Arbitration CAS 2018/A/5734 KS Skënderbeu v. Union des Associations Européennes de Football (UEFA), award of 12 July 2019

Panel: Mr José María Alonso Puig (Spain), President; Mr Philippe Sands QC (United Kingdom); The Hon. Michael Beloff QC (United Kingdom)

Football
Match-fixing
Application of the principles of tempus regit actum and lex mitior
Application of the ne bis in idem principle in the two-stage process conducted by UEFA in match-fixing cases
Right to be heard and anonymous witness statements
Value of expert reports
Standard of proof
Reliability of the UEFA Betting Fraud Detection System
Denial
Legality of the sanction
CAS power to review sanctions

1. **Any determination of what constitutes a sanctionable rule violation and what sanctions can be imposed must take into account the general principle of law *"tempus regit actum"*, whereby these issues shall be determined in accordance with the law in effect at the time of the allegedly sanctionable conduct and new rules and, in consequence, regulations do not apply retrospectively to facts occurring before their entry into force. However, in accordance with the principle of *lex mitior*, the UEFA Disciplinary Regulations (DR) apply to disciplinary offences committed before their entry into force if they are more favourable towards the accused than the regulations in force at the time of the offence.**

2. **The *ne bis in idem* principle applies to disciplinary matters. Indeed, it would contravene any principle of justice if any person could be sanctioned for an offence for which it has already been sanctioned in a final decision. UEFA conducts a two-stage process in respect of match-fixing. Such a two-stage process, with a first stage being an administrative measure, is justified because sport has a compelling interest to act immediately against undesirable behavior that threatens its integrity. Thus, there is a need to have a procedure allowing immediate exclusion of a club from a competition, without prejudice to the possibility that later the same club can be made subject to a disciplinary sanction taking into account the nature of such behavior and all the related circumstances. The one year of ineligibility imposed in the administrative measure is taken into account in the disciplinary measure, so there is no double-counting of the sanction. Also, the administrative measure is limited to the competition in question, while a disciplinary measure can extend to other UEFA competitions. Therefore, the two-stage procedure followed in UEFA match-fixing cases does not infringe the**

principle of *ne bis in idem*.

3. **Anonymous witness statements do not breach the right to be heard when such statements support the other evidence provided to the court. Although admissible, the use of anonymous witnesses is subject to strict conditions. The right to be heard and to a fair trial must be ensured through other means, namely by cross examination through "audiovisual protection" and by an in-depth check of the identity and the reputation of the anonymous witness by the court.**

4. **CAS arbitrators are free to assess expert evidence and its weight and may take into account whether the expert is a tied or affiliated person or a truly independent witness when assessing the expert evidence in any particular case. It is established practice in international arbitration that parties file their own expert testimony, which can be tested in cross-examination, and if their opinions diverge, the arbitrators are free to evaluate the competing merits of that diverging evidence. To decide whether a document is a factual document or an expert report, a panel takes into account its nature and its author, so that, as a general principle, a document that analyses a technical aspect written by somebody who has (or is alleged to have) technical expertise on that matter in hand, can be qualified as an expert report, without prejudice of the value that the panel gives to it which is a separate question.**

5. **Swiss law considers disciplinary proceedings to be civil proceedings. As such, as a general rule, the standard of proof shall be that of beyond reasonable doubt. However, Swiss law offers several means to ease the difficulty of proving certain facts, either by imposing a duty to collaborate on the other party, against whom the facts have to be proved, or by shifting the burden of proof, or lowering the standard of proof. This is notably the case if a party has no access to direct evidence (but only to circumstantial evidence) in order to prove a specific fact. The nature of match-fixing and corruption, the environment in which such activities take place and the limited powers of investigations that sports governing bodies may have to detect such behaviors are relevant factors to determine the standard of proof. Indeed, while national authorities have techniques, such as telephone tapping, that allow them potentially to obtain direct evidence, sports bodies do not benefit from such methods; it is very rare that a sporting disciplinary body will have direct evidence of match fixing, as distinct from indirect evidence. Therefore, the relevant standard of proof in cases of match-fixing should be the comfortable satisfaction of the court having in mind the seriousness of the allegation which is made.**

6. **The role of the UEFA Betting Fraud Detection System (BFDS) is to highlight irregular betting movements, both pre-match and in-game (live), in the core betting markets by monitoring major European and Asian bookmakers. If a match displays irregular betting patterns the match is "escalated" and a report generated. This escalation process is key for the reliability of the system. In a first step, the BFDS uses mathematical calculation to simply flag irregularities on odds but does not offer possible explanations that could justify a flagged irregularity. If it only consisted of this**

step, the BFDS would not be reliable at all because it is just a mathematical analysis that disregards other circumstances. The basis of the proceedings are the subsequent reports and evidence in relation to the flagged matches. Indeed, in order to come to the conclusion that a match is fixed, the analytical and mathematical information needs to be supported by other, different and external elements which point in the same direction, i.e. a differentiation must be made between the so-called quantitative information and a qualitative analysis of the quantitative information, which is also needed. Once a match has been flagged in the first step, the second step is divided in two stages. In the first stage, the analyst reviewing the case decides to label the match as suspicious, or determine whether it should be hotlisted for further investigation. A hotlisted match is then reviewed by analysts prior to a group discussion of the case, and at least three analysts must agree that a match is suspicious. Therefore, the decision is not taken only by one person but by a group of people and after discussion. Further, additional research for information has to be carried out and the correspondent in a country that covers the relevant competition is asked to answer questions about the match. Once the relevant information has been assembled, the match is considered by all available analysts/supervisors, and generally a consensus is sought on whether a match should be reported. For all the above, the BFDS is a reliable mechanism to assist in the detection of fixed matches.

7. **Witness statements denying match-fixing are insufficient to rebut other evidence. Those involved in match fixing cannot be expected to admit their misconduct.**

8. **In order for a club to be subject to disciplinary measures for match-fixing, Article 8 UEFA DR does not require that a specific individual is identified but only that it can be established that members, officials, supporters or players of the club are involved in match-fixing activities, in the sense that the adjudicating body must be comfortably satisfied that people belonging to any of these groups and not to other groups (for instance referees) are the ones that committed the offence. This enlarged approach of article 8 UEFA DR is consistent with the fact that the behaviors that are sanctioned, match-fixing and corruption, are concealed and wiretapping and other types of evidence available to state authorities that are useful to unearth such misconduct, are not available to sports governing bodies, due to their limited coercive powers.**

9. **In the absence of any guidance in the applicable regulations as to particular objective and subjective circumstances to be taken into account in pronouncing an appropriate sanction, a CAS panel, in determining an adequate sanction to be imposed, relies on 1) its *de novo* competence to review the facts and the law afresh; 2) the range of sanctions pronounced in earlier cases before the CAS. In relation to the first element, a line of CAS jurisprudence suggests that CAS panels should review sanctions imposed by disciplinary bodies of federations only when the sanction is evidently and grossly disproportionate to the offence. Another line suggests that, given that a CAS panel has *de novo* powers, while it may naturally respect the federation's decision as conditioned by the requirements of the game it regulates, any such self-restraint is a matter of choice, not compulsion. On either basis, a CAS panel will take into account**

circumstances, such as, *inter alia*, whether the disciplinary body is facing a case of a first offence, the type and gravity of offence or whether there have been multiple offences, as opposed to a single one.

I. THE PARTIES

1. Klubi Sportiv Skënderbeu (the "Appellant") is a professional football club with its registered headquarters in Korçë, Albania. The Club is registered with the Football Association of Albania (the "FAA"), which in turn is affiliated to the Union Européenne de Football Association and the Fédération Internationale de Football Association ("FIFA").

2. Union Européenne de Football Association ("UEFA") is an association under Swiss law and has its registered office in Nyon, Switzerland. UEFA is the governing body of football at European level. It exercises regulatory, supervisory and disciplinary functions over national federations, clubs, officials and players in Europe.

3. The Appellant and UEFA are hereinafter referred to collectively as the "Parties".

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts on the basis of the Parties' oral and written submissions and the evidence provided in the present proceedings. While the Panel has considered all the facts, legal arguments and evidence submitted by the parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

5. Since 2010, the UEFA Betting Fraud Detection System ("BFDS") has identified more than 50 matches involving the Appellant where the results were allegedly manipulated for betting purposes.

6. On 4 May 2016, the UEFA Ethics and Disciplinary Inspectors informed the UEFA General Secretary that they had found sufficient evidence to support disciplinary proceedings against the Appellant.

7. On 13 May 2016, the UEFA Ethics and Disciplinary Inspectors submitted a report in which they requested that the Appellant be declared ineligible to participate in the 2016/17 Champions League ("16/17 CL").

8. On 21 November 2016 in a grounded award, following internal proceedings and an appeal before CAS (procedure CAS 2016/A/4650), the CAS confirmed the UEFA Appeals Body's Decision of 1 June 2016, that declared the Appellant inadmissible to participate at the UEFA competitions for the season 2016/2017.

9. On 19 January 2017, UEFA invited the FAA to conduct investigations to determine whether the Appellant breached the legal framework of the FAA at domestic level.

10. On 23 June 2017, the FAA Ethics Committee ("FAAEC") found that the Appellant had fixed six national-level matches that had been escalated by BFDS and imposed sanctions. On 13 April 2018 CAS (procedure CAS 2017/A/5272) upheld the appeal against the FAAEC.

11. In consequence of the award in CAS 2016/A/4650, the UEFA Ethics and Disciplinary Inspectors ("EDIs") opened a new investigation against the Appellant.

12. On 7 February 208, the EDIs submitted their report concluding that the behavior of the Appellant's players, coaches and officials made the Appellant liable for these people's behavior according to art. 8 of the UEFA Disciplinary Rules ("UEFA DR").

13. On 8 February 2018, the Appellant was informed that disciplinary proceedings had been opened on the basis of the report mentioned in the previous paragraph and that the disciplinary proceedings were referred to the UEFA Appeals Body ("UEFA AB").

Proceedings before the UEFA AB

14. On 13 February 2018, the Appellant disagreed with the decision to refer the case to the UEFA AB.

15. On 20 February 2018, the Appellant sent a list of questions to be answered by UEFA before filing its reply to the EDIs report.

16. On 23 February 2018, the Chairman of the Control, Ethics and Disciplinary Board ("CEDB") ordered UEFA to answer only some of the questions made by the Appellant, which were answered on 26 February 2018.

17. On 5 March 2018, the Appellant submitted its reply to the EDIs report asserting that (i) the BFDS report alone did not constitute evidence of match fixing, (ii) the procedure did not respect the due process, (iii) the report constantly made an extrapolation where there is lack of connection and evidence between facts and the pretense, (iv) no single hard fact or evidence, not a single person, not a single investigation, not a single criminal charge, revealed or substantiated hard facts, (v) when the allegation was that more than 50 matches have been fixed, it is precisely that it did not happen.

18. On 21 March 2018, the CEDB held a hearing to decide the case.

19. On 29 March 2018, the Parties were notified with the decision with grounds, which reads:

"The CEDB decides:

> *To exclude KS Skënderbeu from participating in the next ten (10) UEFA club competitions for which it would otherwise qualify.*

To fine KS Skënderbeu € 1,000,000.

The above fine must be paid into the bank account indicated below within 90 days of communication of this decision".

20. On 3 April 2018, the Appellant notified the UEFA administration of its declaration of appeal against the CEDB's decision and on 9 April 2018, the Appellant submitted the reasons of its appeal and requested a stay of the execution of the decision of the CEDB.

21. On 12 April 2018, the Appellant challenged the Chairman and one of the Vice Chairmen of the UEFA AB because they had already sat in the same capacity in the proceedings that took place in May/June 2016. The challenged persons withdrew from the proceedings.

22. On 13 April, the EDIs submitted their reply to the request for stay of the execution of the CEDB decision of 21 March 2018, and on 18 April the EDIs filed the reply to the appeal brief.

23. On 23 April 2018, the Chairman of the UEFA AB dismissed the request for stay.

24. On 26 April 2018, a hearing was held.

25. On 26 April 2018, the UEFA AB took the decision (the "Appealed Decision") setting out the following operative part:

    1. *"The appeal lodged by KS Skenderbëu is dismissed. Consequently, the UEFA Control, Ethics and Disciplinary Body's decision of 21 March 2018 is confirmed.*

    2. *The costs of the proceedings, totaling € 8'000 (minus the appeal fee), are to be paid by the Appellant.*

    3. *The Football Association of Albania is jointly and severally liable for the payment of the fine and the costs of the proceedings".*

26. The Appellant appeals against the decision of the UEFA AB of 26 April 2018, notified on 4 May 2018 in disciplinary proceedings under reference DC 3118.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

27. On 14 May 2018, the Appellant, filed the Statement of Appeal pursuant to Article R51 of the Code of Sports Related Arbitration (the "Code"). In its Statement of Appeal, the Appellant requested a stay of the Appealed Decision, chose English as the language of the proceedings and appointed Mr. Philippe Sands QC as arbitrator.

28. On 16 May 2018, the Court of Arbitration for Sport ("CAS") acknowledged receipt of the Statement of Appeal and granted UEFA a deadline of 10 days to file its position on the Appellant's request for provisional measures.

29. On 24 May 2018, the Appellant filed its Appeal Brief in accordance with Article R51 of the Code.

30. On 25 May 2018, the Appellant requested that Mr. Igor Samardziski be heard on the BFDS and the Nexus report and amended its preliminary prayer number 11 of the Appeal Brief accordingly.

31. On 28 May 2018, UEFA filed its Answer to the Appellant's request for provisional measures and nominated Mr. Michael J. Beloff QC as arbitrator.

32. On 30 May 2018, the Appellant filed its rebuttal to UEFA's Answer to the Appellant's request for provisional measures.

33. On 3 June 2018 UEFA indicated that it had no intention to supplement its original submission on the provisional measures requested by the Appellant.

34. On 14 June 2018, the President of the Appeals Arbitration Division dismissed the Appellant's request for provisional measures.

35. On 15 June 2018, the CAS Court Office informed the Parties that, pursuant to Article R54 of the Code, the Panel appointed to decide this appeal would be constituted as follows:

    President: José María Alonso Puig, attorney-at-law in Madrid, Spain.

    Arbitrators: Mr. Philippe Sands Q.C., Barrister/Professor of law in London, Great Britain.

    The Hon. Michael J. Beloff QC, Barrister in London, Great Britain.

36. On 18 June 2018, the CAS informed that Mr. José Manuel Maza had been appointed as ad hoc clerk in the present case.

37. On 29 June 2018, UEFA filed its answer to the appeal brief.

38. On 28 September 2018, the CAS informed that Mr. Maza had resigned as ad hoc clerk.

39. On 8 October 2018, the CAS, on behalf of the Panel, invited UEFA to file its comments to the Appellant's "preliminary prayers" within seven days, and communicated that Mr. Victor Bonnin had been appointed as ad hoc clerk.

40. On 12 October 2018, UEFA filed its comments to the "preliminary prayers".

41. On 16 October 2018, the Appellant filed a rebuttal to UEFA's comments to the "preliminary prayers".

42. On 22 October 2018, the CAS communicated the Panel's decision on the preliminary prayers (the "PP Decision").

43. On 26 October 2018, as per the PP Decision, UEFA provided the audio recordings of the hearings before the CEDB on 21 March 2018 and the Appeals Body of 26 April 2018, and the video footage of the Crusaders match. In addition, UEFA requested an extension until 5 November to provide the names of the persons who drafted each of the BFDS reports. On the same day, the extension was granted.

44. On 1 November 2018, UEFA referred to Sportsradar's reticence to provide the names of the analysts in order to protect their safety, because some Sportsradar employees had received death threats. In addition, UEFA indicated that each report had been prepared by up to 20 analysts. Further, it provided a general summary from Sportsradar with the background of the individuals involved in the escalation and the reporting process.

45. On 7 November 2018, the Appellant referred to the previous communication of UEFA to indicate that UEFA's answer had as a consequence that the BFDS reports could not qualify as evidence and that the reliability of the reports will never be assessed in a reliable manner. The Appellant raised other arguments to reiterate its preliminary prayers for a full review of the BFDS.

46. On 23 November 2018, the CAS, on behalf of the Panel, requested UEFA to indicate the name of the persons responsible for each report and their CV for verification purposes. Those persons would be identified to the Appellant on an anonymous basis. The Panel also indicated that those witnesses would be examined following a process similar to that used in CAS 2009/A/1920, and also invited the Parties to provide a hearing schedule.

47. On 30 November 2018, the Appellant indicated that the quality of the footage of the Crusaders match was too poor to make an analysis and attached a letter from Cocon in this regard.

48. On 4 December 2019, the Appellant complained about the process proposed by the Panel to examine the analysts of the BFDS reports.

49. On 10 December 2019, the CAS, on behalf of the Panel, allowed the Appellant to present alternatives for the examination of the analysts and requested UEFA to provide other footage of the Crusaders match if available.

50. On 13 December, UEFA indicated that it did not have any other footage of the Crusader's match and objected to the Appellant's allegations about the quality of the footage.

51. On the same date, the Appellant, in reply to the CAS Court Office letter of 10 December 2019, insisted that the identity of the analysts be disclosed and objected to the examination of only one person for each BFDS report.

52. On 27 December, the CAS advised the parties that the Panel, after considering their respective contentions in relation to the testimony of the BFDS analysts, confirmed the process of examination it had previously indicated but directed that UEFA call the most senior person responsible for each report who can deal with the full report, or all the most senior persons

responsible for a report so that they can deal with it likewise. It also took note that the Appellant had indicated that the point of the footage of the Crusader's match was closed.

53. On 9 January 2019, UEFA indicated that it was not possible to verify one single person responsible for each report, given that they were the result of team work but could offer as witnesses four employees that were in charge of the preparation of the reports. Hence, the Respondent submitted the names of the four witnesses, jointly with their CV for the CAS and the Panel, while the Appellant received an anonymized CV with more generic information (for instance, the age was stated in a range, or the year of academic education was not indicated).

54. On 24 January 2019, the Appellant objected that UEFA had not satisfied the Panel's order of 27 December 2018 in so far as it dealt with the people related to the reports that it had identified and that the anonymized version of the CV of the analysts was *"overly summary and inconclusive"*.

55. On 30 January 2019, the Panel decided that the Responded had satisfied the Panel's order.

56. On 31 January 2019, the Parties informed the CAS that they had not been able to find an agreement on a hearing schedule and sent their proposed agendas for the hearing that did not follow the direction of the Panel inasmuch as they contemplated a schedule in excess of the time indicated for the hearing.

57. On 11 February 2019, the CAS, on behalf of the Panel, considering that the Parties had called more than 40 witnesses and for the efficient conduct of the hearing, decided to invite the Parties to present written witness statements that would serve as evidence in chief. The consequence was that the only witnesses to attend the hearing would be those called by the counter-party for cross-examination. In this regard, the CAS invited the Parties to submit their witness statements by 28 February 2019 and to indicate the name of the witnesses they wished to cross-examine by 6 March 2019.

58. On 27 February 2019, following a request from UEFA for an extension of 20 days to file the witness statements, the Panel partially granted the Parties an extension until 9 March 2019 to file the witness statements and until 12 March 2019 to indicate the names of the witnesses they wanted to cross-examine.

59. On 8 March 2019, the Appellant filed the witness statements and requested an extension to file some statements that were pending.

60. On 11 March 2019, UEFA filed the witness statements available and requested an extension (i) to file some statements still to come and (ii) to indicate the names they wished to cross-examine. The Appellant did not object the fact that UEFAs had not filed the statements timeously.

61. On 12 March 2019, the CAS, on behalf of the Panel, granted an extension to the Parties to provide the remaining witness statements by 18 March 2019 and to indicate the individuals they wished to cross-examine by 21 March 2019.

62. On 12 March 2019, also the Appellant objected the admissibility of the Nexus-BFDS Counter-Analysis Report Assessment that was attached to Mr. O'Kane's witness statement.

63. On 15 March 2019 UEFA submitted its comments on that objection.

64. On 18 March 2019, the CAS, on behalf of the Panel, declined to admit the Nexus-BFDS Counter-Analysis Report Assessment and allowed UEFA to resubmit Mr. O'Kane's witness statement by 20 March 2019.

65. On 18 March 2019 also, the Appellant filed the missing witness statements of Mr. Samardziski and Mr. Steendam and requested that the Cocon report be considered as a report.

66. On 20 March 2019, UEFA filed the amended witness statement of Mr. O'Kane.

67. On 21 March 2019, UEFA objected to the testimony of Mr. Steendam and to the testimony of Mr. Kalezic and Mr. Verbeek because they had been called late. In addition, UEFA indicated that it did not wish to cross-examine any of the witnesses of the Appellant and complained as well that the Appellant had posted on Facebook confidential information about the proceedings.

68. On the same date, the Appellant indicated that it wished to cross-examine Mr. Tom Mace, X. and the anonymous witnesses A, B, C and D of Sportsradar. Additionally, it indicated that it was not in a position to cross-examine Prof. Forrest and objected to the witness statement of Mr. O'Hanrahan as being adduced late and of Mr. O'Kane because its statement was similar to the report that the Panel had rejected. Finally, the Appellant indicated that it would call as its own witnesses, Mr. Zeqo and Mr. Ridvan.

69. On 26 March 2019, the Panel ordered the Appellant to remove any information it had made publicly available about the present proceedings and reminded it of the provision of Article R59 para.7 of the Code.

70. On 27 March 2019, the Appellant objected to UEFA's request to dismiss the testimonies of Mr. Steendam, Mr. Kalezic and Mr. Verbeek, and contested the Panel's letter of 26 March 2019.

71. On 3 April 2019, the Parties were informed of the proposed agenda for the hearing, and of the Panel's decision to (i) reject the Appellants' request for the attendance at the hearing of Mr. Bode and Mr. Zeqo for direct examination, (ii) reject the testimonies of Mr. Steendam, Mr. Verbeek, Mr. Kalezic and Mr. Hanrarahan, but to maintain the Cocon report in the file, (iii) to indicate that Prof. Forrest did not need to attend the hearing, and (iv) to accept the witness statement of Mr. O'Kane and allow the Appellant to indicate if it wished to call him for cross-examination.

72. On 5 April 2019, the Appellant objected to the above decision of the Panel in relation to the Mr. Bode, Mr. Zeqo, Mr. Steendam, Mr. Verbeek and Mr. Kalezic and indicated that the witness statement of Mr. O'Kane was inadmissible, and that the Appellant would not accordingly seek to cross-examine him.

73. On 8 April 2019, the CAS replied to the Appellant's comments on the issue of the confidentiality of the proceedings, made in its letter of 27 March 2019, and invited UEFA to comment on the Appellant's letter of 5 April 2019.

74. On 9 April 2019, the CAS sent the Order of Procedure to the Parties and requested them to sign it by 12 April 2019.

75. On 10 April 2019, UEFA returned the Order of Procedure duly signed and submitted its comments to the Appellant's letter of 5 April 2019.

76. On 10 April 2019 also, the Panel decided to maintain its decision of 3 April 2019 in relation to the witnesses and gave a last opportunity to the Appellant to indicate whether it wished to cross-examine Prof. Forrest.

77. On 12 April 2019, the Appellant returned the Order of Procedure, signed but with some alterations, and requested the admission of a new document (a UEFA power point presentation) to the file, which was accepted by UEFA, with the consequence that the Panel incorporated it into the file. The Appellant also indicated that it was not in a position to cross-examine Prof. Forrest because it had not been provided with the technical data of the BFDS. The Panel confirmed accordingly that Prof. Forrest was not required to attend the hearing.

78. On 16 April 2019, a hearing took place in the headquarters of CAS in Lausanne. In addition to the Panel, Mr. Daniele Boccucci, Counsel the CAS, and Mr. Victor Bonnin, Ad hoc Clerk, the following persons attended the hearing:

- For the Appellant:
    - Mr. Jean-Cédric Michel, Counsel
    - Mr. Sebastien Fries, Counsel
    - Ms. Noemie Weill, Counsel
    - Mr. Adrian Dan, Counsel
    - Ms. Lorin Burba, Counsel
    - Mr. Ardjan Takaj, Appellant's President
    - Mr. Gerhard Takaj, Appellant's Director
    - Mr. Piro Tanki, translator
- For UEFA:
    - Mr. Miguel Lietard, Counsel
    - Mr. Saverio Lembo, Counsel
    - Mr. Lukas Stocker, Counsel

- Ms. Mirjam Trunz, Counsel
- Mr. Angelo Rigopoulos, UEFA Managing Director.

- The Panel heard evidence from the following persons in order of appearance:
  - Witnesses A, B, C and D from Sportsradar
  - Mr. Tom Mace, Director of Global Operations Integrity Services at Sportsradar
  - X., […] at Starlizard.

79. Each witness heard by the Panel was invited by its President to tell the truth subject to the sanctions of perjury. As all of them were UEFA's witnesses and their written statements stood as evidence in chief, following the directions of the Panel of 11 February 2019, the Appellant had the opportunity to cross-examine them. Witnesses A, B, C and D were brought to a secure location in Lausanne where they were duly identified by the Panel and a CAS Counsel who was present in the same room as the witnesses when they gave their testimony in order to assure that it was given without any influence from a third party. The protected witnesses were heard by teleconference, with a voice distortion. The procedure was explained by the President of the Panel to both parties. The parties then had ample opportunity to present their case, submit their arguments and answer the questions posed by the Panel.

80. At the outset of the hearing both Parties confirmed that they did not have any objection with the composition of the Panel and at its conclusion UEFA confirmed that it did not have any objection with the procedure and that their right to be heard had been respected. The Appellant however stated that it maintained the procedural objections it had raised during the proceedings.

81. The Panel confirms that it carefully heard and took into account in its discussion and subsequent deliberations all of the submissions, evidence and arguments presented by the parties oral or written, even if they have not been specifically summarized or referred to in the present award.

IV. OUTLINE OF THE PARTIES' POSITIONS

A. The Appellant

a. Appellant's position

82. The Appellant contends that the disciplinary proceedings must be fair and respect due process and that the Appellant should not suffer prejudice from the delay in bringing the disciplinary case, nor from short deadlines imposed on it hostile to due process, when the EDI had over a year and half to prepare its case.

83. Further, the Appellant alleges that UEFA's case is based mainly on the BFDS reports, from which UEFA inferred that there was prima facie no other explanation for the variation of

betting odds than match fixing, and that as the Appellant did not provide a counter-evidence or an alternative scenario, the club and the players must be held liable for match fixing. The Appellant disputes as unsound this analysis.

84. The Appellant states that none of its members (players, officials, etc.) did fix any match, and no disciplinary proceedings was brought against any of its members. Further, the EDI's report does not identify any person or demonstrate facts that could evidence match-fixing such as bribes, payments or money transfers. Thus, it is impossible for the Appellant to rebut an allegation of match-fixing that is not described in requisite detail.

85. The Appellant states that it wanted to qualify for the group stage of the 2015-2016 Champions League and promised bonuses to incentivize the players, something inconsistent with match fixing.

86. In relation to the Crusaders Match, one of those that UEFA asserts to have been fixed, the Appellant explains that due to last minute visa issues, the Appellant's team had to travel to Paris one day before the match in order to obtain an express visa on the same day for Ireland. The team arrived in Paris at 2 a.m. before the match and after getting the visas the team arrived in Belfast by plane at 6 p.m. Therefore, the team had insufficient rest. Moreover, on the day of the match they noticed that the field was in poor conditions. Further, the Appellant explains that the Appellant's players were threatened by Crusaders' players, in particular the African players. In addition, Mr. Renato Arapi, who could benefit of a bonus of EUR 100,000 was fined and excluded from all other bonuses as a result of receiving a red card in the beginning of the Match. Moreover, the Crusader's goalkeeper was himself engaged in betting.

87. The Appellant also refers to the circumstances of the matches against the Dinamo Zagreb to indicate that the Appellants' team lost the first leg match and that in the second leg the difference in performance level of the two teams was obvious. The Appellant points out that the team managed to score and draw 1-1, although the game finished with four goals against the Appellant. In this game, the Appellant's team was offered a bonus of EUR 1,000,000.

88. In relation to the match against Sporting Clube, the Appellant notes that the key defensive player of the team was absent, and the main striker had not been given a visa. In addition, one of the players received a red card and the referees awarded two penalties against the team. The bonus here was EUR 220,000. Further, Mr. Sampaio, of the Sporting Clube, said that he saw nothing wrong or suspicious during that match.

89. Finally, the Appellant refers to the match against Lokomotiv Moskva and explains that the Lokomotiv fans started saying in Serbian *"kill the Albanians"*. UEFA imposed sanctions in this regard. In any case, the team performed well. For the return game, the difference between the performance level of the teams and the financial resources of the clubs was obvious. The bonus for the team was EUR 220,000.

90. The Appellant contends that, in a disciplinary matter, UEFA bears the burden of proof and the Appealed Decision reverses that burden seven times against the Appellant by relying on a negative inference. Further, under articles 8 and 12 UEFA DR, UEFA must allege and

demonstrate that designated individuals belonging to the Appellant breached article 12 UEFA DR, i.e. must to indicate precisely who breached that article and how, which UEFA did not.

91. In relation to the standard of proof, the Appellant alleges that UEFA lowers the bar and that given the seriousness of the accusation and the magnitude of the sanction, the standard of proof should be equivalent or close to that of beyond reasonable doubt. Alternatively, if, the standard is one of comfortable satisfaction, the more serious the allegations are, and the sanctions sought, on a sliding scale the closer the cursor should be to beyond reasonable doubt. The Appellant refers to the award in CAS 2014/A/3628 (para. 123) that stated: *"In particular, the CAS jurisprudence has clearly established that to reach this comfortable satisfaction, the Panel should have in mind "the seriousness of allegation which is made" (i.e. CAS 2005/A/908, CAS 2009/1920). It follows from the above that this standard of proof is then a kind of sliding scale, based on the allegations at stake: the more serious the allegation and its consequences, the higher certainty (level of proof) the Panel would require to be "comfortable satisfied""*.

92. The Appellant also contends a violation of due process with regards to any reliance on the BFDS which does not itself constitute evidence either of match fixing, nor in any event of the involvement of specific individuals, and to whose reliability there are doubts.

93. The Appellant disputes the neutrality of Sportsradar because advocating and selling the BFDS furthers its own commercial interests. Further, the data used by Sportsradar cannot be ascertained, and as they are obtained from third parties, could be biased or distorted. In addition, the algorithm used could itself have been designed to serve Sportsradar's own commercial interest. For these reasons, a sanctioned party, such as the Appellant, should have access to the data, formulae and algorithms that are the main basis for the sanction, including the different modified versions, which bears on the consistency of the BFDS' results over time. Therefore, as this information was not given to the Appellant, any decision based on the BFDS breaches elementary due process rules.

94. Further, the BFDS only analyses changes in odds, but does not analyze data as to amounts, number of bets or other elements, while the EDI report claims that huge amounts were bet and huge profits made.

95. In addition, from the Appellant's perspective, the BFDS reports give a subjective opinion made by Sportsradar employees who are accountable for their statements, but are neither identified, nor independent. Therefore, their names, resumes, expertise, etc. should have been disclosed, as no judicial body would accept evidence based on unsigned and anonymous reports.

96. In short, the Appellant contends that, absent a full disclosure how the BFDS works and an independent assessment of the BFDS, and without enabling its operations to be challenged in adversarial proceedings, no adverse finding against the Appellant can be made on the basis of the BFDS reports.

97. In relation to the burden of proof, the Appellant argues that there are 54 BFDS reports with no evidence of match-fixing, which is an obvious sign of false positive results elsewhere and that it is not for the Appellant to provide potential causes for the variation of odds identified

by the BFDS. Further, those reports use conditional wording not consistent with the radical final conclusion of match-fixing.

98. The Appellant contends that the BFDS simply flags situations that could be investigated to see whether there is improper activity. While in other previous cases hard evidence had been obtained through investigation, in the present case, ten years after the oldest matches considered in the BFDS reports, there is no such evidence, although, if match fixing occurred it would be tied to organized crime involving many people.

99. The Appellant also contends that the subjective analysis of matches is not evidence either, as anyone can have its own opinion when analyzing video footage; and interpretation is an especially uncertain tool when matches are looked with a preconceived opinion that something wrong happened. The involvement of another company such as Starlizard takes the matter no further in evidential terms as it relies on the same data on odds as Sportsradar and its conclusions do not constitute evidence of a violation of article 12 UEFA DR. Further, the Appellant's experts themselves came to different conclusions in relation to the matches (with the exception of the Crusaders match that they were not able to analyze due to the quality of the footage).

100. The Appellant objects that the Appealed Decision relies on the story fabricated by the EDI who offers as corroborating facts some tweets, a social network friendship and some relationships between a handful of people and companies and points out to the presence, without being very specific, of some links of people such as Mr. Bode, Mr. Zeqo and Mr. Takaj with betting companies or "criminals", which is false and defamatory. The Appellant also object that some videos from Mr. Vrenosi (who is a clown and makes a living out of social media fantasies), or national and international perception and rumors cannot be relied on as evidence. Thus, the Appellant considers all that evidence to be insufficient and that it is contrary to the law to shift the burden of proof by basing a case on rumors and unsubstantiated facts.

101. The Appellant also alleges that the Appealed Decision does not meet the requirements of articles 8 and 12 UEFA DR because these articles require that a specific person breached article 12.1 UEFA DR and that such person must have acted with the view to obtain an advantage for himself or a third party. As this requirements are not met, UEFA cannot sanction the Appellant on the basis of article 8 UEFA DR. The Appellant refers to past cases such as the Pobeda case (CAS 2009/A/1920) in which individuals were prosecuted by UEFA and one of them was found to have breached the prohibition on match-fixing, and where the involvement of a specified person was considered a necessary precondition to apply a sanction against the club. In other cases, hard facts and evidence from the police or judicial authorities inculpated certain individuals; but this is not replicated in the case at hand. Consequently, as the requirements in articles 8 and 12 UEFA DR are not met, the Appealed Decision violates the principle of legality.

102. The Appellant also considers that the Appealed Decision violates the ne bis in idem principle because the 2016 administrative proceedings are on UEFA's own analysis and action; of the exact same sanctional nature; moreover, the sanctions themselves are exactly the same. From the Appellant's perspective there is no real distinction as to their intrinsic nature between the two stages.

103. Finally, the Appellant argues that it had not been granted a fair trial because UEFA, which is both the accuser and the judge in disciplinary proceedings, issued press releases that created a public perception c that the Appellant has fixed matches and would be the subject of sanction. It also has taken the Appellant's case as an example to advocate the BFDS in public fora.

b. Prayers for relief

104. On the merits, the Appellant requested that the Court of Arbitration for Sport:

> *1. "Cancels the Decision of UEFA's Appeal Body dated April 26, 2018, in disciplinary proceeding under reference DC 31181;*
>
> *2. Dismisses in full the disciplinary sanction against the Appellant;*
>
> *3. Orders that UEFA bears the costs of the proceedings and award in indemnity for costs to the Appellant".*

B. The Respondent

a. Respondent's position

105. UEFA points out that four years ago it initiated a cooperation with the police and prosecutors of the highest level in Albania to support the criminal investigations into the illicit behavior of the Appellant. The investigation results are only shared with sports administrative bodies once the accused are officially charged and the political and judicial cooperation in Albania in relation to these type of investigations is not very proactive. For this reason, Respondent initiated its own investigations.

106. In this context, UEFA's investigation focused on the betting analysis of the Appellant's matches, the video analysis of the relevant matches, an onsite investigation in Albania that proves the link between the Appellant and betting syndicates and the national and international perception of the football community as respects those matches.

107. UEFA notes that the BFDS identified more than 50 matches involving the Appellant that were manipulated for betting purposes, not only by looking at betting patterns, but also by considering actions on the pitch. UEFA also collected external evidence such as testimonies of opponents, media reactions, etc.. It points out that some of those who cooperated with the onsite investigation have even received death threats.

108. After explaining how the BFDS works and the different escalation processes relying on the independent review of the BFDS by Prof. David Forrest (the "Forrest Report"), UEFA lists examples of cases in which the BFDS was successful in the past in detecting match-fixing.

109. UEFA also refers to several CAS awards that have confirmed the reliability and the importance of the BFDS, such as the awards in CAS 2015/A/4351, CAS 2016/A/4650, CAS 2017/A/5173 and CAS 2017/A/5272. Further, UEFA points out that the Council for Europe Convention on the Manipulation of Sports Competitions considers irregular patterns as evidence to detect

match-fixing and that a report from the European Commission confirms the reliability of the BFDS.

110. UEFA analyzed the four matches by way of example and considers that the games show a criminal intention to obtain betting profits and that matches have been fixed not only on the outcome of the game, but also by influencing the total number of goals scored. For UEFA, the fixers knew what would happen (and indeed did happen) on the pitch, and the betting activities confirm the existence of the such fixing.

111. With regard to the game with the Crusaders, UEFA contends that the arrival of the last minutes of the match was used to trigger enormous gains in the betting markets. In particular because once the Appellant had secured the progress to the next round, the Appellant could afford to concede goals. After the 78th minute, an analysis of the bookmakers showed some suspicious live betting. For example, with Maxbet, when odds should be statistically 6.00, they were as low as 2.09. In this match, even the Crusaders goalkeeper suggested on Twitter that some kind of betting scam took place and since that match the Hong Kong Jockey Club no longer offers matches involving the Appellant; similarly, the GLMS (an Asian betting company), recommend precaution to its members in respect of the Appellant. UEFA disputes, the arguments of the Appellant as being misleading - the artificial turf at the stadium had been authorized by FIFA and neither the delegate nor did the referee report any racist incidents.

112. With regard to the match with Dinamo Zagreb, UEFA considers it suspicious that during the second half, with a score 3-1 in favor of Dinamo, which was playing with numerical disadvantage (one man less), enormous amounts of money were suddenly bet on more goals in favor of Dinamo. One of the Appellant's players reacted slowly to the ball that set up the goal and gave up chasing his opponent.

113. With regard to the match with the Sporting Clube de Portugal, UEFA contends that Mr. Salihi was sent off in the minute 24 of the game following a deliberate handball that took place on an Appellant's attack at less than 10 meters and in direct sight of the goal-line referee. An early sending-off is a tactic often used by match fixers. In addition, the Appellant also caused two penalties to be taken against it. And later, with a score 4-0 for Sporting, highly suspicious live bets were suddenly placed that at least 6 goals would be scored in the match that finished with the score 5-1 for Sporting Clube. For UEFA, the Appellant's allegation that there was a big difference in quality between the two teams is disproven by the fact that The Appellant defeated the Sporting Clube with 3-0 in the return leg.

114. Finally, with regard to the Lokomotiv match, after Lokomotiv scored the first goal, and particularly early in the second half of the match, there was a sudden heavy one-sided betting that a further two goals would be scored, and even if only 5 minutes were left and the score was still 1-0, bettors still continued to wager on an additional goal. Also, there was suspicious betting against the Appellant in the last ten minutes of the match on a total of three goals being scored in the match and that the Appellant would lose by at least a two-goal margin. The game finished 3-0 against the Appellant. The second goal resulted from a match incident in the 89th minute when there was a "miscommunication" between the Appellant's goalkeeper and the defender, allowing the opposite striker to score, and the third goal was scored in minute 90 where no

defender tried to stop an attacker near the goal. For UEFA, the evidence obtained from more than 400 bookmakers proves the manipulation of this match, and the arguments given by the Appellant fail because the alleged racist chants did not occur and the difference between the two teams is factored into the escalation process and is taken into account.

115. UEFA further adds that following the recommendations in the Pobeda case, UEFA asked an expert panel of three experienced international coaches to evaluate the Appellant in the field and concluded that both the individual and team performance in the escalated matches were clearly an unexpected and unexplainable deviation from the usual level of performance in other matches.

116. UEFA also list a number of 49 matches that have also been allegedly manipulated by the Appellant prior to the 2015/2016 season and relies on the reports prepared by the BFDS for each of these matches.

117. In addition, UEFA points out that it mandated the company Starlizard to perform an independent and anonymous analysis of the betting data of ten matches of the Appellant and reached to similar conclusions as the BFDS with regard to the behavior of the Appellant with, apart from minimal additional information, nothing but betting data to rely on.

118. UEFA also contends that the Appellant has acknowledged the validity and reliability of the BFDS escalation reports in CAS 2016/A/4650 by stating that their content cannot be denied and even admitted that some of its players were involved in the fixing of the escalated matches.

119. UEFA considers that in the case of the Appellant match-fixing could only have been carried out on the pitch by its players and orchestrated by its officials, chiefly its President, and other key employees such as the coach and other connected persons. UEFA's investigation suggests that match-fixing has been directed and operated by Mr. Bode, Mr. Zeqo and Mr. Takaj and refers to connections between Mr. Zeqo and Mr. Takaj and also between the Mr. Takaj and the former coach, Mr. Jose, the players and betting companies. In this regard, Mr. Takaj was the founder and is a shareholder of Eurobest Sh.a, a shareholder of Star bet, Top-Best (sponsor of The Appellant), SBObet, Baste-Live (sponsor of The Appellant) and Super Bast (sponsor during 2015/2016).

120. UEFA also relies on the perception of the national and international football community, players, supporters, betting operators and journalists, several of whom have complained of the irregularities of the Appellant.

121. In relation to the legal arguments of the Appellant, UEFA first contends that it is for the CAS Panel to decide how the evidence shall be analyzed and evaluated. UEFA also denies that the Appealed Decision infringes the ne bis in idem principle because (i) the rules of criminal law are not applicable in disciplinary matters, (ii) the two stage procedure in articles 4.02 and 4.03 UCLR can be applied when the facts justify the imposition of not only a decision of non-admission, but also additional disciplinary sanctions, (iii) by filing the UEFA Admission Form to participate in the Champions League, the Appellant agreed to be bound by the UCLR and

the two stage process, and (iv) in case CAS 2016/A/4650, the Panel did not decide whether there had been a breach of the UEFA DR in order not to prejudice the disciplinary proceedings.

122. For UEFA, the applicable standard of proof is the one of comfortable satisfaction and refers to article 18.2 UEFA DR that reads that *"the standard of proof to be applied in UEFA disciplinary proceedings is the comfortable satisfaction of the competent disciplinary body"*. UEFA also refers to several CAS awards that apply this standard of proof for match-fixing cases.

123. In relation to the due process allegations made on the basis that the Appellant was not granted access to the formulae and data of the BFDS, UEFA states that the BFDS reports are not considered UEFA official reports and ultimately have to be evaluated by the Panel according to the Swiss law principle of free evaluation of evidence As it is for the Panel to evaluate such reports, there is no issue of due process nor alteration of the burden of proof as argued by the Appellant.

124. Further, UEFA affirms that the principle of strict liability of article 8 UEFA DR applies in the present case. Under this rule, member associations and clubs bear strict liability for the actions of third parties and are responsible for the improper conduct of persons acting on their behalf. Thus, clubs are automatically responsible once such improper conduct has been established.

125. In relation to the Appellant's allegation that article 12 UEFA DR requires the identification of specific individuals, the Respondent considers that the word "anyone" used in that article is a broad term and is defined in article 8 UEFA DR as those who can trigger the responsibility of clubs. In the context of the current case, the only possible conclusion is that match-fixing was effect by individuals connected to the Appellant, such as the players or the coach or the officials.

b. Prayers for relief

126. UEFA requests the CAS to issue an award:

- *"Rejecting all reliefs sought by Skënderbeu.*
- *Confirming the Appealed Decision.*
- *Ordering Skënderbeu to pay all of the costs of this arbitration and a significant contribution towards the legal fees and other expenses incurred by UEFA in connection with these proceedings".*

V. JURISDICTION

127. Article R47 of the Code provides as follows:

"An appeal against the decision of a federation, association or sports-related body may be filed with the CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and insofar if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body".

128. Article 62.1 of the UEFA Statutes provides that *"[a]ny decision taken by a UEFA organ may be disputed exclusively before the CAS in its capacity as an appeals arbitration body, to the exclusion of any ordinary court or any other court of arbitration"*.

129. Accordingly, the jurisdiction of the CAS derives from Article R47 of the Code and article 62 of the UEFA Statutes. Moreover, both parties agree that the CAS has jurisdiction to hear and resolve this dispute and have signed the Order of Procedure.

130. The Panel is therefore satisfied that it has jurisdiction to decide this case.

VI. ADMISSIBILITY

131. Article R49 of the Code provides as follows:

"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against".

132. Article 62.3 of the UEFA Statues provides that *"[t]he time limit for appeal to the CAS shall be ten days from the receipt of the decision in question"*.

133. The appeal was filed within the above deadline of ten days and complied with all other requirements set forth in article R48 of the Code.

134. The Panel is therefore satisfied that the appeal is admissible.

VII. APPLICABLE LAW

135. Article R58 of the Code provides the following:

"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

136. The Parties agree that UEFA Statutes, rules and regulations are applicable to the present proceedings. The Appellant contends that the applicable Disciplinary Regulations are those of 2014 and not those of 2017, whereas UEFA contends that they are those of 2017. For the Appellant, the matter is moot as regards articles 3, 8 and 12 UEFA DR, but significant as regards to article 5, as to the applicable law, and article 24.2 UEFA DR of 2017, as to the standard of proof, which did not exist in the 2014 UEFA DR.

137. In the Panel's view, any determination of what constitutes a sanctionable rule violation and what sanctions can be imposed must take into account the general principle of law *"tempus regit actum"*, whereby these issues shall be determined in accordance with the law in effect at the time

of the allegedly sanctionable conduct and new rules and, in consequence, regulations do not apply retrospectively to facts occurring before their entry into force. This approach has been adopted by previous CAS panels, such as CAS 2000/A/274 that stated:

"under Swiss law the prohibition against the retroactive application of Swiss law is well-established. In general, it is necessary to apply those laws, regulations or rules that were in force at the time that the facts at issue occurred" (para. 72).

138. The four matches which were allegedly fixed and are the reason for the sanction imposed on the Appellant took place in 2015 in relation to the UEFA Champions League and the UEFA Europa League. Consequently, they took place at a time when the 2014 edition of the UEFA DR was in force. Thus, the Appellant submitted to and agreed to be bound by the 2014 edition of the UEFA DR, and this version should apply, in principle, pursuant to its article 70. However, article 78 of the 2017 UEFA DR states that it applies *"to disciplinary offences committed before their entry into force if they are more favourable towards the accused than the regulations in force at the time of the offence"*. Consequently, the Panel will apply the 2017 UEFA DR save when the 2014 UEFA DR are more favourable to the Appellant.

139. In relation to the UCLR and the ELR, the Panel also considers that the applicable versions are those that were in place when the alleged offences took place, with the result that the 2015/2018 Cycle UCLR and ELR shall apply, as they were the ones in force pursuant to article 86 UCLR and article 84 UEFA ELR.

140. Finally, in relation to the applicable UEFA Statutes, the Appellant has put into the record the 2017 Edition of the UEFA Statutes, notwithstanding that the alleged offences were committed in 2105, when an earlier edition was in force. UEFA has not objected. Therefore, the Panel is content to apply the 2017 edition of the UEFA Statutes on the basis that neither party considers that anything turns, for the purposes of this appeal, on any difference between it and the earlier edition.

141. Furthermore, the Panel notes that the decision was issued by the UEFA AB, which is a jurisdictional body of the UEFA, a Swiss association seated in Switzerland. The Panel also notes that article 64 of the Statutes provide that they shall be governed in all respects by Swiss law. The Parties have not disputed that Swiss law may apply subsidiarily. Therefore, considering article R58 of the Code, the Panel will apply Swiss law subsidiarily.

VIII. LEGAL ANALYSIS

142. Given the nature of the arguments of the Appellant, the main issues to be resolved by the Panel can be divided in two parts. The first one concerns procedural and formal issues, while the second part concerns the substantial issues ("Merits"). Consequently, the particular issues to be resolved by the Panel are:

A) Procedural and formal issues

a. Does the Appealed Decision violate the *ne bis in idem* principle?

b. Has the Appellant's right to be heard and the due process rights in the disciplinary proceedings been respected?

c. What is the value of the different expert reports?

B) Merits

a. What is the applicable burden and standard of proof?

b. What is the relevance and credibility of the BFDS?

c. Do the merits of the case warrant disciplinary sanctions being imposed on the Appellant?

d. Does the Appealed Decision violate the principle of legality?

e. Is the sanction imposed by the Appealed Decision proportionate?

A. Procedural and formal issues

a. Does the Appealed Decision violate the ne bis in idem principle?

143. First, the Panel points out that it disagrees with UEFA in so far as it contends that the ne bis in idem principle does not apply to disciplinary matters. Indeed, it would contravene any principle of justice if any person could be sanctioned for an offence for which it has already been sanctioned in a final decision.

144. Concerning the particular question about whether the two-stage process infringes the ne bis in idem principle, the Panel notes that other CAS awards have already pronounced on this issue. In CAS 2013/A/3256 the panel found:

"The Panel finds that the application of such "two stage process", even if the one-year period of ineligibility of the Appellant for UEFA competitions in the 2011/2012 season would not have been imposed by the TFF but by UEFA, which it was not, would not violate the principle of ne bis in idem. Both parties referred to jurisprudence of CAS and the Swiss Federal Tribunal in order to corroborate their respective opinions. The Panel adheres with the position put forward by UEFA because the Panel finds that UEFA has a legitimate interest in applying a "two-stage process" in order to exclude clubs from its competitions with immediate effect, before being required to evaluate the violations to its full extent.

In respect of the example described by the Appellant, the Panel finds that the comparison does not hold. Although indeed a first sanction was imposed on the Appellant based on article 2.05 of the UCLR, this sanction was only a minimum sanction of one season exclusion from European competitions. Therefore, based on the wording of article 2.06 of the UCLR (and subject to the conditions contained therein), the Appellant could have been aware that an additional appropriate sanction could be imposed on it in a second stage. The Panel finds that if the rules provide for two steps (a minimum and a final sanction), no issue of ne bis in idem arises. If a comparison would have to be made, the Panel finds that the following situation would better illustrate the situation: if someone has

a claim of CHF 10,000, he can first claim CHF 3,000 and then in a second procedure the remaining CHF 7,000. This does not change the nature of the first CHF 3,000 and no issue of ne bis in idem arises, since it is made clear from the beginning that the single procedure is split in two steps".

145. The Panel in CAS 2018/A/5500 followed the same approach.

146. The Panel does not see any reason to depart from such previous decisions because, although the disciplinary sanction arises out of the same regulatory framework as the administrative one, the nature of the proceedings is different. That the first stage is an administrative measure is clearly indicated in section 4.03 UCLR, which provides:

"In addition to the administrative measure of declaring a club ineligible as provided for in Paragraph 4.02, the UEFA Organs for the Administration of Justice can, if the circumstances so justify, also take disciplinary measures in accordance with the UEFA Disciplinary Regulations".

147. This Article is related to Article 50.3 of the UEFA Statutes, which provides:

"The admission to a UEFA competition of a Member Association or club directly or indirectly involved in any activity aimed at arranging or influencing the outcome of a match at national or international level can be refused with immediate effect, without prejudice to any possible disciplinary measures".

A distinction between the two stages is therefore recognised to exist in the statutes.

148. There is, moreover, ample CAS jurisprudence confirming that UEFA conducts a two-stage process in respect of match-fixing and that the first stage is of an administrative nature (CAS 2016/A/4650, paras 47 et seq; CAS 2013/A/3258, para. 127; CAS 2014/A/3625, para. 122 of abstract published on the CAS website; CAS 2014/A/3628, para. 102 of abstract published on the CAS website; CAS 2013/A/3256, para. 164 of abstract published on the CAS website; TAS 2011/A/2528).

149. Such a two-stage process, with an initial administrative measure, is justified because sport has a compelling interest to act immediately against undesirable behavior that threatens its integrity. Thus, there is a need to have a procedure allowing immediate exclusion of a club from a competition, without prejudice to the possibility that later the same club can be made subject to a disciplinary sanction taking into account the nature of such behavior and all the related circumstances. This need arises particularly in cases of match fixing to avoid the risk that a club might continue with match-fixing in the same competition (which also explains why the administrative measure has a duration of just one season irrespective of the gravity of the violation).

150. Further, as stated in by the CAS Panel in CAS 2014/A/3625, the administrative measure is *"aimed not to sanction the club but to protect the values and objectives of UEFA's competition, its reputation and integrity, not only to prevent a club which has violated such values from taking part in the competitions organized by UEFA (i.e. to protect the integrity of the competition), but to also dispel any shadow of doubt in the public about the integrity, the values and the fair play of its competitions (i.e. to protect the reputation of the competition)"* (para. 123).

151. The Panel also notes that the one year of ineligibility imposed in the administrative measure is taken into account in the disciplinary measure, so there is no double-counting of the sanction, and also that the administrative measure is limited to the UEFA Champions League competition, while a disciplinary measure under article 4.02 UCLR, can extend to other UEFA competitions.

152. For all the above reasons, the Panel does not consider that the two-stage procedure followed in UEFA match-fixing cases infringes the principle of *ne bis in idem*.

153. The Panel notes the concern of the Appellant raised during its submissions at the hearing. It wishes to make clear that the fact that some issues dealt with in this award were already decided in CAS 2016/A/4650, has not prevented it from considering them again in this award, or to reach to different conclusions, given that case CAS 2016/A/4650 took place in the framework of administrative measures, and this case takes place in the framework of disciplinary measures. Also, the Panel's decision on this issue (see para. 153 above) has been independently reached and reflects its own views.

b. Has the Appellant's right to be heard and the due process rights in the disciplinary proceedings been respected?

154. The Appellant has alleged several due process violations during the proceedings that terminated with the Appealed Decision.

155. As CAS appeals arbitration allows a full de novo hearing of the case, with all due process guarantees, it cures any procedural defects or violations of the right to be heard, as stated in CAS 2009/A/1880-1881: *"the CAS appeals arbitration allows a full de novo hearing of a case, with all due process guarantees, which can cure any procedural defects or violations of the right to be heard occurred during a federations (or other sports body's) internal procedure. [...] it is the duty of a CAS panel in an appeals arbitration procedure to make its independent determination of whether the Appellant's and Respondent's contentions are correct on the merits, not limiting itself to assessing the correctness of the previous procedure and decision"* (paras 142, 146).

156. The same approach has been followed, for instance, in other cases such as CAS 2003/O/486 *"In general, complaints of violation of natural justice or the right to a fair hearing may be cured by virtue of the CAS hearing. Even if the initial "hearing" in a given case may have been insufficient, the deficiency may be remedied in CAS proceedings where the case is heard "de novo""* (para. 50).

(See also CAS 98/208 at para. 10; CAS 2006/A/1153 at para. 53; CAS 2008/A/1594 at para. 109; TAS 2008/A/1582 at para. 54; CAS 2008/A/1394 at para. 21; TAS 2009/A/1879 at para. 71).

157. Consequently, given the previous decisions and the authority granted to the Panel by article R57 of the Code to review fully the facts and the law de novo, the Panel considers that any possible infringements of the Appellants' due process rights, if any, committed during the disciplinary proceedings are hereby cured and thus irrelevant. As a result, the Panel may proceed to rule on the merits of the case.

158. However, the Panel notes that the Appellant has raised also some procedural complaints during the CAS proceedings that the Panel wishes to address here.

159. First of all, the Panel refers to the decision it took in relation to the Appellant's preliminary prayers as the Appellant has raised procedural concerns of due process in relation to its applications rejected by the Panel. The Panel notes at the outset that rejecting a party's request for documents and evidence does not automatically mean that its due process rights are violated. Turning in sequence to the particular complaints:

a) The Appellant first requested that UEFA provided the full and material answers requested by the Appellant on 20 February 2018. The Panel rejected this request, both because the questions arose from an Inspector Report of 7 February 2018 that had not been filed, and because most of the questions referred to Sportsradar. Therefore, the Appellant would have an opportunity to put them to Mr. Mace, Director of Global Operations Security Services at Sportsradar, at the hearing. Moreover, the Appellant did not indicate why they were relevant to the appeal.

b) The Appellant also requested that UEFA provided the full mathematical technical and operative descriptions of the BFDS and to appoint an expert to analyze the BFDS. The Panel rejected such request as it considers (as explained later in section VIII.B.b) that the function of the first stage of the BFDS is simply to flag a particular match, so that an analyst can then analyze whether the actual betting is irregular, and, if so, whether there is an explanation for such level of betting. Thus, the basis for the sanction were the reports, not the simple fact that the matches been flagged at the first stage. In addition, the Panel recalls that such information is not the property of UEFA, but belongs to Sportsradar and is sensitive and confidential business information. Further, the technical information and algorithms, if disclosed, could be misused later by imparting knowledge of exactly how the system flags a match, in order for a match-fixer to design new behavior patterns that could not be flagged. The Panel's refusal of that and the related preliminary relief was justified for all these reasons.

c) The Appellant also requested that UEFA provided the names, resumés and credentials of all persons who drafted each BFDS reports. Given that Sportsradar had indicated that about 20 people participated in each of the BFDS reports, the Panel considered it sufficient to identify the people that were responsible for such reports and were able to testify about their full contents. Further, the Panel ordered that whereas the identification would be provided to the Panel and CAS, the Appellant would receive anonymized CVs only and those witnesses' testimony would be provided (in scrambled form) at the hearing by teleconference from a secret place in Lausanne. Such decision was justified by the fact that, given all the circumstances and not least the evidence provided of the sending of bullets in mail to persons perceived to be hostile to the Appellants, the Panel considered that there was a serious risk to the physical integrity of these witnesses.

Further, in such exceptional circumstances, this kind of protection accorded to witnesses does not infringe the Appellant's due process rights as explained in CAS 2009/A/1920:

> *"When facts are based on anonymous witness statements, the right to be heard which is guaranteed by article 6 of the European Convention of Human Rights (ECHR) and article 29 par. 2 of the Swiss Constitution is affected. According to a decision of the Swiss Federal Court dated 2 November 2006 (ATF 133 I 33) anonymous witness statements do however not breach this right when such statements support the other evidence provided to the court. According to the Swiss Federal Court, if the applicable procedural code provides for the possibility to prove facts by witness statements, it would infringe the principle of the court's power to assess the witness statements if a party was prevented from relying on anonymous witness statements. The Swiss Federal Court refers to the jurisprudence of the European Court of Human Rights which recognizes the right of a party to rely on anonymous witness statements and to prevent the other party from cross examining the witness, if "la sauvegarde d'intérêts dignes de protection" (i.e. if the personal safety of the witness) is at stake. With reference to the ECHR-cases Doorson, Van Mechelen and Krasniki, the Swiss Federal Court then noted that the use of anonymous witnesses, although admissible, was subject to strict conditions. The right to be heard and to a fair trial must be ensured through other means, namely by cross examination through "audiovisual protection" and by an in-depth check of the identity and the reputation of the anonymous witness by the court"* (para. 13).

160. In the present proceedings, the Panel has sought to ensure a proper balance between the rights of the Appellant, notably the right to examine the witnesses, and the need to protect the witnesses from harm. The Appellant was provided with the written witness statements and was able to cross-examine the protected witnesses by telephone during the hearing. A CAS counsel was present at their location to ensure that the witnesses were properly identified and that they were alone during their examination-in-chief and the cross-examination.

161. The Panel granted the Appellant's request to be given the footage of the match with the Crusaders the subject of a BFDS report. The Appellant later complained that the quality of the video did not allow it to carry out an accurate analysis of the match. The Panel considers that this is not a matter which raises due process considerations, but simply relates to the quality of the evidence, and how the Parties make use of it.

162. The Appellant has also complained that he was not allowed to call at the hearing for direct examination of Mr. Bode and Mr. Zeqo and that this also resulted in a violation of due process. The Panel disagrees with the Appellant for the following reasons:

    a) On 23 November 2018, the Panel requested the Parties to propose jointly a tentative agenda for the hearing providing indicative times for the examination and cross-examination of witnesses. The deadline to submit the agenda was subsequently extended. Although the Panel had indicated the Parties the intended duration of the hearing, the agendas proposed by the Parties on 31 January 2019 extended beyond the period that the Panel had fixed.

    b) Consequently, in the light of the fact that there were more than 40 witnesses listed, for the sake of efficiency of the proceedings, to avoid having to delay the hearing, and bearing in mind that article R51 and R55 of the Code allow the Panel to request that witness statements be filed after the submission of the Appeal Brief and the Answer, on 11 February 2019, the Panel (i) ordered the Parties to file the written statements of their

witnesses (ii) directed that such statements would be considered as evidence in chief and (iii) stipulated that only the witnesses called by the counter-party for cross-examination would attend the hearing.

c) These clear instructions allowed the Appellants witnesses to say in writing anything they would otherwise have said orally during the hearing.

d) As UEFA did not call the Appellants' witnesses, Mr. Bode and Mr. Zeqo, they did not need to attend the hearing for cross-examination. Even if UEFA had requested their appearance they would have not been examined by the Appellant, but only subjected to cross-examination (see above (b) and (c)).

e) Admitting the Appellant's request would have resulted in an unequal (less favorable) treatment for UEFA, which had respected the Panel's instructions; if it had known that the Appellant would be allowed to carry out direct examination, UEFA could have also made a similar request.

f) Mr. Bode and Mr. Zeqo were able to present freely and extensively evidence in their written statements akin to what they could have said in direct examination, and hence there was no violation of their due process rights in this regard either.

163. The Appellant raised another due process objection based on due process following the Panel's decision to reject the written witness statements of Mr. Steendam, Mr. Verbeek and Mr. Kalezic. The Panel points out that, as stated in the letter of 3 April 2019, they were not indicated as witnesses in the Appeal Brief, i.e. when the Appellant should have indicated them pursuant to article R51 of the Code. The Appellant itself objected to UEFA's witness Mr. Anrarahan because he had been called late. Therefore, the Panel was only applying the same principle, based on article R51, that the Appellant itself had applied: what was sauce for the goose was sauce for the gander. Further and in any event, because the Appellant did not present a witness statement for Mr. Verbeek and Mr. Steendam, there was not even a statement to be admitted or rejected. Finally, these individuals were proposed to testify about the Cocon report, which the Panel declared that should remain in the file.

164. The Appellant also complained about the fact that it had not been given the technical and software information of the BFDS, and therefore it could not carry out a proper cross-examination of Prof. Forrest. The Panel has already explained the reasons why it denied the technical and software information of the BFDS and notes here that the Forrest Report was a complete analysis of the BFDS and how BFDS reports are drafted. Thus, there was no need at all for the Appellant to have the technological information requested in order properly to carry out a cross-examination of Prof. Forrest about his report. In the Panel's view, the Appellant may have created this complaint as an excuse not to call Prof. Forrest for cross-examination so as then to raise another due process objection.

165. The Appellant has alleged that it has not been accorded a fair trial because of the adverse public perception of the Appellant created by UEFA. The Panel has taken no account of media

reports, and has been informed only by the admissible evidence before it and the submissions made on such evidence

166. Finally, the Appellants criticism, whatever its force, if any, that UEFA was both accuser and judge in the disciplinary proceedings, necessarily lapses when an appeal is made to CAS as the judge.

167. In short, the Panel is confident that the Appellant's due process rights have been fully respected during the proceedings, in accordance with Swiss law. Notably, the Panel has respected the right to be heard and principles of due process. It has only refused evidence that has not been offered in the proper form, or at the proper stage of the procedure, or is not suited to prove the fact for which it was offered, or seeks to prove a matter that is not in dispute or if it seek to prove an irrelevant matter. Moreover, the Appellant was always able to refute the evidence advanced by UEFA, as it had the opportunity to call UEFA's witnesses for cross-examination (4A_274/2013, para 3.2; 4A_440/2010, para. 41.; 4_220/2007, para. 8.1).

c. What is the value of the different expert reports?

168. The Appellant has disputed the value given in the Appealed Decision to the different expert reports that were produced during the disciplinary proceedings. In the course of this arbitration proceedings, the Appellant has also made reference to this issue and has submitted, for instance, in reliance on a judgement of the Swiss Federal Court (SFC 141 III 433) that, if contested, a private expert assessment does not carry any more weight than an allegation and is not itself evidence: only an independent expert report commissioned by a Court in accordance with due process qualifies as evidence. Therefore, on this basis the Forrest Report is not more than an allegation.

169. The Panel disagrees with the Appellant. First of all, the Panel notes that the decision of the Swiss Federal Court referred to civil proceedings and does not apply to arbitration proceedings. As rightly stated in the legal expert report of Prof. Girsberger submitted by UEFA, arbitration proceedings are regulated by chapter 12 of the Swiss Private International Law Act ("PILA"), which is a legislative instrument to which the remainder of the PILA or the Swiss Code of Civil Proceedings, in principle, do not apply, with the consequence that the rules made for state court litigation are inapplicable in arbitration.

170. Therefore, CAS arbitrators are free to assess expert evidence and its weight and may take into account whether the expert is a tied or affiliated person or a truly independent witness when assessing the expert evidence in any particular case. It is established practice in international arbitration that Parties file their own expert testimony, which can be tested in cross-examination, and if their opinions diverge, the arbitrators are free to evaluate the competing merits of that diverging evidence.

171. To decide whether a document is a factual document or an expert report, a Panel takes into account its nature and its author, so that, as a general principle, a document that analyses a technical aspect written by somebody who has (or is alleged to have) technical expertise on that

matter in hand, can be qualified as an expert report, without prejudice of the value that the Panel gives to it which is a separate question.

172. The Forrest Report analyzing the efficacy of the BFDS was prepared by Prof. Forrest, and Prof. McHale, professors of economics at the University of Liverpool. The UEFA Expert Panel Report analyzing the four matches that are the basis of the Appealed Decision was prepared by international football coaches and the Starlizard report analyzing ten matches to see if the results were similar with the results BFDS was prepared by Starlizard, a sports betting consultancy. Therefore, the Panel considers that the reports can be considered expert reports again without prejudice to the weight that the Panel may give to each of them.

173. In this regard, the Panel points out that UEFA told CAS on 18 March 2019, that the three authors of the UEFA Expert Panel Report had resigned and were not available any longer to act as witnesses. The Appellant did not raise any complaint in this regard until the hearing. Before the hearing it did not express any wish to have them cross-examined, nor request the Panel to issue an order ordering them to attend the hearing for cross-examination. Consequently, the Panel was led to conclude that the Appellant had no particular concern in this regard.

174. For all these reasons, the Panel is of the opinion that the expert reports filed in the present proceedings shall be considered as admissible documents and categorized as expert report.

175. By contrast, the Panel considers that the BFDS reports, the basis of the sanction that is the object of challenge in these proceedings, cannot be qualified as a report, but rather as factual documents.

B. Merits

176. Before starting to analyze in detail the merits, the Panel will first consider the applicable standard of proof and in that context the credibility of the BFDS and the value of some reports.

a. What is the applicable burden and standard of proof?

177. As already noted, the Parties disagree on the standard of proof that should apply in a match-fixing case. The Appellant considers that the standard of proof should be close to that beyond reasonable doubt considering the seriousness of the accusation. Conversely, UEFA considers that the standard should be that of "comfortable satisfaction".

178. The Panel notes that the 2014 UEFA DR does not describe the applicable standard of proof that should apply, while the 2017 UEFA DR refers to the "comfortable satisfaction". While pursuant to the 2017 UEFA DR it is clear that the Panel should apply the "comfortable satisfaction" standard, the omission in the 2014 UEFA DR means that the Panel has to determine what is the standard that it should apply.

179. The Panel considers as a relevant factor to determine the standard of proof, the nature of match-fixing and corruption (which is concealed *"as the parties involved will seek to use evasive means to ensure*

that they leave no trail of their wrongdoing" - CAS 2010/A/2172, para. 70), the environment in which such activities take place and the limited powers of investigations that sports governing bodies may have to detect such behaviors. Indeed, while national authorities have techniques, such as telephone tapping, that allow them potentially to obtain direct evidence, sports bodies do not benefit from such methods; it is very rare that a sporting disciplinary body will have direct evidence of match fixing, as distinct from indirect evidence. Such difficulty has been recognized, for instance in case CAS 2009/A/1920:

"Taking into account the nature of the conflict in question and the paramount importance of fighting corruption of any kind in sport and also considering the nature and restricted powers of the investigating authorities of the governing bodies of sport as compared to national formal interrogation authorities, the Panel is of the opinion that cases of match-fixing should be dealt with in line with the CAS constant jurisprudence on disciplinary doping cases. Therefore, the UEFA must establish the relevant facts to the comfortable satisfaction of the Court having in mind the seriousness of the allegation which is made" (para. 85).

180. It is true that Swiss law considers disciplinary proceedings to be civil proceedings. As such, as a general rule, the standard of proof shall be that of beyond reasonable doubt. However, as indicated by UEFA, Swiss law is also aware of the proving difficulties in these kind of cases, it offers several means to ease the difficulty of proving certain facts, either by imposing a duty to collaborate on the other party, against whom the facts have to be proved, or by shifting the burden of proof, or lowering the standard of proof. This is notably the case if a party has no access to direct evidence (but only to circumstantial evidence) in order to prove a specific fact (SFT 132 III 715, E. 3.1; BK-ZPO/BRONNIMANN, 2012, Art. 157 no. 41; BSK-ZPO/GUYAN, 2nd ed. 2013, Art. 157 no. 11). This was also the approach followed in CAS 2013/A/3256 (paras. 276 to 282):

"This Panel finds that the standard of proof to be applied in civil law cases is "beyond reasonable doubt" (SFT 132 III 715, E. 3.1; BK-ZPO/BRONNIMANN, 2012, Art. 157 no. 40).

The Panel observes that CAS jurisprudence has sometimes found that the applicable standard of proof in match-fixing cases is "comfortable satisfaction" in analogy to doping cases according to the WADC (CAS 2009/A/1920, §85; CAS 2011/A/2528, §134; CAS 2010/A/2172, §53; CAS 2010/A/2267, §732). According thereto, the standard of comfortable satisfaction is a flexible one, i.e. greater than a mere balance of probability but less than proof beyond a reasonable doubt bearing in mind the seriousness of the allegation which is being made (CAS 2004/A/607, §34).

The justifications put forward by CAS panels for this departure from the normally applicable standard of proof in civil cases vary. In CAS 2009/A/1920, it was held that:

"Taking into account the nature of the conflict in question and the paramount importance of fighting corruption of any kind in sport and also considering the nature and restricted powers of the investigating authorities of the governing bodies of sport as compared to national formal interrogation authorities, the Panel is of the opinion that cases of match-fixing should be dealt with in line with the CAS constant jurisprudence on disciplinary doping cases. Therefore, the UEFA must establish the relevant facts to the comfortable satisfaction of the Court having in mind the seriousness of the allegation which is made". (CAS 2009/A/1920, §85)

In CAS 2010/A/2172 the panel found that the application of the standard of comfortable satisfaction could also be justified because "corruption is, by nature, concealed as the parties involved will seek to use evasive means to ensure that they leave no trail of their wrongdoing" (CAS 2010/A/2172, §70).

The reasoning in CAS 2009/A/1920 is not easy to follow. Disciplinary proceedings are – according to constant CAS jurisprudence – considered to be civil in nature (CAS 2005/C/976 & 986, §127). It is, however, typical and usual in disputes of a civil nature that the parties involved never have investigative powers like "national formal interrogation authorities". Therefore, at least according to Swiss law, the "restricted investigative powers" of a party can never justify a reduced standard of proof in civil matters, since otherwise the normal standard of proof in civil matters ("beyond reasonable doubt") would never be applicable.

However, this being said, the Panel also notes that Swiss law is not blind vis-à-vis difficulties of proving ("Beweisnotstand"). Instead, Swiss law knows a number of tools in order to ease the – sometimes difficult – burden put on a party to prove certain facts. These tools range from a duty of the other party to cooperate in the process of fact finding, to a shifting of the burden of proof or to a reduction of the applicable standard of proof. The latter is the case, if – from an objective standpoint – a party has no access to direct evidence (but only to circumstantial evidence) in order to prove a specific fact (SFT 132 III 715, E. 3.1; BK-ZPO/BRONNIMANN, 2012, Art. 157 no. 41; BSK-ZPO/GUYAN, 2nd ed. 2013, Art. 157 no. 11). In the case at hand, the Panel acknowledges that there is only circumstantial evidence available to UEFA to prove the facts it relies upon. In view of these difficulties of proving, the Panel is prepared to apply the standard of comfortable satisfaction to the case at hand.

Consequently, the Panel has no hesitation to apply the standard of comfortable satisfaction as the standard of proof to which extent the Panel must be convinced that the Appellant was involved in match-fixing. The burden of proof necessarily lies with UEFA".

181. As noted above, the Panel is aware that corruption is by nature concealed because the parties involved will do their best to ensure that there is no evidence of their wrongdoing. Therefore, in the case at hand, and considering the Swiss law approach, the burden of proof lies with UEFA. However, as UEFA only has circumstantial evidence to prove the fact, given the inherent difficulties of proving corruption and match-fixing cases, and in fidelity to previous CAS cases, the Panel considers that the standard that it should apply to convince itself that the Appellant was involved in match-fixing in the present case is that of comfortable satisfaction.

b. What is the relevance and credibility of the BFDS?

182. The Panel notes that previous CAS decisions have already evaluated and confirmed the reliability of the BFDS to detect cases of match fixing:

"The Panel took note of the study of the BFDS carried out by Prof. Forrest, his explanation of the BFDS and his review of the system during the hearing. Prof. Forrest concluded in his report that "[o]ur overall conclusion from the study is that matches reported as suspicious by the [BFDS] are very likely to have indeed been manipulated". On the basis of such unrebutted expert testimony of Prof. Forrest and his report (written together with Prof. McHale) as well as the explanations of Mr. Mace, and despite the above Panel's remark that there is still some room for improvement, the Panel is satisfied that the BFDS is a reliable means of evidence to prove indirect involvement in match-fixing" (CAS 2016/A/4650, para. 102).

Finally, the Panel wishes to make clear that the reason for upholding the Club's appeal is not based on the lack of admissibility or reliability of the BFDS reports as evidence in cases of match-fixing. Even less can this decision be qualified as a departure from the jurisprudence established by previous CAS panels. To the contrary, this Panel finds that the BFDS reports, generally speaking, are a valuable tool in the detection and subsequent sanctioning of match- fixing violations. However, just like any other evidence, also BFDS report do not exempt a panel from carefully evaluating the evidence" (CAS 2017/A/5272, para. 75).

183. CAS 2016/A/4650 has already made a ruling on this issue of the reliability of the BFDS reports, but as indicated in para. 154 above, the Panel is free to review it again for the purposes of the present proceedings. The Panel has done it and finds no reason to depart from the findings of previous awards in relation to the reliability of the BFDS as explained in the following paragraphs.

184. As indicated in the Appealed Decision and by UEFA, the role of the BFDS is to highlight irregular betting movements, both pre-match and in-game (live), in the core betting markets by monitoring major European and Asian bookmakers. If a match displays irregular betting patterns the match is "escalated" and a report generated. As a mathematical calculation, this first step simply flags irregularities on odds but does not offer possible explanations that could justify a flagged irregularity.

185. For the Panel, this escalation process is key for the reliability of the system. In a first step, the BFDS uses algorithms and mathematical models to compare calculated odds with actual bookmaker's odds to determine whether there is a significant deviation in the odds in a specific minute or time period that could result in an irregular betting. In short, this step simply automates what could be also done by human beings in a heavily burdensome task: by looking at the actual odds in each minute and trying to determine whether there is any irregularity (for instance if in the last minutes of a game the odds sharply decrease for another goal, when due to time constraints it is less likely that this will happen unless there are other explanatory reasons). The automatization of the system in this first step, does not serve as an evidence of match-fixing, but simply filters suspicious games, in order to avoid the task of having to analyze each game manually. If the BFDS only consisted of this step, the Panel is of the opinion that it would not be reliable at all because it is just a mathematical analysis that disregards other circumstances. It is the report drafted after analyzing each flagged case, which is the basis of a sanction. This is the reason why the Panel considers that the algorithms used by the BFDS are not as such materially relevant for the Appellant and there is no need for the Appellant to have them in order to explain the apparent irregularities in actual betting.

186. The Panel makes the following comparison: the BFDS system is similar to the system used by tax authorities in many countries. Tax authorities use algorithms to detect tax fraud. When the system detects an irregularity, the system flags it and the tax payer shall be the object of a tax inspection by an expert authority, that may result in liability of the tax payer or simply end without consequences for the tax payer. Nobody would impose or accept tax liability based only on the fact that the system detected an irregularity. On the contrary, it is only once the tax inspection has taken place, that the tax payer may be made subject to a fine and other liabilities. The taxpayer may disagree and file an appeal against the decision of the tax authority, but he/she

will not challenge the software that flagged the irregularity simply because it flagged his/her case.

187. Similarly, the BFDS first detects the irregularity, but the basis of the proceedings are the subsequent reports and evidence in relation to the flagged matches. Indeed, in order to come to the conclusion that a match is fixed, the analytical and mathematical information needs to be supported by other, different and external elements which point in the same direction, i.e. a differentiation must be made between the so-called quantitative information and a qualitative analysis of the quantitative information, which is also needed.

188. The Appellant focused on the deviation between the actual odd and the calculated odds by the BFDS, and the resulting deviation. The Appellant contends that, without the technical data, it is not able to assess whether the calculated odds, and the resulting deviation is correct. The Panel considers, as already stated, that this is an irrelevant issue. The UEFA case is not based merely on the fact that there is a deviation between the actual and the calculated odds, but rather because the actual odds behaved irregularly with no justifiable explanation (as discovered simply by later analysis of the reason for the deviation detected). What is relevant are the actual odds. The calculated odds simply serve to flag that there must be an irregularity in betting at a certain minute, which is the reason why it is necessary to perform a qualitative investigation. Again, this could be done (even if more burdensomely) by human beings, for instance if they detect that actual odds decrease in the last minutes of a match, when logically and statistically odds should increase. Therefore, either the Appellant must prove that the actual odds indicated in a BFDS report at a certain minute are incorrect, or that there is justifiable alternative explanation for the irregularity at that minute.

189. In short, the most simple theories of probability would expect the odds in favor of an additional goal to increase as far as a match progresses, when less time remains to score, unless there is a benign explanation (for instance the sending off of a player, that could affect the odd from the moment it takes place). In the cases analyzed, the contrary happened, and the Appellant has not been able to provide or prove an explanation for this, nor indeed to prove that the data of the actual odds were correct. During the hearing, the Appellant said that there could be several circumstances explaining that behavior of the actual odds, but it did not indicate a particular circumstance that was responsible for that irregular behavior. The only explanations are the ones analyzed in paras. 202 et seq. below that have not been accepted by the Panel.

190. Having this in mind, the Panel considers that the circumstances in which a report is generated inspire trust in the BFDS. The Panel points the following:

    a) Once a match has been flagged in the first step, the second step is divided in two stages. In the first stage, the analyst reviewing the case decides to label the match as suspicious, or determine whether it should be hotlisted for further investigation, and as indicated in the Forrest Report, most of them are labeled as non-suspicious.

    b) For their assessment, analysts have access to many sources of sports information in media, websites, Betradar database, information from correspondents in several countries, etc. Further, the analysts are experienced in financial or betting markets.

c) A hotlisted match is then reviewed by analysts prior to a group discussion of the case, and at least three analysts must agree that a match is suspicious. Therefore, the decision is not taken only by one person but by a group of people and after discussion. Further, additional research for information has to be carried out and the correspondent in a country that covers the relevant competition is asked to answer questions about the match.

d) Once the relevant information has been assembled, the match is considered by all available analysts/supervisors, and generally a consensus is sought on whether a match should be reported.

e) To ensure uniformity and that the reporting activity cover all relevant steps, there is a handbook that sets out the framework for writing reports.

191. In short, the Panel notes that the decision for a match to be reported as a positive case of match fixing is not taken by a single person, but by a group of people, who generally seek to reach a consensus as to the decision to be taken. Those people are qualified to identify and understand all the issues and have available much information in order to discard false positives. Moreover, any report is drafted in the same way in order to ensure that all steps have been followed.

192. This finding that the quantitative analysis at the first stage is not enough for to ground or bring home an accusation of match-fixing and that a deep qualitative analysis is necessary was also accepted in case CAS 2016/A/4650:

"In order to come to the conclusion that a match is fixed the Panel finds that the analytical information needs to be supported by other, different and external elements pointing in the same direction, i.e. a differentiation must be made between the so-called quantitative information and a qualitative analysis of the quantitative information.

In analyzing the BFDS reports, the Panel notes that the final conclusions drawn are not only based on analytical data and the absence of any "normal" explanation, but indeed take into account several external factors corroborating the theory that the abnormal betting behaviour was likely to be explained by match-fixing: suspicious actions of players that took place on the field of play, suspicions raised by an opponent after the match, the emergence of a betting pattern in respect of the Club whereby it would concede late goals when the tie was no longer competitive and the fact that the Hong Kong Jockey Club, a prominent Asian bookmaker, removed the Club from live markets before the end of a game (as confirmed by Mr. Bolingbroke during his testimony).

[…]

Accordingly, the Panel finds that this corroborates the conclusion that, if a specific match has triggered a yellow or red flag in the BFDS, this is by no means evidence that the match was indeed fixed. Such conclusion would only be warranted after a thorough analysis in the subsequent stage of the BFDS. The Panel therefore finds that the quantitative information derived from the BFDS is not definitive in the assessment of whether a specific match has been fixed, although noting Mr. Mase's statement that the analytical data in respect of the four matches of the Club in UEFA's European competitions discussed above are extreme in comparison with other matches flagged for abnormal betting odds" (paras. 86, 87 and 92).

193. In addition, the fact that the Starlizard report reached to similar conclusions as the BFDS report is also evidence of the reliability of the BFDS. Indeed, in the four matches that are the core of the sanction, (matches between the Appellant and Crusaders FC, NK Dinamo Zagreb, Sporting Clube de Portugal and Lokomotiv Moskva) Starlizard concluded that there was a significant possibility of manipulation.

194. For all the above, the Panel considers that the BFDS is a reliable mechanism to assist in the detection of fixed matches.

c. Do the merits of the case warrant disciplinary sanctions being imposed on The Appellant?

195. The Parties do not dispute that UEFA has the burden of proof of proving that the Appellant committed match-fixing, and pursuant to section VIII.B.a of this award, UEFA has to prove match-fixing to the standard of comfortable satisfaction.

196. In this regard, the basis of UEFA's accusations are the four BFDS reports of the following matches that raised the following conclusions:

Crusaders FC v. the Appellant (UEFA Champions League, 21 July 2015):

"The match ended in a 3:2 victory for Crusaders FC.

There was suspicious live betting evident throughout the final period of the match with the scoreline at 1:2, despite the opening 78 minutes of the game trading in a completely regular manner. During this closing period, there was suspicious betting seen for at least one further goal being scored, despite there clearly being significant time constraints on the creation of goal scoring opportunities. This confidence in a late fourth goal to be scored can simply not be justified by any degree of match action, and the behaviour of the odds in the market indicates that heavy betting was taking place for this outcome. It is wholly irregular for bettors to remain so resolutely confident in a late goal being scored, irrespective of the diminishing time in the game, and to witness live betting markets become distorted in this manner is of serious concern from a integrity standpoint. Given the large betting limits available in Asian markets for a fixture of this calibre, it is clear that large amounts were being bet for at least one late goal to be scored in an organised manner.

To reiterate, these betting patterns fundamentally contradict normal betting logic, and have to be treated as reflecting prior knowledge of a late fourth goal materialising.

It is important to analyse why suspicious betting was only evident in the final period of the game with the scoreline at 1:2. Given that KS Skënderbeu held a commanding 6:2 aggregate lead in the tie at this stage, this presented the opportunity for them to manipulate the closing portion of the match for corrupt betting purposes. Simply put, they could attempt such a scheme without putting their qualification to the next round at any significant risk, and could generate large betting profits even from just this last section of the game, given the highly liquid betting markets available.

In terms of match action, there are some key incidents to document. Firstly, in the 11th minute, KS Skënderbeu's Renato Arapi was dismissed following an off the ball incident. He was alleged to have kicked out at opponent

Billy Joe Burns following a foul, and was duly sent off. Although KS Skënderbeu recovered from this, and held a 1:2 lead heading into the closing 10 minutes of the game, their defending in this final period was a serious concern, with erratic decision making and a lack of effort displayed during the final minutes by several KS Skënderbeu players. Of specific interest was the poor performance of Bajram Jashanica, Kristi Vangjely and Esquerdinha during this period. They displayed questionable positional awareness and effort for both the defending of across which resulted in Crusaders FC's second goal, and also for a crossed ball just prior to this which resulted in Crusaders FC hitting the post. This collective defensive effort can only be viewed with serious concern given the betting patterns witnessed during this stage of the match.

Following the match, Crusaders FC goalkeeper Sean O'Neill took to the social media platform Twitter to voice suspicions about the game, suggesting that he believed some kind of 'betting scam' took place in the last ten minutes of the match. He communicated that he had 'never seen football like it', suggesting that KS Skënderbeu's players deliberately underperformed in the final period of the game. Allegations of this nature are clearly very rare from a footballer who has actually taken part in a game, and whilst they are just a personal opinion, they are important to highlight given the speculation that has surrounded the integrity of this match.

Finally, the immensely suspicious history of KS Skënderbeu must also be taken into account when analysing this match. They have featured in an extraordinary number of suspicious matches throughout their history, including multiple escalated games during the qualifying phase of this competition in past seasons. To see KS Skënderbeu once again involved in a suspicious match in European competition can only increase integrity concerns.

Suspicious live betting for a late fourth goal scored

Very poor defensive performance of KS Skënderbeu in the closing stages of the match

Extremely suspicious history of KS Skënderbeu

In summary, there is credible evidence to support the conclusion that this match was manipulated for betting purposes. The suspicious betting patterns observed exceed the acceptable threshold, and the BFDS are satisfied that corrupt betting profits were generated on this match".

NK Dinamo Zagreb v. the Appellant (UEFA Champions League, 25 August 2015):

"The match ended in a 4:1 victory for NK Dinamo Zagreb.

There was highly suspicious live betting which developed abruptly midway through the second half. With the score at 3:1 – and NK Dynamo Zagreb playing with a numerical disadvantage – bettors suddenly became supremely confident that KS Skënderbeu would lose the remainder of the match. Whilst NK Dinamo Zagreb were the better team during this period of the game, no amount of match action can possibly justify the severe betting patterns that emerged, and it is clearly evident that it was not primarily driven by events taking place on the field of play. There was additional betting of an even more suspicious nature at 3:1 for at least five goals to be scored, with odds again forced down to extreme levels. This betting was so severe and so illogical that it is clear bettors were aware of at least one more goal being scored in the match. Indeed, bettors were attempting to extract the maximum possible profits from all live betting markets, as they frequently do in matches which are manipulated for betting purposes.

Furthermore, following NK Dynamo Zagreb's fourth goal (4:1), severe betting ensued for KS Skënderbeu to concede another unanswered goal. It is particularly worrying to see strong live betting for KS Skënderbeu to concede late goal(s) in the game, as there were severe time constraints on goal scoring opportunities being created. Clearly, such betting patterns have to be treated with the utmost concern, and it is clear that extraordinary amounts were being bet in order for markets to react in the way they did.

The timing of the suspicious betting is potentially very informative about the nature of the manipulation. Indeed, suspicious betting developed soon after KS Skënderbeu trailed 3:1, at which point their chances of progressing from their tie were very slim. This suggest that KS Skënderbeu were ready to exploit the match for corrupt betting purposes when the opportunity presented itself, indicating a premeditated and carefully planned scheme. Whilst only one of these goals actually materialised, meaning the desired outcome was only partially successful, considerable corrupt betting profits would still have been generated across multiple markets as a result.

In terms of match action, it must be noted that KS Skënderbeu's performance levels dropped noticeably at 3:1. Whilst this may partially understandable as the tie was effectively over, they did have a man advantage at this point so should still have been competitive. Furthermore, the goal that KS Skënderbeu conceded in the 80th minute must be highlighted. Renato Arapi of KS Skënderbeu was very slow to react to a through ball that set up this goal and then failed to chase the onrushing forward, which allowed ample time and space for the goal scoring chance to develop. Goalkeeper Orges Shehi could also have handled the situation better, choosing to stay rooted to his line for the one on one rather than coming out to close down the angle, which arguably most goalkeepers would have done. Unquestionably, these match incidents have to be documented considering the thoroughly suspicious betting witnessed.

Finally, the extremely suspicious history of KS Skënderbeu must also be taken into account when analysing this match. They have featured in an extraordinary number of suspicious matches throughout their history, including in the second qualifying round of the UEFA Champions League against Crusaders FC on 21/07/2015. That match featured strikingly similar suspicious live betting patterns indicating KS Skënderbeu deliberately conceded a late goal. Once again, the suspected manipulation was executed when the tie was no longer competitive, on that occasion once KS Skënderbeu held a commanding aggregate lead. To see KS Skënderbeu once again involved in match displaying similar suspicious betting highlights the highly coordinated and sophisticated nature of their corrupt betting practices.

Extremely suspicious live betting for KS Skënderbeu to lose the match by at least three and four goals

Equally suspicious live betting for at least five and six goals to be scored

Very poor defending from KS Skënderbeu which led to the final goal

Very suspicious history of KS Skënderbeu, including previous escalations in European competition

In summary, there is overwhelming evidence that this match was manipulated for betting purposes in a precise and premeditated manner, with corrupt betting profits generated as result".

Sporting Clube de Portugal v. the Appellant (UEFA Europa League, 22 October 2015):

"The match ended in a 5:1 victory for Sporting Clube de Portugal.

Late in the match with the score at 4:0, highly suspicious live betting emerged for at least six goals to be scored. These wholly suspicious odds movements developed abruptly, indicating that the final 20 minutes of the match were specifically targeted for the purpose of generating corrupt betting profits. Indeed, there were no signs of irregular betting occurring in any live markets prior to this point. KS Skënderbeu duly conceded a fifth goal in the 77th minute, just five minutes after these suspicious betting patterns materialised. When betting markets reopened with the score at 5:0, there was a further wave of highly suspicious betting for a late sixth goal to be scored, and also additional suspicious betting for KS Skënderbeu to lose by a minimum six-goal margin. Namely, the bettors who were heavily active in the marketplace strongly anticipated both a late goal, and KS Skënderbeu being the team to concede said goal. Even with just five minutes of normal time remaining, there was an unrelenting betting confidence on display, and this can only be treated as reflecting prior knowledge of the match result, given the severe time constraints on these outcomes materialising. The betting was in fact so unusual that it led to one prominent Asian bookmaker removing live markets before the end of the game. A decision by an Asian bookmaker to cease live trading prematurely is very concerning, as it demonstrates that they likely held their own concerns regarding the nature of the betting being executed in the closing period of the match.

The highly suspicious betting for at least six goals to be scored ultimately proved successful courtesy of Sporting Clube de Portugal's fifth goals, and KS Skënderbeu's very late consolation goal. However, when all live betting patterns are viewed in conjunction, it is abundantly clear that bettors expected KS Skënderbeu to be the team to concede the late sixth goal as well. Although this did not occur, it does not make the betting patterns observed any less concerning. Indeed, there is substantial betting evidence that this match was a manipulation attempt by KS Skënderbeu, and corrupt profits were clearly generated for the live market relating to a minimum of six goals being scored, albeit not maximised as a whole, as KS Skënderbeu's losing margin was ultimately only four clear goals.

In terms of the match action, earlier match incidents must also be documented. Firstly, Hamdi Salihi of KS Skënderbeu received a second yellow card for deliberate hand ball in only the 24th minute of the match. His decision to handle the ball from his own sides attacking corner can only be regarded as highly unusual. Secondly, KS Skënderbeu conceded two penalties at the end of the first half, which led to Sporting Clube de Portugal leading 2:0 at half-time. Bajram Jashanica was penalised for tripping a Sporting Clube de Portugal forward for the first penalty, whilst minutes later, referee Clayton Pisani deemed that Kristi Angjeli fouled the same player just inside the penalti area and awarded another penalty. Whilst all these incidents clearly harmed KS Skënderbeu's chances in the match, it should be noted that the highly suspicious betting patterns did not emerge until long after these incidents took place. However, it is notable that the tempo of the match slowed in the final period of the game, with neither side showing a significant attacking threat. This demonstrates that the aforementioned highly suspicious betting patterns were not driven by events unfolding on the field of play itself, raising integrity concerns even further.

Finally, the escalation history of KS Skënderbeu must also be taken into account when analysing this match, as they are one of the most suspicious teams in the history of the BFDS. Of particular concern is that two of their UEFA Champions League qualification matches from this season against NK Dinamo Zagreb on 25/08/2015 and Crusaders FC on 21/07/2015 were also escalated. These matches featured strikingly similar betting patterns for KS Skënderbeu to concede late unanswered goals, and to witness this repeated pattern of betting strongly indicates that this is a specific method of manipulation which KS Skënderbeu are employing in European Competition.

Extremely suspicious live betting for at least six goals to be scored

Additional suspicious live betting for KS Skënderbeu to lose by at least six goals

Very suspicious history of KS Skënderbeu

To conclude, there is substantial evidence to support the conclusion that this match was targeted for betting related manipulation. It strongly bears the hallmarks of other highly suspicious matches, and although the suspicious betting only produced mixed results, this match was clearly targeted for the purpose of generating corrupt betting profits".

The Appellant v. FC Lokomotiv Moskva (UEFA Europa League, 10 December 2015):

"The match ended in a 0:3 victory for FC Lokomotiv Moskva.

Extremely suspicious live betting was observed for at least two and three goals to be scored in the match. This wholly suspicious betting emerged early in the second half, with odds for at least three goals to be scored decreasing steadily, in spite of the elapsing time for the required goals to be scored. Indeed, as the match entered the final 20 minutes (at 0:1), the one-sided betting for a further two goals to be scored was still occurring on a deeply suspicious scale, indicating that heavy amounts were being bet during this period. Even with less than five minutes of normal time remaining, bettors remained convinced that at least one further goal would be scored, with the bettors active in the marketplace displaying no regard for the extreme time constraints on the creation of goal scoring chances at this late stage of play.

There was also highly suspicious betting recorded for KS Skënderbeu to lose the match by at least two goals. This concerning betting did not develop until the final 10 minutes of the contest (at 0:1), as bettors suddenly and inexplicably displayed a suspicious level of confidence in KS Skënderbeu losing the match by at least two goals. Odds decreased against all expectations, reaching low and unrealistic levels with just minutes remaining in regulation time. This period of betting is rendered even more suspicious with a review of the match action and statistics, which reveal that the contest was far from one sided, with KS Skënderbeu actually recording a very similar number of dangerous attacks to FC Lokomotiv Moskva during the final 15 minutes. When examining all the live markets as a whole, it appears clear that bettors were primarily anticipating at least three goals to be scored in this match and were also expecting KS Skënderbeu to concede the late goals to render all the betting successful. Given the high profile nature of the UEFA Europa League and the associated high betting limits, it is abundantly clear that vast sums of money must have been traded on these outcomes to force odds to behave in such an illogical and suspicious manner.

In terms of the match action, the strange nature of the final two goals must be documented. The second goal of the game was scored as a result of miscommunication between KS Skënderbeu goalkeeper Orges Shehi and defender Bajram Jashanica. A long, hopeful ball was not dealt with by Bajram Jashanica, who inexplicably hesitated, allowing the opposition striker to beat both himself and Orges Shehi to the ball for a simple finish into an unguarded net. Similarly, the third and final goals of the game was also characterised by some highly questionable defending from KS Skënderbeu. Not one the defenders attempted to mark an opposition player or close down the man with the ball, allowing FC Lokomotiv Moskva to find an unmarked striker in the box who then proceeded to shoot into the goal under absolutely no pressure. A review of the match action shows there was an obvious drop in performance and focus from KS Skënderbeu players in the later stages of the match, with players making little to no effect to close down and disrupt opposition players. Considered alongside the highly suspicious betting patterns discussed, the notable match incidents have to be viewed critically.

Finally, the vast escalation history of KS Skënderbeu must also be taken into account when analysing this match. Of particular concern is that two of their UEFA Champions League qualification matches from this season against NK Dinamo Zagreb on 25/08/2015 and Crusaders FC on 21/07/2015 were also escalated, as well as their recent UEFA Europa League fixture against Sporting Clube de Portugal on 22/10/2015. These matches featured strikingly similar betting patterns for KS Skënderbeu to concede late unanswered goals, and to witness this repeated pattern of betting strongly indicate s that this is a specific method of manipulation which KS Skënderbeu are employing in European competitions.

Extremely suspicious live betting for at least three and two goals to be scored

Further highly suspicious live betting for KS Skënderbeu to lose by at least two goals

Extremely questionable defensive performance of KS Skënderbeu, in particular Bajram Jashanica Highly suspicious history of KS Skënderbeu

In summary, there is overwhelming evidence that this match was manipulated for betting purposes in a precise, orchestrated manner, with corrupt betting profits generated as a result".

197. The Panel has already indicated that it can comfortably rely on the conclusions of the BFDS reports. Their satisfaction becomes even more comfortable if the Panel takes into account other elements put forward by UEFA to sustain their case.

198. The Panel considers that it is appropriate to assess together all the factual elements that are put before it. In this case it comprises the results of the BFDS reports, whose reliability has been supported with the Forrest Report and the Starlizard Report, the reported suspicious behavior of some players in the field of game, and the decision of a significant market operator such as Hong Kong Jockey Club (who has an interest in offering matches for betting) to exclude the Appellant from live markets. Having regard to the totality of the evidence (and even excluding the UEFA report made by the three coaches because the Appellant could not cross-examine them), UEFA has comfortably satisfied the Panel that the betting movements were suspicious and allowed it to conclude that the four matches were fixed, unless the Appellant is able to provide an alternative reason for the suspicious betting movements. Further, the Panel notes that its finding is consistent with the reaction of media news and the international perception of opponent players, supporters and betting operators.

199. The Panel considers that UEFA has discharged its burden and met its standard of proof, and notes that the Appellant has not offered any compelling alternative explanation for the betting movements that are the basis of the match-fixing charges, as explained below.

200. First, the Panel does not see in the Cocon report any explanation as to why the bets were irregular at a certain minute. The Cocon report provides an overview of the general performance of the team in two matches but out of this analysis there is nothing that could offer an explanation from the field of play that would justify the irregular movements in the odds.

201. The Appellant has also put forward explanations that are not convincing. In relation to the match with the Crusaders, the Panel considers that racist incidents are unlikely to be an

explanation. Professional players are used to pressure from supporters of the opponent. It is deeply regrettable that fans sometimes use improper and unacceptable expressions, but they rarely (not to say never) affect substantially the performance of a team. Equally, the alleged poor conditions of the pitch is not a valid argument either as it is something that would affect both teams. Finally, the problems of the visa application and the fact that the players were tired may have had an impact on the performance of the team but cannot explain the sudden decline of the odds at minute 80.

202. In relation to the match with the Sporting Clube de Portugal, the Panel considers irrelevant the fact that the main striker of the team was not provided a visa, since the bets were for Sporting Clube to score six goals. Also, the red cards received by Mr. Salihi and the two penalties awarded to Sporting Clube which took place between minutes 22 and 39 cannot explain that in the 76th minute the odds in the Asian Handicap declined sharply from 2.42 to 1.80. Indeed, as the bets were for six goals in favor of Sporting Clube, it would be necessary that it started to score rapidly. Finally, the fact raised by the Nexus report that this was not a profitable bet because the sixth goal was scored by the Appellant instead of by Sporting Clube is also irrelevant as match-fixing does not require the fixing to be successful. It could merely mean that some players were not involved in match-fixing.

203. In relation to the match with the Dinamo Zagreb, the Appellant simply refers to a difference in level of quality between the two teams. Such a difference does not explain why there were bets in favor of the Appellant when Dinamo Zagreb was playing with one less player and does not explain that in the last 5 minutes of the match Dinamo's odds decreased from 2.09 to 1.35. Again, the fact raised by the Nexus report that this was not a profitable bet is irrelevant as, the Panel repeats, match-fixing does not require the fixing to be successful.

204. Finally, in relation to the match with Lokomotiv Moskva, the fact that fans of Lokomotiv started saying "kill the Albanians" is not an explanation, as professional players are used to pressure from supporters of the opponent, as already indicated for the Crusaders match. Also, the alleged difference in level or the financial resources do not explain why in the last ten minutes there was a drop in the Asian Handicap market reflecting a high degree of confidence that Lokomotiv would score another goal. It is also striking that leading Asian bookmakers removed this market from the schedule.

205. The Panel also notes that the Appellant argued that the irregularities took place only in relation to one or two markets. The Panel considers this argument to be irrelevant, and actually could itself be even a sign of fraud, because it is more than possible that a fixer will operate in few markets, not in all of them.

206. In relation to the witness statements by players and coaches denying match-fixing, the Panel considers that a simple denial is insufficient to rebut other evidence. Those involved in match fixing could not be expected to admit their misconduct. The players have not offered an alternative version, for instance about their actions on the field of play which could explain for example why late goals were scored coincident with a change in betting odds. This approach is consistent with CAS precedents in anti-doping cases in which the Panel has given no value to a simple denial. In CAS 2010/A/2230, the Panel held that: *"[t]o permit an athlete to establish how a*

substance came to be present in his body by little more than a denial that he took it would undermine the objectives of the Code and Rules".

207. Finally, attention is drawn to the Nexus report. In this regard, the Panel notes that the report is focused on an analytical analysis. The main objections that this report makes against the BFDS reports is that they do not offer findings on what limits SBOBet was offering for the match or on the amount of betting made in the market and whether the matches were offered on low risk limit. Given the process followed to prepare a BFDS report, the Panel considers that, even if they are not expressly referred to, these circumstances must have been considered. However, the Panel suggests that future reports should include this kind of information for the sake of transparency.

208. In summary, the Panel is comfortably satisfied that the totality of the evidence available to it is probative of the existence of match-fixing. It is, for this Panel, particularly relevant that the evidence embraces not one match but four, offering a crescendo of evidence. This evidence would not, in the Panel's view, have been as compelling or conclusive in relation to only one match, where additional evidence could have been expected. In such circumstances, the Panel would have expected UEFA to engage in further efforts to gather evidence beyond that which it has obtained in the present case, including by engagement with the relevant law enforcement authorities. The Panel notes that given the extent of the alleged match-fixing, and the criminal activity that would imply in this case, no such evidence, which might otherwise be desirable, was put before the Panel but repeats that, notwithstanding this omission, the cumulative effect of the evidence which was adduced applicable to this number of matches, points to the conclusion that match-fixing has occurred.

d. Does the Appealed Decision violate the principle of legality?

209. The Appellant has alleged that the Appealed Decision violates the principle of legality because article 12 UEFA DR provides:

> *"1. All persons bound by UEFA's rules and regulations must refrain from any behaviour that damages or could damage the integrity of matches and competitions and must cooperate fully with UEFA at all times in its efforts to combat such behaviour.*
>
> *2. The integrity of matches and competitions is violated, for example, by anyone:*
>
> *a) who acts in a manner that is likely to exert an unlawful or undue influence on the course and/or result of a match or competition with a view to gaining an advantage for himself or a third party".*

210. Therefore, article 12 UEFA DR can only be violated by actual persons. The Appellant acknowledges however that article 8 UEFA DR, provides:

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

association or club concerned, even if the member association or the club concerned can prove the absence of any fault or negligence".

211. However, to apply this article 8 UEFA DR, it is necessary that one of the persons indicated in this article has breached a rule, i.e. article 12 in the case at hand. The Appellant considers that it is necessary that one or several individuals that committed the offence are specifically identified and refers to the decision in CAS 2017/A/5272.

212. For UEFA, the term "anyone" is a broad term and in the present case evidence shows that the only conclusion possible is that match fixing was perpetrated by human beings connected to the Appellant, whether identified or not.

213. The Panel notes that the case cited by the Appellant, i.e. CAS 2017/A/5272, concerned the application of article 68.2 of the AFA Disciplinary Code, which states:

"In the case of confirming the participation of a player or official in influencing the result of the game in accordance with paragraph 1 of this article, a legal entity, association or club where the player or officer concerned pertains shall be punished with a fine of ALL 2,000,000 (two million Albanian Lek). In case of identifying serious cases or cases of cooperation in an organized manner, the legal entity, association or club concerned shall be punished with removal of 12 (twelve) points, exclusion from championship or competition or relegation to a lower category".

214. The difference between this article and article 8 UEFA DR is self-evident. Indeed, the AFA Disciplinary Code refers to the confirmation of the participation of a player or official in influencing the game. The use of the word "confirming" in the AFA Disciplinary Code may be construed as a need to identify specific individuals as a precondition of imposition of a disciplinary sanction.

215. Conversely, article 8 UEFA DR is expressed in more broad terms, as it does not refer to any kind of confirmation in relation to a specific individual but only that it can be established (as per comfortable satisfaction pursuant to the standard of proof) that members, players officials or supporters of the club were involved in match-fixing.

216. This enlarged approach of article 8 UEFA DR is consistent with the fact that the behaviors that are sanctioned, match-fixing and corruption, are concealed and wiretapping and other types of evidence available to state authorities that are useful to unearth such misconduct, are not available to sports governing bodies, due to their limited coercive powers.

217. In the Panel's view, article 8 UEFA DR does not require that a specific individual is identified but only that members, officials, supporters or players of the club are involved in match-fixing activities, in the sense that the Panel must be comfortably satisfied that people belonging to any of these groups and not to other groups alien to the Appellant (for instance referees), are the ones that committed the offence.

218. In this regard, the Panel is satisfied that given the number of suspicious matches, and that the report directly refer to "mistakes" made by the players of the Appellant, it can be excluded that

referees or other officials may have been involved, but determined rather that people related to the Appellant alone were involved in match-fixing. Consequently, the Appellant shall be held responsible pursuant to article 8 UEFA DR.

e. Is the sanction imposed by the Appealed Decision proportionate?

219. Article 6 UEFA DR establishes the sanctions that can be imposed on member associations and clubs, and include fines, and disqualification from competitions in progress and/or exclusion from future competitions.

220. Article 17.1 UEFA DR provides that *"the competent disciplinary body determines the type and extent of the disciplinary measures to be imposed in accordance with the objective and subjective elements of the offence, taking account of both aggravating and mitigating circumstances"*.

221. Consequently, the UEFA DR does not provide any guidance as how to determine the sanction that should be imposed. As was already indicated in CAS 2013/A/3256, in the absence of any guidance in the UEFA DR as to particular objective and subjective circumstances to be taken into account in pronouncing an appropriate sanction from the wide range of sanctions provided for in article 17.1 UEFA DR, the Panel, in determining an adequate sanction to be imposed, relies on 1) its *de novo* competence to review the facts and the law afresh; 2) the range of sanctions pronounced in earlier match-fixing cases before the CAS.

222. In relation to the first element, there is a long line of CAS jurisprudence which suggests that CAS panels should review sanctions imposed by disciplinary bodies of federations only *"when the sanction is evidently and grossly disproportionate to the offence"* (CAS 2009/A/1817, para. 174, CAS 2009/A/1844, para. 68). More recent case (CAS 2017/A/5003) suggests that, given that a CAS panel has *de novo* powers, while it may naturally respect the federation's decision as conditioned by the requirements of the game it regulates, any such self-restraint is a matter of choice, not compulsion.

223. In relation to the second element, the Panel observes that the range of sanctions imposed in earlier match-fixing cases before CAS vary between a one-year period of ineligibility (CAS 2011/A/2528), and an eight-year period of ineligibility (CAS 2009/A/1920).

224. As the Panel has reached to the same conclusion as the Appealed Decision, the Panel does not need to prefer one line of authority to another. In determining whether the sanction imposed by the Appealed Decision should be upheld, it takes into account on either basis circumstances, such as, *inter alia*, whether the disciplinary body is facing a case of a first offence, the type and gravity of offence or whether there have been multiple offences, as opposed to a single one.

225. Taking into consideration that match-fixing is an offence that is able to distort an entire competition that there should be a zero tolerance against such activities, and that the case at hand involves four fixed matches (once could even consider the other 46 cases referred to in the file), and that in the Pobeda case (CAS 2009/A/1920) the club was excluded from UEFA competitions for a period of 8 years for fixing two matches, the Panel considers that a ban for a period of 10 years in the present case is proportionate and justified.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Klubi Sportiv Skënderbeu on 14 May 2018 against the decision issued on 26 April 2018 by the Appeals Body of the *Union Européenne de Football Association* is dismissed.

2. The decision issued on 26 April 2018 by the Appeals Body of the *Union Européenne de Football Association* is confirmed.

3. (…).

4. (…).

5. All other and further motions or prayers for relief are dismissed.