



**Arbitration CAS 2011/A/2647 Serhii Berezka v. Football Federation of Ukraine (FFU) & Football Federation of Kyiv (FFK), award of 30 August 2012**

Panel: Mr Lars Halgreen (Denmark), President; Mr Aliaksandr Danilevich (Belarus); Mr Bernhard Welten (Switzerland)

*Football*

*Exclusion from a list of referees*

*CAS jurisdiction to rule in appeal in case of lack of first-instance decision*

**If no decision has ever been taken by a first-instance body regarding a specific question, a request for relief regarding this particular question must be dismissed as the CAS has no jurisdiction to rule in appeal about a decision that does not exist.**

**I. BACKGROUND**

**1. The Parties**

1. Mr Serhii Berezka (hereinafter referred to as “Berezka” or “the Appellant”) is a Ukrainian citizen and a football referee in Ukraine. He is a former referee of FIFA, and the Deputy Head of Panel of Football Referees and Inspectors in Kyiv (Ukraine).
2. The Football Federation of Ukraine (hereinafter also referred to as “FFU” or the “Respondent 1”) is the organisation responsible for organizing football in Ukraine. FFU is an affiliate member of FIFA and UEFA.
3. The Football Federation of Kyiv (hereinafter referred to as “FFK” or “Respondent 2”) is the organisation responsible for organising football in Kyiv. Respondent 2 is an affiliate member of Respondent 1.
4. FFU and FFK are hereinafter jointly referred to as “the Respondents”.

**2. The Dispute between the Parties**

5. The circumstances stated below are a summary of the main relevant facts as submitted by the parties in their written submissions and/or in the evidence presented in the course of the proceedings. Additional facts may be emphasized, where relevant, in connection with the legal analysis, which follows below.

6. This case concerns the allegedly unlawful decisions taken by the Respondents, which led to the exclusion or non-admission of the Appellant from/to the list of referees recommended for services at Ukrainian Premier League football matches. These decisions and the generally unfair treatment that the Appellant believes that he has received, have triggered the Appellant to make claims of alleged violation of fundamental principles of UEFA (“Respect”), conducted personally by the FFU President, Mr H. Surkis, and the FFK President, Mr I. Kochetov, towards him.
7. From the Appellant’s point of view, the present dispute between the parties had its origins in an incident that happened during the 2007/2008 season, where the Appellant refereed a match in the Ukrainian Premier League between FC Worskla against FC Dnipro. After the match, the Appellant was criticized by the visiting team, FC Dnipro, for not having awarded a penalty kick, when the ball hit the hand of a defender from the opposite team. The Control and Disciplinary Committee of the FFU decided, on its own initiative, to reconsider a decision made by the expert committee of the FFU, which had exonerated the Appellant, on the basis of television recordings of the match. As a result thereof, the expert committee reassembled and decided that the Appellant was to blame for not having appointed a penalty kick, and subsequently, the Appellant was suspended from refereeing matches of the Premier League Championship in Ukraine for two months.
8. It is the Appellant’s submission that the incident, which led to the official two months’ suspension from refereeing Premier League matches, has de facto resulted in an unofficial indefinite ban on him refereeing matches in the Premier League, due to an allegedly personal grudge held by the FFU President, Mr H. Surkis, against him as a result of the incident. The Appellant has made a reference to a video recorded speech by Mr H. Surkis, where he allegedly said: *“As long as I’m the head of the Football Federation of Ukraine, Berezka won’t judge”*. The Appellant has not refereed matches in the Premier League since then, but has in the following three seasons refereed in the first league (second highest league of Ukrainian football), in which period he has headed the ranking of the first league referees, but received no promotion to referee games of the Premier League. The Appellant alleges that the antagonism from leading representatives of the Respondents against his person is the real reason behind this lack of promotion, and also the reason why the respective deciding bodies of the Respondents have ruled against him.
9. The facts of the latest case, the one at stake in the present proceedings, which led to a number of subsequent sanctions of the Appellant in 2011 by various sanctioning bodies of the Respondents, shall be summarized as follows. During a championship match in Kyiv for children born in 2000, played on 2 June 2011 between FC Kyiv and FC Lokomotiv, the Appellant accompanied his son, who was playing for FC Kyiv. The Appellant, who was present in his capacity as a father and not as an official, approached the referee, when a number of parents of players from the FC Lokomotiv team complained about two allegedly unelgibile players, who had participated in the football match on the FC Kyiv team. The conflict escalated somewhat in the following course of events and a complaint was launched to the FFK. On 15 June 2011, the Appellant was called as a witness at a session held by the Control and Disciplinary Committee of the FFK dealing with the official protest initiated by FC Lokomotiv.

10. On 22 June 2011, the Control and Disciplinary Committee of the FFK reconvened, and the following was decided with respect to the Appellant:

*“... At the Panel meeting to consider the question of S.M. Berezka, the deputy head of the panel of football referees and inspectors in Kyiv and national category referee, who was present at the match between FC Kyiv and Lokomotiv Olympic Reserve Sports School for Children and Youth as the father of one of the FC Kyiv players, .... failed to assist the management of the conflict between FC Kyiv’s coach, the referee, the representatives of ORSSCY Lokomotiv and the player’s parent, who accused FC Kyiv of having a player out of the team entry form, and referees non-fulfilment of the obligations concerning these claims. Besides, he introduced himself as a representative of the Football Federation of Kyiv and acted for the benefit of FC Kyiv, whose player is his son. By these actions he failed to promote fair play and fulfilment of regulations for the football competitions in Kyiv. Being present at the meeting of the Football Federation of Kyiv, CDC on 15 June 2011 as a witness he misinformed the CDC members, which influenced its primary non-legal decision”.*

11. On the same day, 22 June 2011, the Control and Disciplinary Committee of the FFK made a supplementary decision regarding the Appellant’s conduct, in which the following was decided:

*“... The actions of S.M. Berezka, Panel of Football Referees and Inspectors in Kyiv, Deputy Head and National Category referee, after the match between FC Kyiv and ORSSCY Lokomotiv ... shall be considered misconduct, particularly his failure to assist the management of the conflict between FC Kyiv’s coach, the referee, the representative of ORSSCY Lokomotiv and the player’s parents, by which he violated the competition provisions defined by the regulations of the Football Competitions, as well as he failed to point out the absence of the information on fans misconduct, player’s substitute for the player absent in the team entry ..., the demands of the ORSSCY Lokomotiv coach to surrender FC Kyiv player ... for verification etc. to the referee of the match. Such action led to the violation of the Regulations of the Football Competition provisions in what concerns the competition documentation (Article 5 of Chapter 3 of the Disciplinary Codex of the Football Federation of Kyiv);*

*The actions of S.M. Berezka, ... shall be considered as those, which contradict to the Federation official representative conduct, particularly his witnessing at the Control and Disciplinary Committee meeting on 15 June (2011) ..., which made objective and fair decision of this case difficult for all intents and purpose;*

*S.M. Berezka ..., shall be reprimanded and warned about similar misconduct in future;*

*By July 4, 2011, the Panel of Football Referees and Inspectors in Kyiv administration shall be obliged to hold a general meeting of its members and to consider the misconduct of S.M. Berezka ... after the match between FC Kyiv and ORSSCY Lokomotiv ... as well as during the FFK CDC meeting of June 2, 2011. The Record of the meeting shall be sent to FFK administration and CDC by July 11, 2011;*

*The Football Federation of Kyiv administration shall be obliged to inform all interested parties in a three day term about its decision;*

*This decision can be appealed at Football Federation of Kyiv Appeals Commission in a 10 day term”.*

12. On 7 July 2011, the Appellant filed a Petition of Appeal against the decision of the FFK Control and Disciplinary Committee’s decision of 22 June 2011 to the Appeal Committee of the

Football Federation of Kyiv. In his appeal, the Appellant requested that the Appeals Committee cancel the decision of the FFK Control and Disciplinary Committee *“as wrongful with frequent violation of the rules of substantive and procedural law as based on incomplete and biased investigation of circumstances”*.

13. On 8 August 2011, the Curator of the Refereeing System in the Professional Football of Ukraine, the Italian former FIFA referee, Mr Pierluigi Collina, informed the Appellant of the following:

*“By this letter we would like to inform you that as a preventive measure, your appointment for the first league matches has been suspended as the result of the Kyiv CDC decision.*

*As soon as we get information clarifying the situation the following decision or the decision on the appeal – we will immediately inform you about the decision concerning this case”.*

14. On 12 August 2011, a meeting was held in the Executive Committee of the Panel of Football Referees and Inspectors in Kyiv, during which the Appellant was reprimanded again for his lack of help in the management of the conflict and the report compilation by the referee Mr Kutsenko.
15. After the Appellant’s request for an immediate hearing on 17 August 2011, the FFK Appeals Committee made its decision on 23 August 2011. The FFK Appeals Committee denied the Appellant’s Petition of Appeal and confirmed the FFK Control and Disciplinary Committee’s decision of 22 June 2011. On the same day, the Appellant wrote to the Referees Committee of the FFU with reference to the said suspension letter signed by Mr Collina and requested a copy of the FFU Referees Committee’s decision based on which he was suspended from refereeing at the matches in the first league.
16. In an unsigned letter responding to the Appellant’s letter of 24 August 2011, Mr Collina replied that *“taking into consideration the significance of what you were accused of, the Refereeing System Supervisor in Professional Football of Ukraine and at that time the head of FFU RC decided to suspend your appointment as a preventive action for Ukrainian football competitions up to the moment of deciding the question concerning your appeal that you gave to the Appeal Committee of Football Federation of Kyiv”*. The letter further stated: *“For the reason of above mentioned, the FFU RC keeps a close watch on your situation, wait for the decision of the Appeal Committee of Football Federation of Kyiv, and hopes that your situation will soon clear-up. In the case, the Appeal Committee of Football Federation of Kyiv confirms the decision taken by the first instance, the RC reserves the right to examine the materials with the aim of estimation of possible violation of the FFU Disciplinary Regulations”*.
17. On 13 September 2011, the Appellant wrote to the Executive Committee of the FFK, requesting a decision in a written form including an explanation for not calling him to the meeting of the FFK Executive Committee, so that he could launch an appeal on an informed basis.
18. On 22 September 2011, FFK informed the Appellant in essence of the following:

*“On September 9, 2011, the meeting of members of the Executive Committee of Football Federation of Kyiv was held. One of the questions in agenda was approving of referees list that were recommended for city football competitions. While discussing this question, taking into consideration the event occurring during and after the match between FC Kyiv and Lokomotiv ... and also taking into account the decision of the Control and Disciplinary Committee (of June 22, 2011) and the Appeal Committee of Football Federation of Kyiv of August 23, 2011, members of the Executive Committee decided not to nominate you for referee activities in Kyiv city football...”*

19. The abstracts of Record Protocol No. 7 show that out of the Executive Committee’s 32 members, 20 members voted for not approving the Appellant for refereeing at Kyiv football competition. Nobody voted against, and 10 abstained from voting.
20. On 29 September 2011, the Appellant sent a complaint to the Control and Disciplinary Committee of the FFU about the FFK Executive Committee’s decision of 9 September 2011. In his complaint, he requested among other things that the decision not to recommend his candidacy for refereeing at Kyiv City Football Competitions be cancelled as having been taken by an incompetent body and as one that violated the constitution of Ukraine and FFK Articles of Association.
21. On 3 October 2011, the Control and Disciplinary Committee of the FFU dismissed the Appellant’s complaint about the FFK Executive Committee’s decision of 9 September 2011. In the resolution the following was established:
  - 1) *“On September 29, 2011 the referee S.M. Berezka sent a complaint to the FFU Control and Disciplinary Committee for the decision of the Executive Committee of Football Federation of Kyiv of September 9, 2011 (Protocol No. 7) concerning approval of referee lists that were recommended for Kyiv city football competitions.*
  - 2) *The complaint contained materials that confirmed the circumstances mentioned in the complaint.*
  - 3) *The decision of the FFK Executive Committee of September 9, 2011 (Protocol No. 7) does not presuppose disciplinary measures and bears recommendation character.*
  - 4) *The claim to FFU DCD does not contain sufficient reasonable references to violation of rights and interests of the complainant by the appealed decision.*
  - 5) *The decision of FFK DCD that was attached to the complaint was taken on June 22, 2011. The decision of FFK AC for the complaint of FFK DCD of June 22, 2011 was taken on August 23, 2011.*
  - 6) *The claimant did not adhere to the period of appeal from decisions of legal entities, determined in part 3, Article 82 of the FFU Disciplinary rules and rules of claiming to a football arbitration body, determined in part 8, Article 64 of FFU Disciplinary Rules”.*
22. On 3 October 2011, the Appellant filed a new complaint to the Appeals Committee of the FFU about the resolution of the FFU Control and Disciplinary Committee’s decision of 9 September 2011. On the same day, the Control and Disciplinary Committee of the FFU made a supplementary decision in order to correct a number of formal errors, which had been pointed out about its decision before the FFU Appeals Committee. The corrected errors of the decision,

which mainly were of procedural nature, did not change the Committee's decision to dismiss the case for the stated reasons in its decision of 3 October 2011.

23. On 19 October 2011, the Appeals Committee of the FFU made a resolution "on elimination of draw-backs in the complaint". The Appeals Committee relying on Article 63 of the FFU Disciplinary Rules resolved the following:

*"1. To postpone a decision of the case proceedings of Panel of Football Referees and Inspectors in Kyiv Deputy Head S.M. Berezka's petition of appeal, giving him the possibility to specify his position in the respect of the FFU CDC Supplementary Resolution as well as in order to eliminate drawbacks from the above mentioned complaint.*

*2. In order to eliminate the drawbacks of the complaint to propose the claimant to present FFU AC the references to particular Constitution of Ukraine and FFK Articles of Association provisions, which in his opinion prove the illegitimate character of section 1 of the FFK Executive Committee decision of September 9, 2011 by October 27, 2011, given grounds for its cancellation or change.*

*3. To explain the Claimant that provided duly fulfilment of section 2 of this resolution, the FFU AC will make a decision concerning the beginning of the case proceedings of his complaint".*

24. On 25 October 2011, the Appellant filed another supplement to his complaint to the Appeals Committee of the FFU for the resolution of the decision of the FFU Control and Disciplinary Committee of 9 September 2011.

25. On 31 October 2011, the Appeals Committee of the FFU dismissed the Appellant's appeal with the following reasoning:

*"The FFU Appeals Committee has considered the matter of the complaint for the resolution of the FFU CDC Head of 10 October 2011.*

*The Appellant disputes the legitimacy of the decision by the Football Federation of Kyiv (FFK) Executive Committee of 9 September 2011 approving the list of referees recommended for officiating at the Kyiv City matches football competitions (Protocol 7).*

*In FFU AC's opinion, the above mentioned dispute as such is within the jurisdiction of the football Arbitration bodies.*

*At the same time a separate legal person (FFK) Executive Body decision is the matter of consideration, that's why it should be pointed out that the football arbitration bodies have to follow the FFK regulative documents, particularly, its Articles of Association. Incidentally, the Appellant's legal position is rightfully based on the FFK Articles of Association provisions.*

*Thus, the FFU Appeals Committee has no right to ignore Article 44 of the FFK Articles of Association, according to which the Appellant's problem is to be decided within FFK, particularly, by the football arbitration bodies of FFK.*

*According to Article 60 of the FFU Disciplinary Rules, the competence of the FFU Appeals Committee covers the consideration of the petitions of appeal from the FFU CDC decision. In its turn, the FFU CDC, according to part 2 of Article 58 of the FFU Disciplinary Rules, controls football officials following the provisions of the statutory and regulative documents as well as considers any protests arising from legal persons, bodies' decisions.*

*Considering the above mentioned provisions of part 2, Article 58, as well as "the Definition of Terms", Chapter of FFU Disciplinary Rules, the FFU CDC, firstly, has no right to ignore the provisions of Article 44 of the FFK Articles of Association, and secondly, in this case, it can consider the protest against the FFK football arbitration bodies' decision.*

*Thus, the competence of both the FFU CDC and FFU AC is limited by the possibility of the revision of the FFK football arbitration bodies' decisions of Mr S.M. Berezka's case in this situation.*

*Mr S.M. Berezka has to follow the procedure of his problem consideration at the FFK football arbitration bodies, and only then, in case he disagrees with their decision, he can file a petition of appeal at the FFU CDC and AC.*

*Otherwise, both the FFU CDC and AC cannot be considered as such whose competence covers the consideration of Mr S.M. Berezka's problem.*

*Considering the above mentioned, relying on part 2, Article 58, Article 60, part 8, Article 63 of the FFU Disciplinary Rules, Article 44 of the FFK Articles of Association, the FFU Appeals Committee Head passes the resolution to dismiss any case proceedings of the received complaint due to its filing to an unauthorized body".*

26. On the 8 December 2011, the Curator of the Refereeing System in the Professional Football of Ukraine, Mr Collina, having received a copy of the Appellant's complaint with the CAS from the FFU, informed the Appellant that the Referees Committee of the FFU had cancelled his suspension and confirmed that the Appellant's name would appear on the list of referees of the first league for the season 2011/2012. On the same day, the Executive Committee of the FFK also decided to cancel the previous resolution of 9 September 2011.

## **II. ARBITRAL PROCEEDINGS**

### **1. The CAS Proceedings**

27. On 19 November 2011, the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport (hereinafter also referred to as the "CAS"). The appeal was directed against the decision of the Appeals Committee of the FFU of 31 October 2011 and the decision of the Executive Committee of the FFK of 9 September 2011.
28. On 29 November 2011 the CAS Court Office asked the Appellant to complete his appeal until 2 December 2011, in order to be compliant with article R48 of the CAS Code. Of Sports-related Arbitration Rules (hereinafter referred to as the "Code").
29. On 2 December 2011 the Appellant filed his Appeal Brief.

30. On 5 December 2011 the CAS Court Office set the Respondents based on article R55 of the Code a deadline of 20 days to file their answers.
31. On 14 December 2011, the Respondents jointly filed a letter with the CAS in response to the Appellant's Appeal.
32. On the same 14 December 2011 the CAS Court Office set the Appellant a deadline until 20 December 2011 to give his position and observations to the Respondents' letter of 14 December 2011.
33. On 21 December 2011 the CAS Court Office stated that the Appellant did not file any statement within the deadline and it granted the Appellant another deadline until 27 December 2011 to file his position and observations to the Respondents' letter of 14 December 2011.
34. On 23 December 2011 the Appellant filed a letter with the CAS, stating that his claim is not cancelled, his position is the same and until 27 December 2011 he will file more documents to support his claim.
35. On 26 December 2011 the Appellant filed the amendment to his Appeal Brief and took position to the Respondents' letter of 14 December 2011.
36. On 28 December 2011 the CAS Court Office set the Respondents a deadline of 20 days to file its answer.
37. On 16 January 2012, the Respondents filed a Joint Statement of Defence to the Appeal Brief seeking its dismissal for lack of CAS jurisdiction.
38. On 19 January 2012 the CAS Court Office invited the Parties to state their preference of having a hearing or asked the Panel to issue the award based on the Parties' written submissions until 26 January 2012.
39. On 24 January 2012 the Appellant asked the Panel that a hearing shall be held.
40. On 26 January 2012 the Respondent 2 stated its preference that the Panel shall hold a hearing.
41. By communication dated 26 January 2012, the CAS Court Office informed the Parties on behalf of the President of the CAS Appeals Arbitration Division that the Panel had been constituted as follows: as President of the Panel, Mr Lars Halgreen, as arbitrators Mr Aliaksandr Danilevich and Mr Bernhard Welten.
42. On 27 January 2012 the CAS Court Office stated that the Respondent 1 did not file any response regarding its choice of a hearing to be held.
43. On 30 January 2012, dated 26 January 2012, the Respondent 1 sent a letter to the CAS stating that the Panel shall hold a hearing.



44. On 6 March 2012 the CAS Court Office informed the Parties that the hearing in Lausanne will be held on 16 April 2012.
45. With letter of 12 March 2012 the Appellant requested the CAS to set a new hearing date, as 15 April 2012 is the Orthodox Easter day and 16 April 2012, Easter Monday, is an official holiday in Ukraine so he will not be able to travel to Lausanne on this day.
46. On 27 March 2012, the CAS Court Office, on behalf of the President of the Panel, issued an order of procedure (hereinafter referred to as the “Order of Procedure”), which was accepted and countersigned by the parties. In a second letter on this same 27 March 2012 the CAS Court Office announce the hearing to be held on 21 May 2012.
47. On 3 April 2012 the Respondents filed a common statement, including a summary of the expected witness statements.
48. On 27 April 2012 the Appellant filed the requested witness statements.

## **2. The Position of the Parties**

49. The following outline of the parties’ positions is illustrative only and does not necessarily comprise every contention put forward by the Parties. The Panel, indeed, has carefully considered all the submissions made by the Parties, even if there is no specific reference to those submissions in the following summary.

### **a) The Position of the Appellant**

50. The Appellant’s requests for relief, as stated in the Appeal Brief are as follows:

*“My requirements are: 1) To take and consider my claim; 2) To oblige the Executive Committee of the Football Federation of Ukraine to include me in the list of referees recommended for service at all Ukrainian football competitions of any level; 3) to recognize the behaviour of the FFU President H. Surkis and the President of the Football federation of Kyiv I. Kochitov towards me as the one that is not consistent with fundamental principles of UEFA – “respect”; 4) To transfer all the costs of the proceedings related with the work of CAS, as well as my personal expenses (flight, accomodation, meals) and expenses of those people, who will represent me, to the Football Federation of Ukraine and the Football Federation of Kyiv in equal parts”.*

51. On 18 May 2012, Mr Kliuchkovskyi, attorney-at-law in Kyiv, Ukraine, informed the CAS Office that he had been engaged to represent the Appellant as legal counsel. The Appellant’s counsel subsequently changed the second request for relief in the CAS proceedings as follows:

*“To include name of S. Berezka in the list of referees of the Premier League for the further appointment to the matches between the clubs of the Premier League”.*

52. As for the other requests for relief, they remained unchanged.

53. Counsel for the Appellant explained that Mr Berezka had almost immediately following the submission of the Statement of Appeal to CAS been reinstated as a referee of the Ukrainian first league and as a referee at the local Kyiv level. Mr Berezka had received his first appointment to referee the Ukrainian first league match after being reinstated on 29 March 2012, but he had not refereed any matches at the Kyiv level following his reinstatement.
54. The Appellant's counsel claimed that Mr Berezka had not in fact been correctly reinstated as a referee in the Ukrainian first league, as he had been expelled from the college of Kyiv Football Referees and had not yet been reinstated there as a member of that organisation. Under the relevant regulations applicable to refereeing in Ukraine, only members of regional colleges of referees, according to the counsel, were eligible to referee official football matches in Ukraine on any level.
55. Subsequently, the Appellant had decided to rephrase his claims contained in his original claim, insofar as they concerned refereeing in the Ukrainian first league and at the local Kyiv level. However, the Appellant now requested the CAS Panel to reach a decision, whereby he would also be included in the list of referees of the Premier League for the further appointment of matches between the clubs of the Premier League in Ukraine.
56. Due to the late change in the requests for relief a few days before the hearing, the Appellant's counsel withdrew his petition for calling seven witnesses in support of the Appellant's claims and instead asked to call two witnesses to testify by video-conference, namely Mr Igor Ishchinko, a former FIFA referee and former head of the Appeals Committee of the FFK, and Mr Yevhenni Venger, a former referee and member of the Board of Referees and Inspectors of KKF and a former executive director of the Youth Football League of the FFU.
57. In support of his request to be included in the list of referees of the Premier League, the Appellant maintains that his performance as a referee in the first league being rated in the first place in the referees rating for three consecutive seasons had earned him the right to automatically be promoted to the Premier League. Other referees with significantly lower ranking had been promoted to referee in the Premier League, and it was only because of the personal grudge held by the President of the FFU, Mr Surkis, that the Appellant's promotion had been delayed or obstructed.
58. The reinstatement of the Appellant as a referee in the first league did not remedy the injustice, which the Appellant believed that his unwarranted suspension from refereeing in Ukrainian football had resulted in. However, the Appellant did not claim for damages during the CAS proceedings, but reserved his right to seek legal recourse, if his rights would be violated by FFU or FFK again.

**b) *The Position of the Respondents***

59. In their preliminary answer dated 14 December 2011, the Respondents requested the CAS to dismiss all of the Appellant's requests for relief for lack of CAS jurisdiction.
60. As for the original claims in the Appellant's Appeal Brief, the Respondents claimed that Mr Berezka had in fact never been excluded from the list of referees but had only been temporarily suspended with reference to the letters from Mr Collina of 8 August and 15 September 2011. After the suspension had been revoked, the main demand of the Appellant would no longer be valid.
61. As for the claim "*to recognize the behaviour of the FFU President A. Surkis and the President of the Football Federation of Kyiv I. Kochitov towards the Appellant as the one that is not consistent with fundamental principles of UEFA ("respect")*", the Respondents note that Mr Kochitov in his capacity as Head of the FFK had publicly demonstrated maximum respect towards the Appellant by awarding him with the medal for his merits and activity for the benefit of the federation.
62. Moreover, Mr Berezka had not exhausted all internal remedies in accordance with the Ukrainian football regulations. The Appellant had never made any claim, let alone an appeal about breach of fundamental principles of UEFA to any disciplinary bodies of the FFK or the FFU. The failure to exhaust domestic remedies is an undisputable obstacle, which prevented the Appellant from raising this claim with the CAS.
63. The Respondents referred to clause 1.3 of article 3 of the FFU Statutes, article 52 of the FFU Disciplinary Regulations and clause b of article S12 of the Code to substantiate these arguments.
64. On 16 January 2012, the Respondents filed a joint statement of defence, in which they repeated their claim of dismissal of the case on the ground of lack of jurisdiction of the CAS, and submitted additional written evidence.

**3. *The Hearing***

65. A hearing was held on 21 May 2012 at the CAS headquarters in Lausanne, Switzerland. The Panel was assisted at the hearing by Mr William Sternheimer, Counsel to the CAS. The following persons attended the hearing:
  - The Appellant, Mr Serhii Berezka, assisted by Mr Markiyan Kliuchkovskyy and Mr Oleksii Reznikov, Attorneys-at-law, Kyiv, Ukraine
  - Mr Igor Kochetov, Head of the Football Federation of Kyiv City
  - Ms Anna Bordiugova, Head of the legal department of FFU
  - Ms Olga Zhukovska, attorney-at-law, counsel for FFK

66. As the Appellant's requests for relief had been changed, the President of Panel informed the Parties at the beginning of the hearing that the Panel did not deem it necessary to hear a number of witnesses called upon by either Party, since these testimonies would not appear to be relevant anymore. The President of the Panel requested that the Parties in their opening statements focused on the issue of CAS jurisdiction in this matter.

67. After having heard the Parties' legal arguments, which in essence were consistent with the written submissions already presented to the Panel, the latter announced that it had decided in accordance with Article R57.1 of the Code of Sports-related Arbitration (hereinafter referred to as the "CAS Code") only to hear the witness called by the Respondents Mr Luciano Luci, Deputy of the Curator of Refereeing System of FFU. All other witnesses were dismissed.

68. Mr Luciano Luci's testimony can be summarized as follows:

Since July 2010, he worked as the Deputy of Mr Collina, who is presently the Curator of the Refereeing System of FFU. Mr Luci explained about his background in the Italian Football Federation and as a referee for many years in the Italian league, and that he and Mr Collina had been invited by the FFU to reform the Ukrainian refereeing system, which had been criticized by UEFA for not living up to UEFA's standards of independency from the FFU. Mr Luci told that he and Mr Collina wanted to introduce a new set of procedural regulations, which were adopted by the FFU Referees' Committee on 20 December 2010. According to these regulations (paragraph 6), the FFU Referee Committee shall define the referees, who are assigned to officiate the Premier League matches for the first time ever, being guided by a number of criteria such as high level of their background and officiating experience in first division matches, positive results from physical tests and theoretical background, and the referees should be maximum 35 years of age.

69. He explained that he and Mr Collina in an unbiased way had reviewed the performances of the Appellant, but had not decided to promote him to Premier League matches, because of his age.

70. On cross-examination Mr. Luci said that according to his memory, no exceptions had been made to the age requirement (which could be granted in circumstances where a referee had to stop his professional activity for a long period due to injuries or illnesses or other justified reasons), and for that reason alone, Mr Berezka, who was 38 years of age, could not become eligible again for refereeing in the Premier League in Ukraine. He said that Mr Berezka had been reinstated to referee first division matches, but that no promises had ever been made to Mr Berezka by himself or Mr. Collina to be promoted into the Premier League.

71. At the conclusion of the hearing, the Parties confirmed that they had no objection in respect of their right to be heard. They also confirmed that they had been treated equally in the arbitration proceedings, and that they had been given the opportunity to fully present their cases.

### III. LEGAL ANALYSIS

#### Jurisdiction

72. Before the Panel may assess the merits of this case, it has to decide whether it has jurisdiction to decide the present dispute between the parties.
73. The jurisdiction of CAS has been disputed by the Respondents, and therefore the Panel shall decide on the jurisdiction issue with respect to the following two requests for relief from the Appellant:
1. To include the name of S. Berezka in the list of referees of the Premier League for the further appointment to the matches between the clubs of the Premier League;
  2. To recognize the behaviour of the FFU President H. Surkis and the President of the Football Federation of Kyiv, I. Kochetov towards the Appellant as one that is not consistent with fundamental principles of UEFA – “respect”.

#### **1. *Re. CAS jurisdiction as to the Appellant’s first request for relief***

74. According to article R47.1 of the Code:

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

75. Due to the change of the Appellant’s plea, the Panel interprets the Appellant’s revised request of relief as an acknowledgement that the members of the Executive Committee of the FFK at its meeting on 8 December 2011 have in fact cancelled the previous resolution from 9 September 2011 and that the Referee Committee of the FFU has confirmed that his name is again included in the list of referees of the first league for the 2011/2012 season.
76. Neither during the course of the hearing, nor in any of the submitted documents the Panel has found evidence that the Appellant should not have been fully reinstated as a referee in the first league in the season 2011 – 2012 or in the matches of Kyiv City football competitions. In fact, the Panel feels confident that this conclusion can be the only logical one drawn from the letter signed by Mr Collina on 8 December 2011, and the resolution of the FFK of the same day.
77. Moreover, and based on the evidence at hand, in particular the witness statement of Mr Luciano Luci, the Panel must come to the conclusion that no decision has been made either by the Referees Committee of the FFU or any other governing body of Ukrainian football to *exclude* the Appellant from the list of referees of the Premier League for the further appointment to the matches between the clubs of the Premier League. The Panel has taken notice in this respect of how the selection criteria are promulgated in the procedural regulations governing the refereeing activities as well as the selection, evaluation and rotation procedure for the FFU

referees, and sees no formal or legal problems in having such criteria in the selection of referees in Ukraine.

78. As far as the Panel may assess the situation at present, no formal *requests* have in fact been made by the Appellant to be included in the list of the Premier League after the decision of the Referees Committee of the FFU and the Executive Committee's decision of the FFK was made on 8 December 2011. Since no request has been made, and subsequently no decision as regards the possibility of the Appellant to become a referee for the Premier League has been announced, the Panel has reached the decision that CAS does not have jurisdiction in this respect, simply because no decision as regards the question to include the Appellant in the list of referees of the Premier League has ever been made by any relevant governing body in Ukrainian football.
79. Thus, the Panel dismisses the Appellant's first request for relief as the CAS has no jurisdiction.

**2. *Re. CAS jurisdiction as to the Appellant's second request for relief:***

80. Although the Panel from the written submissions of the Appellant has understood that it is his conviction that the decisions that had been taken against him in the disciplinary proceedings following the children's football match between FC Kyiv and FC Lokomotiv and the subsequent decision to suspend him from refereeing matches in the Ukrainian first league has been caused by the undue influence of Mr H. Surkis, President of the FFU, and/or Mr I. Kochetov, President of the FFK, this Panel finds no evidence to substantiate such allegations.
81. Thus, the Panel has interpreted this request for relief as being a plea for a more general recognition by this Panel that the allegedly undue – but unsubstantiated - behaviour of Mr Surkis and Mr Kochetov against the Appellant would be inconsistent with fundamental principles of UEFA – “respect”.
82. From the submitted evidence before and during the hearing, the Panel has found no official complaint filed by the Appellant with Ukrainian football authorities against either the President of the FFU or the President of the FFK stipulating that they would have influenced the outcome of the proceedings against the Appellant or acted against the Appellant in general inconsistently with fundamental principles of UEFA. Nor has the Panel been informed of any complaint that the Appellant may have filed against these individuals directly at UEFA.
83. Thus, this Panel subsequently has to reach the conclusion that no decision has been made according to which an appeal may be launched to the CAS.
84. Finally, the Panel notes for the avoidance of doubt that even though such a decision may be construed to have been made, the Appellant has not exhausted any of the domestic remedies available according to Ukrainian football by-laws at the national level, which inevitably would lead to the same result, namely that this Panel has no jurisdiction under article R47 of the Code to decide on the Appellant's second request of relief.
85. Therefore, the Panel finds that the CAS has no jurisdiction for the second plea, resulting in the final conclusion that the case is dismissed altogether due to lack of CAS jurisdiction.

#### **IV. CONCLUSION**

86. In light of the foregoing, the Panel holds that the Appellant's appeal against the FFU and the FFK is altogether dismissed following the lack of CAS jurisdiction.

### **ON THESE GROUNDS**

#### **The Court of Arbitration for Sport rules:**

1. Denies its jurisdiction to hear the appeal filed by Mr Serhii Berezka on 19 November 2011 against the Football Federation of Ukraine and the Football Federation of Kyiv.
2. Dismisses the appeal filed by Mr Serhii Berezka on 19 November 2011.
3. (...).
4. (...).
5. Dismisses all other motions and prayers for relief.