



**Arbitration CAS 2015/A/3944 Galatasaray Sportif Sinai A.S. v. Union des Associations Européennes de Football (UEFA), award of 30 July 2015**

Panel: Mr Lars Hilliger (Denmark), Sole Arbitrator

*Football*

*Disciplinary sanctions against a club for improper conduct of its supporters*

*Definition of supporter*

*Validity of cross-appeals*

*Recidivism*

*Proportionality of sanctions*

*Mitigating factors*

1. A person is to be considered as a supporter of a club under the UEFA Disciplinary Regulations (DR) if the behaviour of that person would lead a reasonable and objective observer to conclude that he or she was a supporter of the club in question. The team a person cheers and where he or she is seated in the stadium are important criteria for determining a supporter's allegiance.
2. Swiss law recognizes the cross-appeals as a valid institution under Swiss law and, therefore, if a cross-appeal is accepted, such acceptance does not breach the principle of *reformatio in peius*. Cross-appeal is also recognized by UEFA Regulations. Under Swiss law – as under most legal systems – sporting associations have a wide margin of autonomy to regulate their own affairs and have the power (i) to adopt rules of conduct to be followed by their direct and indirect members and (ii) to apply disciplinary sanctions to members who violate those rules upon condition that their own rules and certain general principles of law – such as the right to be heard and proportionality – are respected. The authority by which a sporting association may set its own rules and exert its disciplinary powers on its direct or indirect member is in principle not based on public or penal law, but on civil law.
3. A five-year period for regarding previous incidents as recidivism is not too long and must be considered lawful and fair. In any case, the five-year rule appears explicitly from the UEFA DR and a club that agrees to respect UEFA's legal framework, for instance by signing the respective entry form for participating in the UEFA Champions League, cannot subsequently choose to declare it unlawful and unfair, based solely on a self-interested approach.
4. According to a steady line of jurisprudence, the CAS has to show reservation or restraint in evaluating whether a sanction is appropriate; the measure of the sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rule can be reviewed only when the sanction is evidently and grossly disproportionate to the

**offence.**

- 5. The fact that incidents occurred in connection with an away match and possibly were committed by supporters who were not attending the match as a part of arrangements organised by the club cannot be seen as mitigating factors. Alleged, but not documented, shortcoming in the control at the gates of the stadium under the responsibility of the home team are also not mitigating factor. Equally, the fact that a field invasion was committed by only one supporter and that it was never the intention of that supporter to attack anybody is not a mitigating factor.**

## **I. THE PARTIES**

- Galatasaray Sportif Sinai A.S. (“the Appellant” or “the Club”) is a Turkish professional football club with its registered office in Istanbul, Turkey. The Appellant is a member of the Turkish Football Federation, which in turn is a member organisation of the Union des Associations Européennes de Football.
- Union des Associations Européennes de Football (“UEFA” or “the Respondent”) is an international association of European football federations and the governing body of European football, dealing with all matters relating thereto and exercising regulatory, supervisory and disciplinary functions over national federations, clubs, officials and players affiliated with UEFA or participating in its competitions. UEFA is the organising authority of all UEFA football competitions for clubs at the European level, including the UEFA Champions League and the Europa League. UEFA has its registered office in Nyon, Switzerland, and is a legal entity registered under Swiss law.

## **II. FACTUAL BACKGROUND**

- The elements set out below are a summary of the main relevant facts as established by the Sole Arbitrator on the basis of the decision rendered by the UEFA Appeals Body (“the UEFA AB”) on 3 February 2015 (“the Decision”), the written submissions of the Parties and the exhibits filed. Additional facts may be set out, where relevant, in the legal considerations of the present Award.
- On 4 November 2014, the Appellant participated in a 2014/2015 UEFA Champions League (“UCL”) match against the German football club Borussia Dortmund, which was played at the BVB Stadion Dortmund in Germany (“the Match”).
- Following a series of incidents committed by the supporters of the Appellant, the following episodes were reported by the UEFA officials in the UCL delegate report:

***“Security incidents affecting the match (away team) – pitch invasion, throwing of objects, laser point***

*Several bombs were thrown to the pitch during the match with the following details:*

*1’ – 2 bombs were thrown to the pitch side*

*2’ – 1 flare thrown to the pitch*

*52’ – 3 bombs thrown to the pitch. The match was interrupted for 2 min. after PA announcement in German and Turkish the referee decided to proceed with the match after consulting the VD. The away team players tried to appeal for respect from the supporters.*

*86’ – flare was thrown from the away team stand (North upper level) to the home team stand (central). The match was interrupted for 1’.*

*89’ – Bomb was thrown from the away team stand (North lower level) to the home team stand (central). Another bomb thrown to the pitch side.*

*90’ – objects thrown from the away team stand to the home team stand. After final whistle – when the team was celebrating on the pitch, an away team supporter invaded the field to salute the home team Turkish player #8 (photo to be attached). After the match, when the teams were out of the field:*

*7 bombs were thrown to pitch side*

*A black smoke appeared in the stand, because several chairs were burned (damaged evaluation now taking place)*

*...*

***Use of pyrotechnics (away team)***

*Pyrotechnics not thrown:*

*1’- 2 bombs*

*2’- 1 flare in the stand*

*52’- 11 bombs exploded right before the match interruption*

*70’- 3 bombs*

*76’- 1 bomb*

*79’- 1 bombs*

*88’- flare in the stand*

*90’- 1 bomb*

*After the match, when the teams were out of the field:*

*2 red flares*

*A black smoke appeared in the stand, because several chairs were burned (damages evaluation no taking place)*

*5 flares were lightened (one after the other during 10m)*

*1 smoke bomb*

*3 bombs exploded”.*

6. Based on the UCL delegate report, the Control, Ethics and Disciplinary Body ruled as follows in its decision of 13 November 2014 (“the CEDB Decision”):
  1. To fine Galatasaray A.S. Euro 70’000.
  2. Galatasaray is ordered to contact Borussia Dortmund within 30 days for the settlement of the damages caused by its supporters.
  3. the above fine must be paid into the bank account indicated below within 90 days of communication of this decision.

7. On 5 December 2014, the Appellant filed an appeal with the UEFA AB against the CEDB Decision, requesting the UEFA AB to overturn and rescind the CEDB Decision, and, in the alternative, to reduce the fine imposed.
8. On 5 January 2015, the UEFA Ethics and Disciplinary Inspector submitted her reply to the appeal, together with a cross-appeal, requesting, *inter alia*, that the Appellant be ordered to play its next UEFA home match behind closed doors, in addition to parts 1, 2 and 3 of the operative part of the CEDB Decision, which should remain.
9. The Appellant's grounds for appeal with the UEFA AB can be summarised as follows:
  - The Control, Ethics and Disciplinary Body did not consider the fact that the Appellant was not the host club for the match in question.
  - The Appellant did not organise transport to the match for its supporters.
  - The level of security at the stadium was insufficient.
  - Responsibility for preventing supporters from bringing fireworks into the stadium and from using any such object lies with the host club.
  - The incidents in question were caused by an insignificant number of supporters.
  - There are several discrepancies between the delegate's first report and his additional report which the Control, Ethics and Disciplinary Body should have considered.
  - The Appellant takes all necessary measures to prevent such behaviour among supporters when playing at home.
  - The intention of the supporter who entered the field of play was to salute a Turkish player, and it is unfair to hold responsible and punish the Appellant because of only one person entering the field of play.
  - A fine of EUR 70,000 is excessive and disproportionate; the incidents were not severe enough to justify such a heavy sanction.
10. The UEFA Ethics and Disciplinary Inspector on her side argued in her cross-appeal that the Control, Ethics and Disciplinary Body failed to take into consideration and evaluate the Appellant's poor previous record and therefore applied too lenient a sanction. Furthermore, it was argued that the fine of EUR 70,000 was not deterrent as the Appellant has been fined many times for similar circumstances.

11. The UEFA AB, after having confirmed its competence and the admissibility of the appeal and the cross-appeal, first of all confirmed that under the UEFA Statutes and the UEFA Disciplinary Regulations (“the UEFA DR”), disciplinary measures may be imposed for unsportsmanlike conduct violations of the Laws of the Game and contravention of the UEFA’s Statutes, regulations, decisions and directives. Member associations and clubs are responsible for the conduct of their players, officials, members, supporters and any other persons exercising a function at a match on their behalf. This also applies to 2014/15 UEFA Champions League matches, as expressly stated in the competition regulations.
12. Furthermore, the UEFA AB confirmed that, according to the UEFA DR, the match delegate’s and referee’s reports must be considered as being truthful and reliable unless they can be proved otherwise, clearly and beyond doubt.
13. Based on the above, the UEFA AB found it established to its satisfaction that the Appellant’s supporters set off pyrotechnic devices, some of which were thrown onto the field of play and caused the referee to stop the Match twice. At the end of the Match, one of the Appellant’s supporters also entered into the pitch.
14. The UEFA AB noted that the Appellant’s main grievance seemed to be that the Appellant was playing away from home, which is why it could not be held liable for safety and security at the Match and, consequently, was not responsible for any improper conduct by its supporters.
15. Under Article 16(1) of the UEFA DR, the host association or club is responsible for order and security both inside and around the stadium before, during and after the match. On the other hand, under Article 16(2) of the UEFA DR, all member associations and clubs are liable for the conduct of their players, officials, members, supporters and any other persons exercising a function at a match on their behalf. This is the principle of strict liability.
16. However, the UEFA AB stressed that liability for a host club under Article 16(1) does not exclude liability of a visiting club under Article 16(2). Those two types of liability can be applied simultaneously and does not in any way exonerate the visiting club from strict liability for its supporters. The rules and principles also apply to teams participating in the 2014/2015 UEFA Champions League in accordance with the competition regulations. Thus, the fact that the Appellant was playing away does not exempt it from the possibility of a sanction for improper conduct by its supporters under Article 16(2) of the UEFA DR.
17. Possible shortcomings in the organisation of the Match could, at most, be considered as mitigating circumstances for violations conducted by the visiting team supporters.
18. The Appellant further insinuated that the persons who committed the offences were not supporters of the Appellant.
19. The UEFA AB found this insinuation unfounded and irrelevant since it is the constant practice of the UEFA disciplinary bodies to consider as supporters of a club individuals whose behaviour would lead a reasonable and objective observer to conclude that he or she was a

supporter of the club in question. The team a person cheers and where the person is seated in the stadium are important criteria for determining a supporter's allegiance. Therefore, the UEFA concluded that the persons who committed these incidents were supporters of the Appellant.

20. Furthermore, the UEFA AB found it irrelevant and inadmissible that the Appellant submitted that the fact that its home matches have been without incidents should be considered as a mitigating factor. Moreover, the UEFA AB found this claim untrue as the Appellant has been punished 17 times in the last five years for improper conduct committed by its supporters and organisational failings.
21. Based on the above circumstances, among others, the UEFA AB found that the Control, Ethics and Disciplinary Body was right in holding the Appellant responsible for its supporters' misconduct.
22. With regard to the sanction imposed, the Appellant claimed that the fine of EUR 70,000 is excessive and disproportionate as the incidents that occurred at the Match were not themselves excessive. The UEFA AB rejected this argument.
23. On the contrary, and in view of the persistent disorder shown by the Appellant's supporters despite the fines imposed on their club, the UEFA AB found it necessary to select a more severe and visible sanction – one that fulfils the objectives of educating the supporters and prompting the club to take action itself.
24. Based on the above, on 3 February 2015, the UEFA Appeals Body rendered the Decision and decided, in particular, that:
  - “1. *The appeal lodged by Galatasaray is rejected,*
  2. *The cross-appeal lodged by the UEFA Ethics and Disciplinary Inspector is partially admitted, in that the EURO 70,000 fine is upheld and Galatasaray is ordered to play one UEFA home match behind closed doors, with the enforcement of this order suspended for a probationary period of five years.*
  3. *The costs of the proceedings, totalling EURO 7,000, are charged as follows: EURO 5,000 minus the appeal fee to Galatasaray AS and the rest to UEFA. The Turkish Football Federation is jointly liable for collection of the costs charged to the appellant and the fine.*
  4. *This decision is final, subject to Article 58(7) of the UEFA Disciplinary Regulations.*
  5. *...”.*

### III. SUMMARY OF THE ARBITRAL PROCEEDINGS BEFORE THE CAS

25. On 17 February 2015, the Appellant filed a Statement of Appeal against the Respondent with respect to the Decision rendered by the UEFA AB on 3 February 2015.
26. On 25 February 2015, the Appellant filed its Appeal Brief.
27. In the Appeal Brief, the Appellant reserved its right to submit further comments and explanations once it had received the grounds of the Decision from the UEFA AB. Thereafter, the parties agreed that the CAS Court Office to grant a 20-day deadline to the Appellant in order to complete the appeal brief upon receive of the grounds of the Decision.
28. By letter dated 31 March 2015, the Parties were informed by the CAS Court Office that Mr Lars Hilliger, attorney-at-law, Copenhagen, Denmark, had been appointed as Sole Arbitrator in the case.
29. On 4 May 2015, and after having been granted a prolonged deadline in order to await the grounds of the Decision, the Appellant filed its completion of its Appeal Brief.
30. On 26 May 2015, the Respondent filed its Answer.
31. On 28 May 2015, the Respondent informed the CAS Court Office that it *“does not oppose to hold a hearing if the Appellant and/or the Sole Arbitrator considers it appropriate”*.
32. However, on 2 June 2015, the Appellant informed the CAS Court Office *“that holding a hearing is not necessary in this matter”*.
33. On 4 June 2015 the Parties were therefore informed by the CAS Court Office that the Sole Arbitrator had decided to render an award on the sole basis of the Parties’ written submissions.
34. Finally, on 5 June 2015, both Parties signed and returned the Order of Procedure.

### IV. CAS JURISDICTION AND ADMISSIBILITY OF THE APPEAL

35. Article R47 of the Code of Sports-related Arbitration (“the CAS Code”) states 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 if 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”*.
36. With respect to the Decision, the jurisdiction of the CAS derives from Article 58(7) of the UEFA Disciplinary Regulations and Articles 62 and 63 of the UEFA Statutes. In addition, neither the Appellant nor the Respondent objected to the jurisdiction of the CAS, and both Parties confirmed the CAS jurisdiction when signing the Order of Procedure.

37. It follows that the CAS has jurisdiction to decide on this appeal.
38. Furthermore, the admissibility of this appeal is not disputed by the Respondent. It therefore follows that the appeal is admissible.
39. Under Article R57 of the CAS Code, the Sole Arbitrator has full power to review the facts and the law and may issue a de novo decision superseding, entirely or partially, the decision appealed against.

## V. APPLICABLE LAW

40. Art. 63, para. 2, of the UEFA Statutes states as follows: *“Moreover, proceedings before the CAS shall take place in accordance with the Code of Sports-related Arbitration of the CAS”*.
41. Article R58 of the CAS Code states as follows: *“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”*.
42. The Sole Arbitrator notes that, in accordance with Article R58 of the CAS Code, the applicable law in this matter shall be the regulations of UEFA, in particular the UEFA Disciplinary Regulations and, subsidiarily, Swiss law.

## VI. THE PARTIES’ REQUESTS FOR RELIEF AND POSITIONS

43. The following outline of the Parties’ requests for relief and positions is illustrative only and does not necessarily comprise every contention put forward by the Parties. The Sole Arbitrator, however, has carefully considered all the submissions and evidence filed by the Parties with the CAS, even if there is no specific reference to those submissions or evidence in the following summary.
44. In its Appeal Brief, the Appellant requested the CAS to:
  - *“Accept our request of appeal,*
  - *To overturn and rescind the abovementioned decision of the UEFA Appeals Body,*
  - *If CAS is of the opposite opinion:*
    - *to reduce the fine,*
    - *to overturn and rescind the sanction of “to play its next UEFA home match behind closed doors but the enforcement of the match behind closed doors was suspended for a probationary period of five years”; if CAS is of the opposite opinion to amend this sanction as “to play its next UEFA*

*away match without Galatasaray fans but the enforcement of the away match without Galatasaray is suspended for a probationary period of five years”.*

- 1) *To condemn the Respondent to pay the legal fees and other expenses of the Appellant in connection with the proceedings”.*

45. In support of its requests for relief, the Appellant provided the following arguments:

- The fact that the UEFA AB increased the sanction imposed on the Appellant, upon the cross-appeal of the Respondent, constitutes a violation of the prohibition of *reformatio in peius*.
- According to this universal principle of law, no one should be placed in a worse situation as a result of filing an appeal. Otherwise, it may deter a person or a club from lodging an appeal, which would without a doubt violate a person’s or a club’s fundamental right to exercise legal remedies.
- Therefore, primarily, the decision of the UEFA AB shall be overturned by the CAS as it violates the prohibition of *reformatio in peius*.
- Moreover, the cross-appeal was not filed within the legal time limit and only after having received the Appellant’s letter of appeal before the UEFA AB.
- The Appellant does not deny the strict liability as described in the Decision.
- However, it must be underlined that the organisational shortcomings and lack of security as described in the different written submissions must be taken into consideration as mitigating factors when determining the sanctions in the Decision.
- Even if the UEFA AB admitted in the Decision that “*possible shortcomings in the organisation of the match could, at most, be considered as mitigating circumstances for violations conducted by the visiting supporters*”, the UEFA AB did not take these into consideration when deciding on the sanction in the Decision.
- Moreover, the Appellant objects to the statement of the UEFA AB that “*the controls at the gates (including body searches) were properly conducted at the match in question*” when referring to the UEFA Delegate’s Report.
- According to the same report, 13 bombs, 2 flares and several other objects were thrown during the Match. This means that these objects were allowed into the stadium, which proves that the controls at the gates were not properly conducted and that there was a clear lack of security.

- There is no doubt that this fact constitutes a mitigating factor when deciding on the sanction imposed on the Appellant.
- Furthermore, the Appellant argues that the decisions of the referee to stop the Match twice due to objects being thrown were not correct.
- Stopping a match for supporter incidents is a severe situation, and there is no doubt that if a situation occurs which really threatens the safety and security of any person at the stadium, the referee has to stop the match.
- However, at the Match, only three objects were thrown before the first stop of the Match and only one before the Match was stopped for the second time. None of these objects actually hit anybody.
- The Appellant does not object to the fact that the throwing of objects constitutes a breach according to the UEFA DR. But as the Match was stopped because of such throwing, it automatically makes the breach more severe according to the UEFA DR because it means that *“the objects thrown were so many and so severe that the referee has to interrupt the game”*.
- In any case, the Appellant did its utmost to prevent such incidents. Even if the Appellant has no control and/or authority over its fans all over Europe, this does not mean that the Appellant does not at try to do its best to prevent undesirable incidents.
- With regard to the field invasion of one supporter, the UEFA AB found that the number of fans who invade the field or the intention of the fan has no effect on the assessment of the violation and the determination of the sanction. This assumption cannot be accepted.
- According to the UEFA DR, a club *“may be subject to disciplinary measures”* because of the misconduct of its supporters such as field invasion. This means that all field invasions do not automatically constitute a violation and that the UEFA Disciplinary bodies must take all the tangible facts of the case into consideration when determining the sanction if a field invasion is seen as a violation of the regulations.
- In the case at hand, only one supporter entered into the pitch, and this supporter had no intention to attack, assault and/or insult any player, official or other person. The only intention was to salute the Turkish player of the home team.
- Therefore, the conduct of the supporter does not constitute any violation according to the UEFA DR.
- Furthermore, it must be taken into consideration when deciding on a possible sanction on the Appellant that no supporters’ incidents have occurred in the Appellant’s stadium in the 2014/2015 UEFA Champions League.

- This shows that such incidents may be prevented by taking the necessary precautions, and the incidents during the Match would therefore not have occurred if the necessary precautions had been taken by Borussia Dortmund.
  - In any case, the fine of EUR 70,000 and the order to play one match behind closed doors imposed on the Appellant are excessive, disproportional and unfair sanctions.
  - The incidents at the Match were not sufficiently severe to impose such heavy sanctions on the Appellant.
  - Furthermore, and according to Article 17 of the UEFA DR, the mitigating circumstances mentioned above must be taken into account in determining the sanction.
  - Finally, since the incidents occurred at an away match, a possible sanction on the home fans of the Appellant in Istanbul shall constitute an unfair and unlawful situation, and any possible sanction regarding the Appellant playing a match without its fans should therefore be amended to the Appellant's next UEFA away match.
46. In its Answer filed on 26 May 2015, the Respondent requested the CAS to issue an award as follows:
- *“Rejecting the reliefs sought by Galatasaray Sportif Sinai A.S.*
  - *Confirming the decision under appeal.*
  - *Bearing in mind that UEFA has more financial resources than Galatasaray Sportif Sinai A.S and the defence of UEFA has been conducted by in-house lawyers, Respondent honestly considers that no contribution towards the legal fee and other expenses incurred by UEFA in connection with these proceedings must be paid by Appellant”.*
47. In support of its requests for relief, the Respondent submitted the following arguments:
- The UEFA AB did not violate the prohibition of *“reformatio in peius”* when partially admitting the cross-appeal lodged by the UEFA Ethics and Disciplinary Inspector and amending the CEDB Decision.
  - Cross-appeals are contemplated in UEFA's legal framework and, in particular, under Article 56(2) of the UEFA DR, according to which: *“The reply to the appeal may include the declaration of a cross-appeal. The procedural rules governing appeals apply equally to cross-appeals”.*
  - Furthermore, the cross-appeal is a well-known legal instrument under Swiss law, also applicable on the disciplinary proceedings of sports federations situated in Switzerland, which are civil proceedings by nature.

- The Appellant complains that the cross-appeal was not submitted after the notification of the grounded CEDB Decision in accordance with Article 54 of the UEFA DR.
- However, cross-appeals must only comply with the conditions established in Article 56(2) of the UEFA DR.
- The institution of the cross-appeal is not UEFA's own creation. It is based on the Swiss procedural civil code, and UEFA has a clear legal framework regulating the figure of cross-appeal.
- Furthermore, CAS case law and the Swiss Federal Tribunal jurisprudence have both validated this institution with disciplinary proceedings conducted by the international sports federations.
- It follows that the UEFA AB was entitled to amend the CEDB Decision within the terms requested by the appealing parties.
- According to UEFA DR, an 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 if such a rule is violated as a result of the conduct of, among others, its supporters, even if the association or club concerned can prove the absence of any fault or negligence.
- The Respondent notes that this principle of strict liability is no longer contested by the Appellant.
- Furthermore, it is undisputed by the Parties that a number of objects were thrown by the Appellant's supporters during the Match and that one of the Appellant's supporter invaded the pitch after the Match.
- All the incidents were reported by three different official reports, i.e. the UEFA delegate, the UEFA security officer and the UEFA referee, which are presumed to be accurate according to the UEFA regulations. Furthermore, the incidents were confirmed by means of various video footage of the Match.
- Based on that, the Appellant is focusing on the alleged lack of proportionality of the sanction as the liability of the Appellant is accepted, and, accordingly, only the extent of this liability is questioned.
- It has been confirmed many times by the CAS that a club is liable for its supporters' behaviour and that it is not acceptable to punish always (only) the host club. According to CAS jurisprudence, strict liability applies also in away matches for incidents perpetrated by the visiting team supporters, even in cases where the security obligations have not been fulfilled by the host club.

- It is therefore established by consistent CAS jurisprudence that for incidents perpetrated by a club's supporters, the club is to be held liable in accordance with the principle of strict liability, irrespective of the fact that the incident was perpetrated by these supporters during an away match or that the security obligations of the host club were not fulfilled.
- Consequently, the UEFA AB correctly held the Appellant liable for the incidents which occurred during the Match.
- With regard to the question of proportionality of the sanction, the CAS has previously stated that *"The measure of the sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rule can be reviewed only then the sanction is evidently and grossly disproportionate to the offence"*.
- Hence, it is admitted under CAS jurisprudence that the CAS has to show reservation or restraint in evaluating whether a sanction is appropriate, and in accordance with CAS jurisprudence, a decision passed by the relevant disciplinary body of UEFA shall therefore not be reviewed by a CAS panel unless such decision would be disproportionate.
- This is not the case with the Decision.
- The sanction imposed by the UEFA AB on the Appellant in the Decision is fair and proportionate under the circumstances of the case and the undisputed incidents during the Match.
- When determining the appropriate sanction in the Decision, the UEFA AB took into account both Article 17 and Article 18 of the UEFA DR, considering both aggravating and mitigating circumstances.
- It is obvious that the long list of infringements, which includes crowd disturbances, a field invasion, the setting off and throwing of fireworks and objects against players, UEFA officials and home team supporters, two stoppages of the Match as well as damage perpetrated against the patrimony of the host club, merits a strong and meaningful decision.
- Furthermore, the Respondent objects to the submission of the Appellant that the referee was wrong when stopping the Match on two occasions.
- Taking the above into account, it is clear that the Appellant merited a strong and definitive sanction that could trigger a change in the Appellant's approach towards the attitude of its supporters. This was in fact the consideration of the UEFA AB when it decided to defer and not to impose directly the order of playing one match behind closed doors.

- According to Article 19 of the UEFA DR, recidivism occurs if another offence of a similar nature is committed within five years, exceptions being made to one-match suspension, two-match suspension and match-fixing.
- By signing the respective entry form, the Appellant and the other clubs participating in UEFA competitions have agreed to respect UEFA's legal framework, and it consequently makes no sense to try to limit the period of recidivism of five years to one year without proving any single legal consideration in support thereof.
- It must be stressed that the history of the Appellant over the last couple of years shows that the Appellant has been consistently and severely punished at both home and away matches for similar incidents.
- It follows that the Appellant was actually sanctioned in the most lenient way, taking into consideration the seriousness of the incident, the continuous violent conduct of its supporters, the attack on the integrity of a player and an UEFA official, the attack on [home] supporters, the damage to the host patrimony, and the act of recidivism committed by the Appellant.
- In the light of the above, there is no basis for concluding that the Decision should be annulled, even less when considering that the Appellant is ordered merely to pay a fine, which supposes a minimal percentage of all revenues granted by UEFA for participating in the UEFA Champions League competition.

## VII. DISCUSSION ON THE MERITS

48. This case concerns a series of incidents committed during and after the Match between the Appellant and the German football club Borussia Dortmund, which was played at the BVB Stadion Dortmund in Germany on 4 November 2014.
49. Following the Match, the following episodes were reported by the UEFA officials, including in the UCL delegate report, which states:

***“Security incidents affecting the match (away team) – pitch invasion, throwing of objects, laser point***

*Several bombs were thrown to the pitch during the match with the following details:*

*1' – 2 bombs were thrown to the pitch side*

*2' – 1 flare thrown to the pitch*

*52' – 3 bombs thrown to the pitch. The match was interrupted for 2 min. after PA announcement in German and Turkish the referee decided to proceed with the match after consulting the VD. The away team players tried to appeal for respect from the supporters.*

86' – flare was thrown from the away team stand (North upper level) to the home team stand (central). The match was interrupted for 1'.

89' – Bomb was thrown from the away team stand (North lower level) to the home team stand (central). Another bomb thrown to the pitch side.

90' – objects thrown from the away team stand to the home team stand. After final whistle – when the team was celebrating on the pitch, an away team supporter invaded the field to salute the home team Turkish player #8 (photo to be attached). After the match, when the teams were out of the field:

7 bombs were thrown to pitch side

A black smoke appeared in the stand, because several chairs were burned (damaged evaluation now taking place)

...

#### **Use of pyrotechnics (away team)**

Pyrotechnics not thrown:

1' - 2 bombs

2' - 1 flare in the stand

52' - 11 bombs exploded right before the match interruption

70' - 3 bombs

76' - 1 bomb

79' - 1 bombs

88' - flare in the stand

90' - 1 bomb

After the match, when the teams were out of the field:

2 red flares

A black smoke appeared in the stand, because several chairs were burned (damages evaluation no taking place)

5 flares were lightened (one after the other during 10m)

1 smoke bomb

3 bombs exploded".

50. According to Article 38 of the UEFA DR, "Facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided".
51. The Appellant has not been able to produce any evidence that could possibly provide a basis for setting aside the content of the official reports, and the Respondent has presented the CAS with pictures and video footage of the Match, which confirm the correctness of this content.
52. Against this background, the Sole Arbitrator intends to take into account and have regard to the aforementioned incidents in the further consideration of the case.
53. Article 8 of the UEFA DR states as follows:

*"A member association or club that is bound by a rule of conduct laid down in UEFA's Statutes or regulation 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".*

54. Article 16(2) of the UEFA DR states as follows:

*“1. Host associations and clubs are responsible for order and security both inside and around the stadium before, during and after matches. They are liable for incidents of any kind and may be subject to disciplinary measures and directives unless they can prove that they have not been negligent in any way in the organization of the match.*

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

*a) the invasion or attempted invasion of the field of play;*

*b) the throwing of objects;*

*c) the lighting of fireworks or any other objects;*

*d) the use of laser pointers or similar electronic devices;*

*e) the use of gestures, words, objects or any other means to transmit any message that is not fit for a sports event, particularly messages that are of a political, ideological, religious, offensive or provocative nature;*

*f) acts of damage;*

*g) the disruption of national or competition anthems;*

*h) any other lack of order or discipline observed inside or around the stadium”.*

55. The Sole Arbitrator notes that in line with the above, it is now undisputed by the Parties that the Appellant is liable for its supporters’ behaviour and may be subject to disciplinary measures even if the Appellant can prove the absence of any fault or negligence in relation to the organisation of the match.

56. Furthermore, it is not disputed that the incidents reported by the UEFA officials (see paragraph 8.2 above) were committed by the supporters of the Appellant.

57. This is in line with the constant practice of the UEFA bodies as confirmed by the CAS (CAS 2013/A/3139 para 67), according to which a person is to be considered as a supporter of a club under Article 16(2) of the UEFA DR if the behaviour of that person would lead a reasonable and objective observer to conclude that he or she was a supporter of the club in question. The team a person cheers and where he or she is seated in the stadium are important criteria for determining a supporter’s allegiance.

58. Based on the above, the Sole Arbitrator initially concludes that the Appellant does not deny the strict liability for any violation of the UEFA DR committed by its supporters during and after the Match as described in the Decision.

59. However, the Appellant states that the increased sanction imposed on the Appellant in the Decision constitutes a violation of the prohibition of *reformatio in peius*, and the Decision must consequently be overturned by the CAS.

60. In any case, the Appellant finds, when taking into consideration all mitigating factors, that the fine of EUR 70,000 and the order to play one match behind closed doors imposed on the Appellant are excessive, disproportionate and unfair since the incidents at the Match were not sufficiently severe to impose such heavy sanctions on the Appellant.
61. Thus, the main issues to be resolved by the Sole Arbitrator are:
- a) Did the UEFA Appeals Body violate the prohibition of *reformatio in peius* when it partially upheld the cross-appeal lodged by the UEFA Ethics and Disciplinary Inspector and amended the CEDB Decision and, if so, shall the Decision be overturned?
  - b) In case the Decision is not overturned due to the alleged violation of *reformatio in peius*, is the sanction imposed on the Appellant in the Decision so excessive, disproportionate and unfair that it should be reduced and, if this the case, what sanctions shall then be imposed on the Appellant?
- A. Did the UEFA Appeals Body violate the prohibition of *reformatio in peius* when it partially upheld the cross-appeal lodged by the UEFA Ethics and Disciplinary Inspector and amended the CEDB Decision and, if so, shall the Decision be overturned?**
62. The Control, Ethics and Disciplinary Body decided as follows in the CEBD Decision of 13 November 2014:
1. *To fine Galatasaray A.S. Euro 70'000.*
  2. *Galatasaray is ordered to contact Borussia Dortmund within 30 days for the settlement of the damages caused by its supporters.*
  3. *The above fine must be paid into the bank account indicated below within 90 days of communication of this decision”.*
63. Following the Appellant’s appeal of the CEBD Decision to the UEFA AB, the UEFA Ethics and Disciplinary Inspector submitted her reply to the appeal, together with a cross-appeal, requesting, inter alia, that the appellant be ordered to play its next UEFA home match behind closed doors, in addition to parts 1, 2 and 3 of the operative part of the CEDB Decision, which should remain.
64. As already mentioned above, the Appellant submits that such cross-appeal constitutes a violation of the prohibition of *reformatio in peius*, according to which no one should be placed in a worse situation as a result of filing an appeal.
65. Moreover, it is stated that the cross-appeal was not filed within the legal time limit in accordance with Articles 53 and 54 of the UEFA DR and only after having received the Appellant’s letter of appeal before the UEFA AB.

66. The Sole Arbitrator initially notes that the institution of cross-appeals is a well-known legal instrument under Swiss law and that the Respondent is a legal entity domiciled in Switzerland and, as such, subject to Swiss law.
67. Under Swiss law – as under most legal systems – sporting associations have a wide margin of autonomy to regulate their own affairs and have the power (i) to adopt rules of conduct to be followed by their direct and indirect members and (ii) to apply disciplinary sanctions to members who violate those rules upon condition that their own rules and certain general principles of law – such as the right to be heard and proportionality – are respected. The authority by which a sporting association may set its own rules and exert its disciplinary powers on its direct or indirect member is in principle not based on public or penal law, but on civil law (CAS 2013/A/3139, paras 86-87).
68. Article 56 of the UEFA DR states as follows:  
*“Reply to the appeal and cross-appeal.*  
1. *The chairman notifies the ethics and disciplinary inspector and/ or the parties concerned of the appeal. A reply to the appeal must be filed within the deadline set by the chairman.*  
2. *The reply to the appeal may include the declaration of a cross-appeal. The procedural rules governing appeals apply equally to cross-appeals”.*
69. The Sole Arbitrator notes that Swiss law recognizes the cross-appeals as a valid institution under Swiss law and, therefore, if a cross-appeal is accepted, such acceptance does not breach the principle of *reformatio in peius*.
70. Furthermore, the cross-appeal is recognized by UEFA Regulations and in the case at hand, the cross-appeal was made before the UEFA AB in accordance with the UEFA DR.
71. With regard to the time limit for cross-appeals according to the UEFA DR, the Sole Arbitrator notes that the wording of Article 56(2) of the UEFA DR only establishes the condition to include a possible cross-appeal in the reply to an appeal.
72. As such, there is no obligation to submit a cross-appeal after the notification of the grounds of the decision in accordance with Articles 53 and 54 of the UEFA DR.
73. Based on the above, the Sole Arbitrator finds that the UEFA Ethics and Disciplinary Inspector acted in accordance with the UEFA DR when only cross-appealing in her answer before the UEFA AB.
74. Furthermore, the Sole Arbitrator finds that the UEFA AB did not violate the prohibition of *reformatio in peius* when partially admitting the cross-appeal lodged by the UEFA Ethics and Disciplinary Inspector and amending the CEDB Decision.

**B. Is the sanction imposed on the Appellant in the Decision so excessive, disproportionate and unfair that it should be reduced and, if this is the case, what sanctions shall then be imposed on the Appellant?**

75. In the Decision, the UEFA AB decided, in particular, that:

- “1. *The appeal lodged by Galatasaray is rejected,*
2. *The cross-appeal lodged by the UEFA Ethics and Disciplinary Inspector is partially admitted, in that the EURO 70,000 fine is upheld and Galatasaray is ordered to play one UEFA home match behind closed doors, with the enforcement of this order suspended for a probationary period of five years.*
3. *The costs of the proceedings, totalling EURO 7,000, are charged as follows: EURO 5,000 minus the appeal fee to Galatasaray AS and the rest to UEFA. The Turkish Football Federation is jointly liable for collection of the costs charged to the appellant and the fine”.*

76. The Appellant submits that the sanction imposed on the Club is excessive, disproportionate and unfair and, thus, must be reduced.

77. More specifically, the Appellant sums up a series of factors which in its opinion must be taken into account as mitigating circumstances:

- the organizational shortcomings and lack of security;
- the throwing of objects during the Match was only possible due to the fact that the control at the gates (including body searches) was not properly conducted;
- if the control at the gates had been properly conducted, no objects would have been found inside the stadium;
- the decisions of the referee to stop the Match due to objects being thrown were not correct since only three objects were thrown before the first stoppage and only one object before the Match was stopped for the second time;
- none of the objects actually hit anybody;
- the Appellant did its best to prevent such incidents;
- the field of play was only invaded by one Appellant’s supporter;
- the intent of this supporter was only to salute the Turkish player of the home team;
- these facts had no effect on the UEFA AB assessment of the violation and the determination of the sanction, which is not acceptable;

- according to the UEFA DR, a club “*may be subject to disciplinary measures*” because of the misconduct of its supporters such as field invasion. This means, however, that all field invasions do not automatically constitute a violation and that the disciplinary bodies must take all the tangible facts of the case into consideration when determining the sanction if a field violation is seen as a violation of the regulations;
- in this particular case, the field invasion does not constitute any violation according to the UEFA DR;
- no supporter incidents have occurred in the Appellant’s stadium in the 2014/2015 UEFA Champions League, and finally;
- since the incidents occurred at an away match, a possible sanction on the home fans of the Appellant in Istanbul shall constitute an unfair and unlawful situation, and any possible sanction regarding the Appellant playing a match without fans should therefore be amended to the Appellant’s next UEFA away match.

78. The Sole Arbitrator turns his attention to the legal framework for assessing the proportionality of a sanction based on the applicable UEFA regulations and notes that, according to Article 6 of the UEFA DR, the following disciplinary measures may be imposed on member associations and clubs in accordance with Article 53 of the UEFA Statutes:

- “1. ...
- A) *warning;*
  - B) *reprimand;*
  - C) *fine;*
  - D) *annulment of the result of a match;*
  - E) *order that a match be replayed;*
  - F) *deduction of points (for the current and/or future competition);*
  - G) *order that the match be forfeited;*
  - H) *playing a match behind closed doors;*
  - I) *full or partial stadium closure;*
  - J) *playing a match in a third country;*
  - K) *withholding of revenues from a UEFA competition;*
  - L) *prohibition of registering new players in UEFA competitions;*
  - M) *restriction on the number of players that a club may register for participation in UEFA competitions;*
  - N) *disqualification from competitions in progress and/or exclusion from future competitions;*
  - O) *withdrawal of a title or award;*
  - P) *withdrawal of a licence;*
  - Q) *community football service.*

...

3. *Fines must not be less than EUR 100 and more than EUR 1,000,000. In the case of individuals, a fine may not exceed EUR 100,000.*
4. *The above-mentioned disciplinary measures may be combined”.*

79. Pursuant to Article 20(1) of the UEFA DR, all disciplinary measures may be suspended except for warnings, reprimands, bans on all football-related activities and disciplinary measures related to match-fixing, bribery and corruption.

80. Article 20(2-3) provides *inter alia* that the probation period shall be a minimum of one year and a maximum of five years, and if a further offence is committed during the probationary period, the competent disciplinary body, as a rule, orders the original sanction to be executed.

81. According to Article 17(1) of the same regulations;

*“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”.*

82. Article 19 of the UEFA DR furthermore provides:

*“1. Recidivism occurs if another offence of a similar nature is committed within:*

- A) One year of the previous offence if that offence was punished with a one-match suspension;*
- B) Three years of the previous offence if that offence was punished with a two-match suspension;*
- C) Ten years of the previous offence if that offence was related to match-fixing or corruption;*
- D) Five years of the previous offence in all other cases.*

*2. Recidivism counts as an aggravating circumstance”.*

83. As already mentioned in paragraph 8.5 above, the Sole Arbitrator takes into account the incidents described in paragraph 8.2, enabling the Sole Arbitrator to establish that the Appellant’s supporters, both during and after the Match and to a considerable extent, along with other incidents, set off and threw fireworks and missiles, both against the field of play and against the supporters of the home team, and that a supporter of the Appellant invaded the field in order to salute a Turkish player of the home team.

84. The Sole Arbitrator observes that it is undisputed that, within the last years, the Appellant had already been sanctioned by UEFA for multiple incidents including setting off/throwing of fireworks and missiles, field invasions by supporters and crowd disturbance.

85. Only taking into consideration the previous season (UCL 13/14), the Appellant has undisputedly been punished by UEFA, at home and away matches, as follows:

26.02.2014	APPELLANT VS CHELSEA FC	SETTING OFF/THROWING OF FIREWORKS AND MISSILES FIELD INVASION BY SUPPORTER	EUR 20,000
11.12.2013	APPELLANT VS JUVENTUS FC	FIELD INVASION BY SUPPORTER ILLICIT BANNER SETTING OFF/THROWING OF FIREWORKS AND MISSILES	EUR 42,000
5.11.2013	FC KOBENHAVN VS APPELLANT	SETTING OFF/THROWING OF FIREWORKS AND MISSILES CROWD DISTURBANCES	EUR 100,00
2.10.2013	JUVENTUS FC VS APPELLANT	SETTING OFF/THROWING OF FIREWORKS AND MISSILES	EUR 25,000
17.09.2013	APPELLANT VS REAL MADRID FC	FIELD INVASION MISCELLANEOUS INSUFFICIENT ORGANAZATION	EUR 35,000

86. Given these circumstances, the Sole Arbitrator finds that sufficient evidence has been produced to prove that the Appellant is guilty of recidivism under Article 19(1 D) of the UEFA DR.
87. In this regard, the Sole Arbitrator denies, *inter alia*, the Appellant's allegation that a five-year period for regarding previous incidents as recidivism is far too long and must be considered unlawful and unfair.
88. It should be emphasised that the five-year rule appears explicitly from the UEFA DR and that the Appellant, for instance by signing the respective entry form for participating in the UEFA Champions League, has agreed to respect UEFA's legal framework, which the Appellant cannot subsequently choose to declare unlawful and unfair, based solely on a self-interested approach.
89. The Sole Arbitrator notes that issues regarding the proportionality of sanctions imposed by UEFA have been dealt with in many cases before the present one. The steady line of CAS jurisprudence provides that the sanction imposed shall not be evidently and grossly disproportionate to the offence (see CAS 2007/A/1217 and CAS 2012/A/2762, among others).

90. However, the Sole Arbitrator would like to underline that the same cases, among others, also confirm that the CAS has to show reservation or restraint in evaluating whether a sanction is appropriate and that *“the measures of the sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rule can be reviewed only when the sanction is evidently and grossly disproportionate to the offence”* (see CAS 2012/A/2762, para 122).
91. The Sole Arbitrator finds that the series of incidents committed during and after the Match by supporters of the Appellant constitute a serious violation the UEFA DR.
92. In these circumstances, the Sole Arbitrator finds no grounds for concluding that the decisions of the referee to stop the Match twice were not correct, as submitted by the Appellant.
93. The fact that the series of incidents occurred in connection with an away match and possibly were committed by supporters of the Appellant who were not attending the Match as a part of arrangements organised by the Appellant is not relevant and cannot be seen as mitigating factors.
94. The same goes for the argument made by the Appellant that the alleged, but not documented shortcoming in the control at the gates of the stadium under the responsibility of the home team must be seen as a mitigating factor.
95. Furthermore, the Sole Arbitrator finds that it is not a mitigating factor that the field invasion was committed by only one supporter of the Appellant and that it was never the intention of that supporter to attack anybody.
96. A field invasion is in any case unacceptable and is not conditional on violent intentions to constitute a violation which justifies disciplinary action.
97. The violations show that the sanctions already imposed on the Appellant by UEFA – mainly due to similar offences – did not achieve their purpose and failed to act as a deterrent to stop the unacceptable behaviour of the Appellant’s supporters.
98. Based on the above, the Sole Arbitrator finds that the sanctions imposed on the Appellant in the Decision, including the order directing the Appellant to play one UEFA home match behind closed doors, with the enforcement of this order suspended for a probationary period of five years, are fair and proportionate.

### VIII. SUMMARY

99. Based on the foregoing and after taking into consideration the applicable regulations and all evidence produced and all arguments submitted, the Sole Arbitrator finds that the appeal filed by the Appellant should be dismissed and the Decision of the UEFA AB upheld.
100. Any other prayers or requests for relief are dismissed.

## **ON THESE GROUNDS**

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

1. The appeal filed on 17 February 2015 by Galatasaray Sportif Sinai A.S against the decision rendered by the UEFA Appeals Body on 3 February 2015 is dismissed.
2. The decision rendered by the UEFA Appeals Body on 3 February 2015 is upheld.
- (...)
5. All further and other requests for relief are dismissed.