Arbitration CAS 2016/A/4602 Football Association of Serbia v. Union des Associations Européennes de Football (UEFA), award of 24 January 2017

Panel: Prof. Ulrich Haas (Germany), President; Mr José Juan Pintó (Spain); Mr Patrick Lafranchi (Switzerland)

Football
Membership of an association
Legal interest in general
Legal interest in cases where power of representation and management authority of the association are interdependent
Standing to sue
Standing to be sued
"Recognition by the United Nations as an independent state" as a criterion for membership of the UEFA

1. **In principle, a request is inadmissible, if it lacks legal interest. Thus, a reasonable legal interest is a condition for access to justice. The condition of sufficient legal interest serves first and foremost public interests, i.e. to restrict the case load for the courts by striking "purposeless" claims from the court's registry. This public interest is clearly evidenced by the fact that the courts examine this (procedural) condition *sua sponte*. Therefore, a claim shall be deemed inadmissible if it clearly does not serve the purpose of the appellant.**

2. **The power of representation to engage the association vis-à-vis third parties must be distinguished from the (internal) management authority. As a principle, and in order to protect *bona fide* third parties, a contract entered into by an organ vested with the power of representation on behalf of the association remains valid, regardless of any subsequent court ruling rendering the underlying resolution of another organ vested with the relevant management authority invalid. However, power of representation and management authority may be interdependent in case the contract is executed under the condition that the organ vested with the management authority grants its consent to the execution of the contract. In such (exceptional) case the validity of the (membership) contract will be dependent on the existence / validity of the underlying resolution. If a national federation applying for membership is perfectly knowledgeable that the contract entered into by the organ vested with the power of representation requires a (valid) internal resolution by the competent organ, then this national federation does not deserve protection on the basis of good faith. Consequently, even if the appeal of another national federation contesting membership is primarily directed against the internal resolution and not against the membership contract, this other national federation has sufficient legal interest to pursue the request that the internal resolution to admit the national federation applying for membership as a member is annulled.**

3. **Under Art. 75 of the Swiss Civil Code (SCC), if a member is (procedurally) entitled to take part in the formation of the will of the respective organ of the association, it need not be substantively affected by the decision in order to have standing to appeal. The wording of Art. 62(2) of the UEFA Statutes according to which only parties directly affected by a decision may appeal to the CAS does not change this as the member will always be deemed to be affected by the decision in question, because the (procedural) right to take part in the decision-making process includes a member's right to a decision taken by the competent organ in conformity with the rules and regulations of the association.**

4. **In case a resolution of the general assembly forms the matter in dispute of an appeal, the appeal within the meaning of Art. 75 SCC must be directed solely against the association.**

5. **The reference to the United Nations in Art. 5 (1) UEFA Statutes is not designed or intended to restrict the notion of "independent state" beyond the threshold in public international law. Consequently, Art. 5 (1) UEFA Statutes ambiguously providing that membership of UEFA is open to national football associations based in a country which is *"recognised by the United Nations as an independent state"* shall not require that this country is admitted as a member to the United Nations according to the formal admission procedure, but be interpreted as meaning that the territory in which the federation is located must be recognised by the majority of the United Nations member states as an "independent state".**

I. PARTIES

1. The Appellant, the Football Association of Serbia (Fudbalski Savez Srbije, "FSS", or "Appellant"), is a member of the Union des Associations Européennes de Football ("UEFA") and the Fédération Internationale de Football Association ("FIFA") with its registered office in Belgrade, Serbia.

2. The Respondent, the Union des Associations Européennes de Football ("UEFA" or "Respondent"), is an association incorporated under Swiss law with its seat in Nyon, Switzerland. UEFA is the governing body of European football, dealing with all questions relating to European football and exercising regulatory, supervisory, and disciplinary functions over national associations, clubs, officials and players of the European continent.

II. FACTUAL BACKGROUND

A. Background Facts

3. Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations found in the parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in its award only to the submissions and evidence it considers necessary to explain its reasoning.

4. On 9 March 2015, the Football Federation of Kosovo ("FFK") submitted its application for membership to UEFA.

5. On 17 September 2015, the UEFA Executive Committee decided to place FFK's application on the agenda of the 40th Ordinary UEFA Congress to be held on 3 May 2016 in Budapest.

6. By Circular Letter 6/2016 dated 3 February 2016, UEFA member associations were notified about the upcoming 40th UEFA Congress.

7. By Circular Letter 10/2016 dated 4 March 2016, the formal notification and invitation to the Congress was sent to the UEFA member associations, including the Congress Agenda. Item X of the Congress Agenda tabled the matter *"Application of the Football Federation of Kosovo for UEFA membership"*.

8. On 21 April 2016, Circular Letter 16/2016 was sent to the member associations, containing the attachments to the Congress Agenda. Neither FFK's original application for membership nor the supporting documents have been enclosed, only a summary thereof.

9. At the UEFA Congress in Budapest on 3 May 2016, the UEFA Congress passed a resolution thereby accepting FFK to join UEFA as its 55th member association ("the Resolution" or "the Appealed Decision"). The Resolution was taken by secret ballot and resulted in 28 votes in favour of FFK's admission, 24 against and 2 votes being invalid.

10. Before and after passing the Resolution, the Appellant voiced its opposition at the UEFA Congress to FFK's membership.

11. The result of the Resolution was announced at the UEFA Congress by Mr Ángel María Villar, UEFA vice-president and chairman of the UEFA Congress in the presence of FFK.

12. Ten days later, on 13 May 2016, FFK was admitted as new member of FIFA.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

13. On 13 May 2016, the FSS filed its Statement of Appeal against the Appealed Decision with the Court of Arbitration for Sport ("CAS"). The Appellant appointed Mr José Juan Pintó as Arbitrator and requested an extension of the time limit to submit its Appeal Brief.

14. By letter dated 19 May 2016, the Respondent agreed to the Appellant's request for an extension and asked for an extension of the deadline to nominate an arbitrator.

15. On 20 May 2016, the CAS Court Office granted the Appellant's request for an extension to file the Appeal Brief (until 3 June 2016) and confirmed that the Respondent shall nominate an Arbitrator by 3 June 2016.

16. On 3 June 2016, the Respondent nominated Mr Patrick Lafranchi as Arbitrator.

17. On the same day, the Appellant filed its Appeal Brief. Consequently, the CAS Court Office invited the Respondent to file its Answer within 20 days of receipt of the Appeal Brief.

18. On 23 June 2016, the Respondent asked for an extension of the deadline to file its Answer until 26 July 2016. On the same day, the CAS Court Office invited the Appellant to comment on the Respondent's request.

19. On 27 June 2016, the Appellant agreed to an extension of 15 days. On the same day, the CAS Court Office granted an initial extension of 15 days to file the Answer and indicated that the President of the CAS Appeals Arbitration Division would decide on the Respondent's request for a further extension of 15 days.

20. On 30 June 2016, the CAS Court Office informed the parties that a further extension until 19 July 2016 had been granted by the President of the Appeals Arbitration Division. On the same day, the CAS Court Office also confirmed that the Panel in the procedure was constituted as follows: Mr Ulrich Haas (President), Mr José Juan Pintó (Arbitrator), Mr Patrick Lafranchi (Arbitrator).

21. On 14 July 2016, the Respondent requested another extension to file its Answer (until 2 August 2016).

22. On 19 July 2016, in the absence of any objection from the Appellant, the CAS Court Office granted the requested extension.

23. On 28 July 2016, the Respondent asked for a final extension of the deadline to file its Answer until 8 August 2016.

24. On the same day, the Appellant objected to the Respondent's request.

25. On 29 July 2016, the Panel decided to grant a final extension until 8 August 2016 for the Respondent to file its Answer.

26. On 5 August 2016, the CAS Court Office confirmed the receipt of the Respondent's Answer, and invited the parties to comment on whether they would like a hearing to be held in the matter.

27. In a letter dated 12 August 2016, the Appellant communicated to the CAS Court Office its preference for a hearing to be held. On the same day, the Respondent raised no objection in case a hearing was to be scheduled.

28. On 22 August 2016, the CAS Court Office informed the parties that Ms Larissa Neumayer had been appointed as *ad hoc* Clerk.

29. The Order of Procedure, dated 6 September 2016, was duly signed and returned by the Appellant (on 12 September 2016) and by the Respondent (on 13 September 2016).

30. By letter dated 24 October 2016, the Appellant asked the Panel to be allowed to submit further exhibits at the hearing, which were specified in a letter to the CAS Court Office dated 27 October 2016.

31. By letter dated 28 October 2016, the Respondent did not object to such request of the Appellant.

32. A hearing took place in Lausanne on 31 October 2016. The Appellant was represented by the attorneys-at law Mr Gabriel Lansky and Mr Hansjörg Stutzer. Also present on behalf of the Appellant were Mr Nebojša Ivković (General Secretary of the Appellant), Mr Simon Hohler (Thouvenin Rechtsanwälte), Mr Daniel Gros, and Ms Mara Okmažić (both Lansky Ganzger & partner). Ms Maja Trifunović served as translator for the Appellant. On behalf of the Respondent the following persons attended the hearing: the attorneys-at-law Mr Adam Lewis, Mr Jan Kleiner and Mr Daniel Bethlehem. Furthermore, Mr Emilio García Silvero (UEFA Head of Disciplinary and Integrity) and Mr Jacques Bondallaz (UEFA Head of Sports Legal Services) participated at the hearing on behalf of the Respondent. The following witnesses were heard on behalf of the Appellant: Mr Tomislav Karadžić (former president of the Appellant), and Mr Goran Obradović (president of the Football Association of Kosovo and Metohija) via video-conference.

33. The parties throughout the hearing did not raise any procedural objections and expressly confirmed at the end of the hearing that their right to be heard and to be treated equally had been respected, as they had been given ample opportunity to present their cases and submit their arguments and answers.

34. In two letters, dated 2 November and 8 November 2016, the Appellant submitted a partial amendment of its original prayers for relief (third bullet point). Furthermore, the Appellant provided the numbering for the (new) exhibits produced at the hearing. In addition, the Appellant provided scholarly references for its opinions referred to in the hearing.

35. By letter dated 14 November 2016, the Respondent stated that it *"appreciated the numbering of the newly produced exhibits"* and it did *"not oppose to the newly produced references to be accepted on file*". In

addition, the Respondent produced scholarly references for the opinions cited by it in the course of the hearing.

36. By letter dated 16 November 2016, the CAS Court Office informed the parties that as from now on no further submissions by the parties would be accepted on file.

IV. SUBMISSIONS OF THE PARTIES

A. Position of the Appellant

37. In its Statement of Appeal (13 May 2016), Appeal Brief (3 June 2016), and its subsequent submission dated 2 November 2016 the Appellant filed the following prayers for relief:

- *"The appeal of the Football Association of Serbia is upheld.*
- *The Decision of UEFA, taken at its 40th Ordinary Congress, to admit Kosovo as a member is annulled.*
- *Kosovo cannot be a member of UEFA pursuant to UEFA Statutes and its membership contract is to be declared null and void.*
- *UEFA shall be condemned to pay any and all costs of the present arbitrational proceedings including, without limitation, attorney's fees as well as any eventual further costs and expenses for witnesses and experts. In this respect, the Appellant reserves the right to provide the Panel with all relevant documentation attesting the incurred amounts".*

38. The Appellant's submissions, in essence, may be summarized as follows:

1) The Appellant is directly affected by the Resolution of the UEFA Congress and therefore has the right to appeal the Resolution under the UEFA Statutes as well as under Art. 75 Swiss Civil Code (SCC).

2) There is no legal basis (neither under Art. 5 (1) nor according to Art. 5 (2) UEFA Statutes) for admitting FFK as an UEFA member association, since Kosovo is not recognised by the United Nations as an independent state.

3) Recognition by the United Nations requires that a country is admitted as a member to the United Nations according to the formal admission procedure.

4) CAS jurisprudence confirms the above construction of Art. 5 (1) UEFA Statutes. According thereto the applicant must be located in a country that has been admitted as a member to the United Nations. This understanding not only follows from the wording of the respective provision, but also from CAS jurisprudence (CAS 2002/O/410).

5) Kosovo is not listed in Art. 69 UEFA Statutes. This provision provides for an exception from Art. 5 (1) UEFA Statutes with respect to the prerequisite that a member must be recognised by the United Nations. However, the exception only applies to the following

explicitly listed territories therein, i.e. England, Scotland, Northern Ireland, Wales, Faroe Islands, and Gibraltar.

6) Under Swiss law, regardless of the principle of autonomy, associations do not enjoy unlimited discretion when accepting or refusing new members. According to Art. 2 (2) SCC an association's autonomy to accept new members is limited by the prohibition of arbitrary decisions.

7) UEFA officials were aware of the insufficient legal basis for FFK's admission to UEFA membership. Before taking the Resolution there was an attempt to amend Art. 5 UEFA Statutes. The request tabled at the 40th Ordinary Congress provided that the wording in Art. 5 UEFA Statutes be changed into *"a country recognised by the most of the international community"*. This request for an amendment of the UEFA Statutes, however, was not adopted, since it failed to reach the required 2/3 majority of the UEFA Congress.

8) FFK is not solely responsible for the organization and implementation of football-related matters in the territory of Kosovo. The provincial football association of Kosovo is organized under the auspices of the Appellant. Likewise, football clubs located in the territory of Kosovo are integrated in the Appellant's organizational structure.

9) The Resolution violates Art. 11 European Convention of Human Rights (ECHR) and Art. 12 EU Charter of Fundamental Rights, which enshrine the freedom of association. The Resolution forces football clubs, which are currently members of the Appellant, to join FFK against their will. This violates fundamental European legal principles (see ECJ C-415/93).

10) The Resolution does not comply with essential formal requirements, prior and during the decision making process. Art. 1 and Art. 2 of the Regulations Governing the Implementation of the UEFA Statutes ("Implementation Regulations") set forth that participants of the Congress must have access to specific documents. Art. 6 UEFA Statutes in connection with Art. 2 of the Implementation Regulations provide that certain documents have to be submitted to UEFA members during the application process. According to Art. 2 of the Implementation Regulations the following documents must be provided:

    a) *the statutes and regulations of the association;*
    b) *a declaration whereby the association submitting the application undertakes to observe UEFA's Statutes, regulations and decisions at all times;*
    c) *documents giving information about the internal organisation of the association submitting the application, as well as the competitions staged by the association;*
    d) *names of the members of all association organs.*

11) The Appellant has not been provided with these documents.

12) The Appellant submits that the matter, in addition, should have been presented to the UEFA Legal Committee prior to being tabled at the UEFA Congress.

13) The Appellant submits that the UEFA Congress minutes have not been sent to the member associations (as provided for in Art. 17 (2) UEFA Statutes). This should have happened within the deadline of 90 days of the UEFA Congress.

14) Moreover, the Appellant submits that the Resolution has neither been notified to the Appellant nor officially published.

B. Position of the Respondent

39. In its Answer to the Appeal Brief (5 August 2016), the Respondent requests the CAS to decide as follows:

- *"Declaring the Appeal of Appellant inadmissible;*
- *Subsidiarily, rejecting the reliefs sought by Appellant;*
- *In any event, confirming the Decision under Appeal; and*
- *In any event, ordering Appellant to bear all of the costs of these arbitration proceedings and awarding UEFA a contribution of at least €30,000 towards the legal fees that UEFA has incurred".*

40. The Respondent's submissions, in essence, may be summarized as follows:

1) The Appeal is not admissible due to the lack of standing to be sued of the Respondent. In the case at hand the rights of a third party (FFK) are heavily affected. Therefore, FFK should have been called as Co-Respondent. This follows from CAS jurisprudence, in particular CAS 2016/A/4668, CAS 2011/A/2551, as well as CAS 2013/A/3199 and CAS 2008/A/1708.

2) Moreover, according to the Swiss Federal Tribunal ("SFT"), if a member of an association shall be excluded (Art. 72 SCC), its right to be heard must be preserved before its expulsion. The CAS Panel, therefore, is prevented from excluding FFK.

3) Even if one were to follow the approach taken in CAS 2015/A/3910, it is clear that UEFA cannot be the party "best suited to represent and defend" the Resolution. It is FFK who is "primarily concerned" and most affected by the CAS decision and must therefore participate in these proceedings.

4) The Appellant has no legal interest worthy of protection. The Appellant's position remains unchanged, regardless of FFK's membership with UEFA. The Appellant wrongly claims that small clubs would now be forced to join FFK. Instead, this is a decision that any club can freely take by itself. Furthermore, the Appellant cannot avail itself of alleged interests of third parties (the clubs).

5) Numerous national sports federations of Kosovo have already been admitted as members of international sports organisations, such as the IOC, FIFA, FIBA, AIBA, ITF, etc.

6) The Appeal is not admissible, because the Appellant has no standing to sue based on Art. 62 (2) UEFA Statutes. The provision explicitly states that only parties who are "directly affected" may lodge an appeal to CAS.

7) The Appellant does not have standing to sue under Art. 75 SCC either. Furthermore, the Appellant has failed to prove that it has not consented to the Resolution (i.e. voted against it).

8) The Resolution to admit FFK as member association has been taken validly both from a formal and substantial perspective.

9) Art. 6 (2) UEFA Statutes provides that it is within the Respondent's discretion to accept or refuse an application for membership. This has also been made clear at the UEFA Congress by UEFA's Legal Director, Mr Alasdair Bell, when addressing the UEFA Congress before taking the vote. There is, thus, no room for challenging the Resolution.

10) The UEFA Congress was held in compliance with all formalities according to the UEFA Statutes, specifically Art. 13 (2) and (3), Art. 17 (1) and (2), and in line with the Rules of Procedure of the UEFA Congress.

11) The UEFA Congress is the supreme controlling organ of UEFA and therefore has the competence to consider membership applications (Art. 13 UEFA Statutes).

12) Notice of the Ordinary Congress has been given on 3 February 2016 (by Circular Letter 06/2016), complying with Art. 17 (3) UEFA Statutes. The official invitation has been sent to the members on 4 March 2016 (by Circular Letter 10/2016).

13) The membership application of FFK was included in the relevant UEFA Congress Agenda.

14) The Minutes of the UEFA Congress were sent to the member association on 24 June 2016 (Circular Letter 32/2016), in accordance with the 90 days deadline, provided for in Art. 17 (2) UEFA Statutes.

15) The Implementation Regulations, which specify further formal requirements for the admission of new UEFA members, have also been complied with. FFK's written application (9 March 2015) contained all relevant documents (Art. 2 Implementation Regulations). In particular, the application contained: the Statutes and Regulations of the association, a declaration whereby FFK undertakes to observe UEFA's Statutes and Regulations, documents regarding the internal organization and the names of all organ members.

16) UEFA's Legal Director, Mr Alasdair Bell, introduced the matter at the UEFA Congress and explained the legal framework.

17) Art. 5 (1) UEFA Statutes must be interpreted reasonably and in line with common sense.

18) Since the UN cannot and does not recognise states, the wording of Art. 5 UEFA Statutes cannot be applied literally. Thus, the meaning of said provision must be taken into consideration as well as its application in practice.

19) FFK fulfils the criteria for membership according to Art. 5 UEFA Statutes, since Kosovo is located in Europe, it is recognised by 109 out of 193 UN members, and it is responsible for the organization and implementation of football-related matters in its territory.

20) Pursuant to Art. 18 (c) UEFA Organizational Regulations, the National Associations Committee is competent to address issues arising out of applications for UEFA membership, and not the UEFA's Legal Committee. The National Associations Committee – in accordance with the aforementioned rule – did discuss FFK's membership on 12 February 2015.

21) Art. 5 UEFA Statutes does not require that an association be located in a country that is a member of the United Nations. Neither does the provision require that the applicant is "solely" responsible for football in the respective territory.

22) The amendment of the wording of Art. 5 UEFA Statutes, which was tabled at the UEFA Congress and subsequently not approved with the required majority is immaterial to the present dispute. The purpose of the amendment was only to clarify the Statutes to reflect UEFA's practice. Even if the suggested amendment would have been adopted by the UEFA Congress, this would not have impacted the present dispute, since FFK's application in any event must be assessed under the rules applicable at the time of application for membership.

23) If the Appellant were to integrate teams from Kosovo in its own organizational structure, this would constitute a breach of the Brussels Agreement (19 April 2013).

24) UEFA does neither "accept" nor approve Statutes of member associations. Thus, the fact that the Appellant submitted to UEFA its Statutes, which define the latter's territorial scope of application (including the territory of Kosovo), is irrelevant.

25) Clubs cannot be "forced" to join FFK, as alleged by the Appellant. The only principle to take into account is the "Ein-Verbands-Prinzip" (principle of one association per territory).

V. JURISDICTION

41. Art. R47 of the Code of Sports-related Arbitration ("CAS Code") provides as follows:

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 a 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.

42. Art. 62 (1) UEFA Statutes reads as follows:

Any decision taken by a UEFA organ may be disputed exclusively before the CAS in its capacity as an appeals arbitration body, to the exclusion of any ordinary court or any other court of arbitration. (…).

43. The Resolution was rendered by the UEFA Congress, an organ of UEFA according to Art. 11 UEFA Statutes. Consequently, the CAS has jurisdiction to hear this case. Furthermore, the jurisdiction has not been disputed by the parties.

VI. ADMISSIBILITY

44. Art. R49 of the CAS Code provides as follows:

In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties.

45. According to Art. R49 of the CAS Code, a federation may derogate from the 21 day time-limit in its Statutes or Regulations. Art. 62 (3) UEFA Statutes stipulates that the time limit to challenge a decision shall be 10 days from the receipt of the decision. In cases in which time limits to appeal set by the federation differ from Art. R49 CAS Code, the rule of the federation prevails (being the *lex specialis*) (see MAVROMATI/REEB, CAS Code Commentary, Art. R49 n. 91).

46. The Resolution was communicated (orally) to the members (including to the Appellant) at the UEFA Congress on 3 May 2016 by the chairman of the UEFA Congress. On 13 May 2016, the Appellant filed its Statement of Appeal against the Resolution with the CAS Court Office.

47. Consequently, the Appellant complied with the time limits prescribed by Art. 62 (3) UEFA Statutes and by the CAS Code. The Appeal was, therefore, filed in time.

VII. LEGAL INTEREST

48. In principle, a request is inadmissible, if it lacks legal interest ("Rechtsschutzinteresse", "intérêt à agir"). This condition of admissibility is explicitly provided for in Art. 59 (2) lit. a of the Swiss Code of Civil Procedure ("CCP"). Thus, a reasonable legal interest is a condition for access to justice. A court shall only be bothered to decide the merits of a request, if the applicant has a sufficient legal interest in the outcome of the decision. If – on the contrary – the request is not helpful in pursuing the applicant's final goals, the scarce judicial resources shall not be wasted on such matter.

49. The condition of sufficient legal interest serves first and foremost public interests, i.e. to restrict the case load for the courts by striking "purposeless" claims from the court's registry. This public interest is clearly evidenced by the fact that the courts examine this (procedural) condition *sua sponte* (Art. 62 CCP). Even if aspects of public interest before state courts are not easily transferable *mutatis mutandis* to arbitration proceedings (cf. GIRSBERGER/VOSER, International Arbitration, 3rd ed. 2016, no. 1194), this Panel holds that a claim shall be deemed inadmissible if it clearly does not serve the purpose of the Appellant.

A. The distinction between the membership contract and the underlying Resolution

50. In the case at hand the Appellant's legal interest with respect to his second request (*"The Decision of UEFA, taken at its 40th Ordinary Congress, to admit Kosovo as a member is annulled"*) – at least at first sight – appears questionable with regard to the prerequisite of sufficient legal interest. The goal pursued by the Appellant is – obviously – to ensure that FFK does not become a member of the Respondent. The question, however, is whether the appeal against the resolution taken by the UEFA Congress at its 40th Ordinary Congress serves this purpose.

51. UEFA is an association according to Art. 60 *et seq.* SCC. Thus, the law applicable to acquiring such membership is submitted to Swiss law (EGGER, ZK-ZGB, Art. 70 no. 4). Membership in a Swiss association is acquired through a membership contract (EGGER, ZK-ZGB, Art. 70 no. 3). According to Swiss contract law, a membership contract is concluded by the offer of the potential member and the acceptance of such offer by the association (Art. 1 SCO et seq.). The offer is made by the future member usually by applying for admission. In order for such a membership contract to be valid there needs to be a meeting of the minds between the (representative of the) association and the applicant with respect to the *essentialia negotii*, i.e. to confer the status of a member on to the applicant. The organ with the power to represent the association when executing the membership contract is, in principle, the board of the association. It holds – unlike the general assembly (here the UEFA Congress) – the organ power of representation for the association and, thus, is the only organ capable to engage and bind the association vis-à-vis third parties (such as the applicant). This power of representation of the board is, in principle, unlimited. The general assembly, on the contrary, is not able to act externally on behalf of the association. Consequently, a decision taken by the general assembly has only internal effects (HEINI/SCHERRER, BSK-ZGB, Art. 66 no. 20).

52. This power of representation to engage the association vis-à-vis third parties must be distinguished from the (internal) management authority ("Geschäftsführungsbefugnis"). The

latter describes the internal competence of the various organs of the association to decide on certain matters of association life. The allocation of the management authority is – unlike the organ power of representation – subject to the autonomy of the association. Thus, the association is free to allocate the management authority among its organs in the statutes as it deems fit. It follows from this, that the Statutes may well provide that the board before executing certain contracts vis-à-vis a third party (e.g. the execution of a membership contract) must obtain the (prior) consent or approval of another organ of the association, e.g. the general assembly (RIEMER, BK-ZGB, Bern 1990, Art. 70 no. 48).

53. If the board executes the respective contract without prior approval of the competent organ, it acts outside the boundaries of the association's statutes and, thus, may become liable towards the association. However, the contract itself remains unaffected, because the board had valid power of representation for the association when entering into the contract. This power of representation cannot be limited by the association's statutes. Consequently, Swiss law does not follow an *ultra vires* doctrine with respect to the organ's power of representation. It follows from the above that, as a principle, and in order to protect *bona fide* third parties, a contract entered into by an organ vested with the power of representation on behalf of the association remains valid, regardless of any subsequent court ruling rendering the underlying resolution of another organ vested with the relevant management authority invalid (EGGER, ZK-ZGB, Art. 75 no. 31). This is all the more true, since associations – in principle – need not to register. There is no registry for associations. Consequently, the internal allocation of management authority between the various internal organs of the association is unknown to third parties.

B. Exceptions to the dichotomy of power of representation and management authority

54. If one were to follow the above dichotomy between power of representation and management authority strictly, the Appellant in the case at hand would lack legal interest because by appealing the Resolution it could never attain its ultimate goal, i.e. to invalidate the contract that confers membership rights on FFK (cf. also RIEMER, BK-ZGB, Art. 75 no. 79). However, there are exceptions to the rule that a lack of management authority will not vitiate the power of representation in dealings with third parties.

55. Some argue that the membership contract and the underlying resolution of the general assembly form a single (judicial) act in case the applicant attends the meeting of the general assembly, in which the resolution is taken, i.e. when the execution of the membership contract and the resolution occur practically *uno actu* (SCHERRER/BRÄGGER, CaS 2016, 99, 101; RIEMER, BK-ZGB, Art. 65 no. 35 and Art. 66 no. 9). It is argued that in such situations the general assembly not only has management authority, but – exceptionally – also power of representation (HEINI/SCHERRER, BSK-ZGB, Art. 66 no. 19 and Art. 75 no. 4; JAKOB, KuKo-ZGB, Art. 67 no. 1; dissenting: EGGER, ZK-ZGB, Art. 65 no. 12).

56. Some argue that power of representation and management authority may be interdependent in case the contract is executed under the condition that the organ vested with the management authority grants its consent to the execution of the contract. In such

(exceptional) case the validity of the (membership) contract will be dependent on the existence / validity of the underlying resolution. The third party does not warrant any protection here, since the dichotomy between power of representation and management authority is designed to protect *bona fide* parties. However, if the third party is perfectly knowledgeable that the contract entered into by the organ vested with the power of representation requires a (valid) internal resolution by the competent organ, then this third party does not deserve protection on the basis of good faith. The question, thus, arises, whether the parties to the membership contract have made (explicitly or implicitly) the existence of a valid resolution a prerequisite for the execution of the membership contract (BGE [22.12.2008] 5A_683/2008, E. 4.1).

C. The Position of the Panel

57. In the case at hand there are good reasons – irrespective of which of the above views are to be followed – to accept that the existence and validity of the Resolution is a condition precedent for the validity of the membership contract entered into between UEFA and FFK. It was clear to all parties involved, in particular though to FFK that the organ internally competent to decide on FFK's application was the UEFA Congress and, thus, that any execution of the membership contract (even orally) required according to the UEFA Statutes a resolution by the UEFA Congress. This is evidenced by the fact that FFK attended the UEFA Congress, i.e. the decision making process within UEFA. Consequently, FFK cannot invoke any protection with respect to good faith (HEINI/SCHERRER, BSK-ZGB, Art. 69 no. 35; RIEMER, BK-ZGB, Art. 69 no. 81). As a result, the Panel finds that the power of representation for entering into the membership contract was under the resolutory condition that there is a valid Resolution by the UEFA Congress (ZÄCH/KÜNZLER, BK-OR, Vor Art. 34-35 no. 11 and Art. 33 no. 122). Consequently, even if the appeal of the Appellant is primarily directed against the Resolution and not against the membership contract, the Panel finds that the Appellant has sufficient legal interest to pursue this request.

VIII. APPLICABLE LAW

58. Art. R58 of the CAS Code provides 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.*

59. As confirmed by both parties, the applicable regulations in the given case are UEFA's Statutes and regulations.

60. Both parties also agree that Swiss law may be applied subsidiarily where needed to the merits of the dispute. Additionally, Art. 64 UEFA Statutes provides that the Statutes shall be governed by Swiss law.

IX. MERITS

A. Standing to sue

61. The question of standing to sue (or to be sued) is a matter of substantive law (CAS 2013/A/3047, CAS 2008/A/1639, CAS 2008/A/1583 & CAS 2008/A/1584):

> *"According to the jurisprudence of the Swiss Federal Tribunal, the prerequisite of the standing to be sued is to be treated as an issue of merits and not as a question for the admissibility of an appeal. In an appeal that is directed against a "wrong" Respondent because the latter has no right to dispose of the matter in dispute, the claim filed by the Appellant is admissible but without merit"* (CAS 2008/A/1639).

62. The Panel will first analyse the question of standing to sue under Swiss law and will then examine whether (and if yes) to what extent the rules and regulations of UEFA deviate from the standard applicable under Swiss law.

a. Swiss Law

63. In order to have standing to appeal against a resolution of an association, Art. 75 SCC requires, in principle, that the following preconditions must be fulfilled:

- the Appellant must hold membership, and
- the Appellant must not have consented to the resolution taken by the general assembly (RIEMER, BK-ZGB, Art. 75 no. 45 *et seq.*; HEINI/SCHERRER, BSK-ZGB, Art. 75 no. 16 *et seq.*). It is undisputed in the case at hand that the first precondition is fulfilled, since FSS is a member of UEFA (and was a member of the Respondent at the time of the filing of the appeal).

i. Lack of consent with respect to the Resolution

64. The Respondent disputes that the Appellant has voted against the Resolution. The Panel notes first and foremost that there is no direct evidence whether or not the Appellant has voted against the Resolution, since the vote at the UEFA Congress has been taken by secret ballot. Consequently, the Appellant can impossibly adduce evidence in favour of his factual submissions that it objected to the Resolution. In order not to render impossible the Appellant's right to appeal according to Art. 75 SCC indirect evidence must, therefore, suffice. According to the Swiss doctrine (to which this Panel adheres), the Appellant has satisfied his burden of presentation and proof of the relevant fact, if it has publicly spoken out against the Resolution at the UEFA Congress (cf. RIEMER, BK-ZGB, Art. 75 no. 58). This fact, however, is uncontested in the case at hand because the Appellant's objections to FFK's application for membership have been protocolled.

ii. Further (unwritten) prerequisites

65. Whether the right to appeal (or to sue) according to Art. 75 SCC is subjected to further unwritten requirements is disputed. Swiss legal doctrine, in principle, differentiates between two types of "decisions" that may form the object of an appeal according to Art. 75 SCC, i.e. whether or not the Appellant was entitled to participate in the decision-making process of the relevant organ or not.

(1) The principles according to Swiss law

66. In case the member is not entitled to take part in the decision-making process, it is only entitled to challenge the decision according to Art. 75 SCC, if it is affected by it in its membership rights. Since the member has no right to take part in the formation of the will of the respective organ, its membership rights will only be affected insofar as the decision in question is addressed to said member and personally affects its membership rights as to their substance (RIEMER, Anfechtungs- und Nichtigkeitsklage im schweizerischen Gesellschaftsrecht, Bern 1998, no. 155; RIEMER, BK-ZGB, Art. 75 no. 17, 20; see also CAS 2008/A/1583 & 1584, par. 29). If on the contrary, the member is (procedurally) entitled to take part in the formation of the will of the respective organ, it need not be substantively affected by the decision in order to have standing to appeal. Instead, the member will always be deemed to be affected by the decision in question, because the (procedural) right to take part in the decision-making process includes a member's right to a decision taken by the competent organ in conformity with the rules and regulations of the association (cf. HEINI/SCHERRER, BSK-ZGB, Art. 70 no. 11).

(2) The application of the above principles to the case at hand

67. In the case at hand the Appellant was entitled to participate in the decision-making process leading up to the Resolution. Consequently, the Appellant need not be substantively affected by the Resolution in order to have a right to appeal. In particular, the Resolution need not be personally directed against it. On the contrary, the Appellant is entitled to appeal the Resolution for any breach of the statutes and / or regulations of UEFA or any other (mandatory) law provisions.

b. Do the UEFA Statutes deviate from the above principles?

68. The Respondent disputes the Appellant's standing to appeal the Resolution not only in light of Swiss association law, but also with regard to the UEFA Statutes. In this context the Respondent refers to Art. 62 (2) sentence 1 UEFA Statutes, which reads as follows:

> *Only parties directly affected by a decision may appeal to the CAS.*

69. The UEFA Statutes do not define the term "directly affected". It does not follow from the wording of this provision whether, in order to have standing to appeal (or to sue), the member must be substantively affected in its membership rights or not. The scope of Art. 62 (2)

sentence 1 UEFA Statutes has been evaluated in CAS 2008/A/1583 & 1584. The CAS decision reads in its pertinent parts as follows:

> *"The wording of Art. 62(2) of the UEFA Statutes does not do much to put the flesh on the bones of the provision either. At most one can see an attempt that not just any effect on the complainant's legal position should suffice in order to justify a right to appeal. Rather the decision taken by the association must directly interfere with the rights of the person. The latter is always the case if the matter concerns the accused or the addressee of the (potential) measure by the association or disciplinary measure. However, the wording of Art. 62(2) of the UEFA Statutes does not exclude the possibility that a third party can also be a party, i.e. a person against whom the measure taken by the association is not directly aimed; for the provision refers to the actual state of being affected, not to whether someone is formally the addressee of the measure or not"* (para. 24).

70. In the case at hand, the Appellant is (directly) affected by the Resolution of the Congress, because the Appellant's membership right to participate in the decision-making process of the Congress is at stake. This right includes – as stated above – that the decision-making process complies with the applicable rules and regulations of the association. Nothing in Art. 62 (2) UEFA Statutes indicates that a member's right to take part in a lawful decision-making process shall not be protected under the UEFA Statutes or that the legal protection provided to members under the UEFA Statutes shall be inferior compared to the statutory model in Art. 75 SCC. Reference is made in this regard – again – to CAS/A/1583 & 1584, where the Panel held as follows:

> *"It is undeniable that the association's legislator can extend the group of persons, who have a right to appeal, compared with the statutory model in Art. 75 Swiss Civil Code (ZGB) (CAS 2007/A/1278 & 1279, no. 87). By contrast, the Panel is of the opinion that the association's legislator cannot make the group of persons, who have a right to appeal, smaller than the statutory model; for it is an indispensable essential part of the ordre public that an individual's legal protection against measures by an association is guaranteed by an external instance that is independent from the association"* (para. 30).

71. Bearing in mind the purpose of Art. 75 SCC, i.e. the legal protection of a member's rights and its importance as an instrument of good governance within an association (RIEMER, BK-ZGB, Art. 75 no. 4) as well as taking into account Art. 64 UEFA Statutes, which provides that the Statutes shall be governed and, thus, construed and interpreted in light of Swiss law, the Panel finds that the Appellant meets the required threshold for the standing to appeal (or to sue) in the case at hand.

B. Standing to be sued

72. Art. 75 SCC is – contrary to the legal situation in relation to public limited companies[1] – silent on who is the appropriate defendant of a "Vereinsbeschluss" (resolution). The provision states as follows:

> *Any member who has not consented to a resolution which infringes the law or the articles of association is entitled by law to challenge such resolution in court within one month of learning thereof.*

73. The legal literature unanimously holds that standing to be sued rests (solely) with the association itself (RIEMER, BK-ZGB, Art. 75 no. 60; HEINI/SCHERRER, BSK-ZGB, Art. 75 no. 21).

a. The Position of the Respondent

74. The Respondent submits that the above view is not in line with CAS jurisprudence. Consequently, the Respondent argues that the appeal should have also (or exclusively) been filed against FFK, since the remedy sought from this Panel aims at changing the legal status of FFK. According to the Respondent the appeal must, therefore, be lodged against the party that is substantively or materially affected by the outcome of the appeal procedure, i.e. FFK. Since the Appellant has failed to direct its appeal against the proper defendant(s) the present appeal must – according to the Respondent – be dismissed for lack of standing to be sued. In support of its submission, the Respondent refers to a number of CAS cases, in particular CAS 2016/A/4668, CAS 2011/A/2551, CAS 2013/A/3199, CAS 2008/A/1708, and CAS 2007/A/1424.

75. In CAS 2016/A/4668, the respective panel dealt with an application for provisional measures filed by Panionios against UEFA. The latter had issued a decision, which denied Panionios admission to the Europa League. The CAS panel rejected the request because Panionios had failed to lodge its appeal against the otherwise qualified club, PAS Giannina FC, whose place Panionios wished to take in the competition. Similarly, in CAS 2011/A/2551 Fenerbahçe sought to be reinstated into the group phase of the competition *in lieu* of another club and, thus, according to the panel in question, had to lodge the appeal also against said other club.

76. Moreover, the Respondent refers in its submission to Art. 72 SCC. The provision reads as follows:

> *(1) The articles of association may specify the grounds on which a member may be excluded, but exclusion may also occur without reasons being given.*
>
> *(2) In such cases, the exclusion may not be challenged based on the reasons.*

[1] Art. 706 CO: *"The board of directors and every shareholder may challenge resolutions of the general meeting which violate the law or the articles of association by bringing action against the company before the court"* (emphasis added).

(3) Unless the articles of association provide otherwise, exclusion requires a resolution by the members and good cause.

77. The Respondent submits that the Appellant's request, in essence, is aimed at excluding FFK from UEFA membership. Such disputes are, in principle, dealt with in Art. 72 SCC. However, according to the Respondent it follows from this provision that FFK must be involved as a party in a dispute, in which its membership is at stake.

b. The Position of the Panel

78. This Panel does not concur with the Respondent's view. The legal literature is unanimous with respect to the standing to be sued in case a resolution of the general assembly forms the matter in dispute of an appeal. In such case the appeal within the meaning of Art. 75 SCC must be directed (solely) against the association. The Respondent could not point to a single commentary in the legal literature or to a court decision that calls this finding into question.

79. In particular, the conclusion followed by the Panel is not contradicted by the CAS jurisprudence adduced by the Respondent. The cases submitted by the Respondent refer to different matters than the one at stake here. None of the decisions deals with the question who is the appropriate defendant if an appeal by an association member is directed against the resolution of the association's general assembly. Instead, all cases cited by the Respondent refer to cases where Art. 75 SCC is applied to the dispute by analogy only, be it because the appeal was lodged by a so-called "indirect member" (instead of a true or formal member) of the association or that the matter in dispute dealt with a decision from an organ other than the general assembly. In none of the cases cited by the Respondent the party lodging the appeal was – like in the case at stake – affected in its procedural right to participate in the formation of the will of the organ. Instead, the cases cited by the Respondent only concern (substantive) infringements of an (indirect) member's right by a decision of an organ (other than the general assembly) of the association.

80. With respect to the case CAS 2016/A/4668 cited by the Respondent, the Panel notes that – again – that case is not comparable to the dispute at stake. The dispute in CAS 2016/A/4668 deals with what this Panel describes as an "allocation problem". According thereto several applicants battle for a restricted number of spots in a particular competition. However, the spot in question can only be allocated to one out of several applicants. In awarding the spot to one (out of several) applicants, the respective organ of the association effectively issues several decisions, i.e. a decision to positively award the spot to one applicant and to negatively not to award the spot to all the others. It is rather obvious that in such a complex situation an appeal procedure dealing with the (re-)allocation of the spot in the competition necessarily must involve the party whose spot in the competition is the object of the controversy. The case at hand, however, deals with a completely different scenario. No "allocation problem" is at stake here.

81. In the case CAS 2015/A/3910, the panel applied the following criteria to determine the appropriate defendant in an appeal proceeding:

> *"In view of all of the above, the Panel holds that … the question of standing to be sued … must be resolved on the basis of a weighting of the interests of the persons affected by said decision. The question, thus, is who … is best suited to represent and defend the will expressed by the organ of the association"* (para. 138).

82. This balance of interest-test clearly speaks in favour of the view held by this Panel, i.e. that the appeal in the case at hand must solely be directed against UEFA. Squashing the Resolution would not only affect FFK, but also all the other UEFA members that have participated in the formation of the will of the UEFA Congress and voted in favour of admitting FFK to membership. Thus, if one were to follow the Respondent's argumentation that an appeal must be lodged against all affected parties, the appeal of the Appellant would have to be directed not only against FFK, but against all members that voted in favour of the Resolution. This would not only be unreasonable and contrary to the legislative intent of Art. 75 SCC. In addition, it would – in a case where the vote is taken by secret ballot – render an appeal against the resolution of a general assembly impossible. All of the above illustrates clearly, that the party best suited to represent and defend the will of the majority of the UEFA Congress (within the meaning of CAS 2015/A/3910) clearly is the association itself. This being said, the Panel wishes to note that nothing in this case prevented FFK – should it have feared that UEFA was either unwilling or incapable of properly defending the will of the majority of its members – to intervene in these proceedings as an interested party (cf. in detail RITTER, Einheitliche Entscheidung gesellschaftsrechtlicher Beschlussanfechtungsklagen vor Schiedsgerichten, Diss. 2015, p. 69 *et seq*.).

83. Finally, the Panel notes that Art. 72 SCC does not apply in the given case. This case does not deal with the exclusion of a member. Instead, the appeal at stake is directed against the initial decision to admit FFK as a new member to UEFA (cf. RIEMER, BK-ZGB, Art. 75 no. 12, Art. 70 no. 55). Consequently, the present dispute concerns the question whether or not FFK was lawfully admitted to UEFA membership *ab initio*. However, this dispute does not deal with the question whether a party that was (finally and bindingly) admitted to UEFA membership could be excluded from the association *ex nunc*. Only the latter case is dealt with in Art. 72 SCC (RIEMER, BK-ZGB, Art. 72 no. 6). Thus, Art. 72 SCC only comes into play once admittance to membership is unchallenged and the continued inclusion as a member is disputed. Thus, Art. 72 SCC is inapplicable in the case at hand.

84. Consequently, the Respondent's submission with regard to UEFA's lack of standing to be sued has to be rejected.

C. Compliance of the Resolution with the applicable procedural rules

85. In the case at hand, the Resolution has come into legal existence once the results of the vote (regarding the item of FFK's membership application) were communicated by Mr Ángel María Villar, UEFA vice-president and chairman of the UEFA Congress to the members of the UEFA Congress. The Panel finds that – absent any provisions to the contrary in the UEFA Statutes and regulations – a resolution by the general assembly need not to be notified to any particular member of the association or officially published. In particular, for the Resolution

to come into legal existence the point in time on which the minutes of the UEFA Congress were sent to the individual members is – in the view of this Panel – irrelevant.

86. The Appellant alleges that the Resolution infringes various procedural rules contained in the UEFA Statutes and regulations.

a. The proper procedure

87. Art. 13 (3) UEFA Statutes reads as follows:

> *Notice of an Ordinary Congress shall be given in writing at least three months in advance. The official invitation to attend the Congress shall be sent out at least four weeks before the Congress is due to take place, together with the agenda, which shall be drawn up by the Executive Committee.*

88. The Panel notes that the 40th UEFA Congress took place on 3 May 2016. The Panel further notes that Circular Letter 6/2016 (3 February 2016) (Exhibit 3) notified the members about the 40th UEFA Congress. Circular Letter 10/2016 (4 March 2016) (Exhibit 4) constituted the formal notification and invitation to the UEFA Congress. This Circular Letter contained the Congress Agenda (however not the enclosures or the "final programme"). By Circular Letter 16/2016 (21 April 2016) (Exhibit 5) the members were provided with the documents referred to in the Congress Agenda. With regard to FFK's application for membership the member associations were provided with a summary of said application. A copy of the original of the application was not attached to said Circular Letter.

89. The Appellant submits that it was not provided with the necessary documentation prior to the Congress. Art. 67 (3) SCC states that a member's right to vote also encompasses its right to be able to sufficiently and duly prepare itself for the general assembly. Thus, in order to be able to exercise its voting right, a member must have access to the relevant documents on which the vote at the general assembly will be based (RIEMER, BK-ZGB, Art. 67 no. 73 and 79).

90. The Panel notes that with regard to membership applications, the UEFA Implementation Regulations lay down certain formal requirements. Art. 1 of the Implementation Regulations provides that

> *A national football association that wishes to become a member of UEFA shall submit a written application to the UEFA Administration, for submission to the UEFA Congress.*

91. Art. 2 of the Implementation Regulations specifies the documents that must be submitted along with the application. These documents are:

> *a) the statutes and regulations of the association;*
>
> *b) a declaration whereby the association submitting the application undertakes to observe UEFA's Statutes, regulations and decisions at all times;*

c) documents giving information about the internal organisation of the association submitting the application, as well as the competitions staged by the association;

d) names of the members of all association organs.

92. On 9 March 2015, FFK submitted its application for membership (including all supporting documents) to UEFA in line with Art. 1 and 2 of the Implementation Regulations. This has not been disputed by the Appellant.

93. By Circular Letter 10/2016 (4 March 2016), the Respondent communicated to its members the Congress Agenda. However, no details were included at this point with regard to FFK's membership application. By Circular Letter 16/2016 (21 April 2016), the UEFA members were provided with a 2-page summary of FFK's membership application. It is undisputed that the Circular Letter did not include a copy of FFK's application itself. Nor did the Circular Letter contain a copy of the supporting documents referred to in Art. 1 and Art. 2 Implementation Regulations.

94. The parties are in dispute whether the members should have been provided with the full set of documents mentioned in Art. 1 and Art. 2 of the Implementation Regulation. The Panel tends towards answering such question in the negative. First, it appears to the Panel that Art. 1 and Art. 2 Implementation Regulation do not serve to concretise Art. 67 (3) SCC. In particular it does not follow from the wording of these provisions that the whole documentation package with respect to a member's application must be forwarded to each and every member prior to the UEFA Congress. Secondly, such understanding does not follow from Art. 67 (3) SCC either. This provision only requires that the members be sufficiently informed before the general assembly so that they are able to take an informed decision when exercising their voting rights at the general assembly. However, this purpose is also complied with if the members are provided with a summary of the applicant's documentation, provided that the summary truly and comprehensively reflects the information contained in the (full) documentation package. In the case at hand the Panel does not need to take a final decision whether or not the above procedural rules have been infringed by the Respondent, because the Appellant is barred from raising such deficiencies. These limitations arise from the principle of good faith and the principle of relevance.

b. Good faith principle

95. It is true that Art. 75 SCC grants members the right to appeal against the resolution of the general assembly, if necessary information was withheld from them (HEINI/SCHERRER, BSK-ZGB, Art. 75 no. 36; PORTMANN, Das Schweizerische Vereinsrecht, 3rd ed. 2005, no. 275). However, the right of appeal according to Art. 75 SCC is limited by the principle of good faith in order to prevent an abuse of rights. Swiss association law provides that violations with respect to procedural provisions must be raised by a member as soon as the member gains knowledge thereof ("raise it or waive it"-principle). The *ratio* behind this principle is to enable the association to correct the alleged procedural mistake (RIEMER, BK-ZGB, Art. 75 no. 59).

96. Regardless of whether any procedural violations have taken place, it is undisputed that the Appellant in the case at hand did not raise any procedural flaws before or in the course of the UEFA Congress. Having been aware of the alleged procedural flaws in advance, the Appellant had the opportunity to notify the Respondent about its objection before taking the vote, and could, thus, have prevented the association from taking an (allegedly) faulty decision. Since no objection was raised by the Appellant in due time, it is barred from raising the above procedural flaws in these appeal proceedings.

c. Relevance

97. Furthermore, according to Swiss association law, violations of the statutes or the law may only be appealed successfully, if the alleged violations have influenced the outcome of the resolution. More precisely, it is necessary that the violation *de facto* influenced or (at least) could have influenced the result of the vote (RIEMER, BK-ZGB, Art. 75 no. 26). The Panel finds that in the case at hand the alleged procedural flaws were not relevant for the outcome of the vote.

98. The members were provided with a summary of FFK's application (see supra). Furthermore, UEFA's Legal Director introduced the matter at the Congress before taking the vote and, in particular, explained the legal framework. The Appellant has not submitted that the information provided in that summary was incomplete, i.e. omitted important information or was otherwise misleading. If, however, the information provided with the Circular Letters enabled the UEFA members to sufficiently prepare themselves for the UEFA Congress (within the meaning of Art. 13 (3) UEFA Statutes; Art. 67 SCC) and to take an informed decision, a right to appeal the Resolution according to Art. 75 SCC with respect of procedural flaws must be declined for lack of relevance.

99. Insofar as the Appellant submits that the applicable procedural rules were breached because the minutes of the UEFA Congress were not sent to the members within the time limit prescribed by Art. 17 (2) UEFA Statutes, the Panel fails to see inasmuch such breach – in case it really occurred, which this Panel seriously doubts – is causal or relevant for the outcome of the Resolution. The same is true for the procedural violation with respect to whether FFK's request for admission should have been tabled to the UEFA Legal Committee or to the National Associations Committee prior to being voted on by the UEFA Congress. Even if a breach of Art. 18 UEFA Statutes should have occurred – what this Panel fails to see – such breach would neither have been relevant or causal for the outcome of the vote.

D. Compliance of the Resolution with substantive provisions

100. The Appellant submits that the Resolution is not in compliance with substantive provisions in the UEFA Statutes and regulations.

a. Interpretation of Statutes in general

101. Whether and to what extent the Resolution complies with substantive provisions in the UEFA Statutes and regulations depends – *inter alia* – on the principles applicable to their interpretation. Both parties agree, that statutes and regulations of an association shall be interpreted and construed according to the principles applicable to the interpretation of the law rather than to contracts; see HEINI/SCHERRER, BSK-ZGB, Art. 60 SCC no. 22; RIEMER, BK-ZGB, Systematischer Teil no. 331; BGE 114 II 193, E. 5a). The Panel concurs with this view, which is also in line with CAS jurisprudence, which has held in the matter CAS 2010/A/2071 as follows:

> *"The interpretation of the statutes and rules of a sport association has to be rather objective and always to start with the wording of the rule, which falls to be interpreted. The adjudicating body - in this instance the Panel - will have to consider the meaning of the rule, looking at the language used, and the appropriate grammar and syntax. In its search, the adjudicating body will have further to identify the intentions (objectively construed) of the association which drafted the rule, and such body may also take account of any relevant historical background which illuminates its derivation, as well as the entirely regulatory context in which the particular rule is located (…)"* (para. 46).

b. The scope of application of Art. 6 (2) UEFA Statutes

102. Art. 6 (2) UEFA Statutes provides as follows:

> *The Congress shall have the power in its discretion to accept or refuse an application for membership.*

103. The parties are in dispute if and to what extent Art. 6 (2) UEFA Statutes is applicable with respect to the admission of FFK to UEFA membership. If the admission of FFK were in the discretion of the UEFA Congress, the appeal against the Resolution could only be upheld if the majority at the UEFA Congress had abused or exceeded its discretion (RIEMER, BK-ZGB, Art. 75 no. 25). Thus, the threshold for a violation of the applicable substantive provisions would be particularly high.

104. The Panel find that the scope of application of Art. 6 (2) UEFA Statutes is limited. The purpose of the provision is to make it clear that even in case an applicant fulfils all conditions for membership according to the UEFA Statutes it has no enforceable right to obtain UEFA membership. Thus, it is within the discretion of the UEFA Congress to deny membership to the applicant even if the latter complies with all prerequisites for membership. Thus, discretion of the UEFA Congress according to Art. 6 (2) UEFA Statutes only comes into play once an applicant fulfils the criteria for membership according to Art. 5 (1) UEFA Statutes. This restrictive scope of application of Art. 6 (2) UEFA Statutes clearly follows from a systematic construction of the rules. Art. 6 (2) UEFA is positioned right behind Art. 5 UEFA Statutes, which regulates the conditions for membership. In addition, setting up specific conditions for membership in Art. 5 UEFA Statutes would make little sense if that provision would be trumped by Art. 6 UEFA Statutes, i.e. if the UEFA Congress had the right to admit an applicant to UEFA membership irrespective of whether or not the latter complies with the conditions laid down in Art. 5 UEFA Statutes.

105. In the present case the parties are in dispute whether or not FFK complies with the conditions for membership in Art. 5 UEFA Statutes. Art. 6 (2) UEFA Statutes, therefore, does not apply in the case at hand. The UEFA Congress, consequently, has no discretion to admit FFK to UEFA membership irrespective of the criteria stipulated in Art. 5 UEFA Statutes.

c. The criteria for membership in Art. 5 (1) UEFA Statutes

106. At the heart of the present dispute is Art. 5 (1) UEFA Statutes. The provision reads as follows:

> *Membership of UEFA is open to national football associations situated in the continent of Europe, based in a country which is recognised by the United Nations as an independent state, and which are responsible for the organisation and implementation of football-related matters in the territory of their country.*

107. In the case at hand it is undisputed between the parties that FFK is a football federation situated in the continent of Europe and that the federation organises and implements football-related matters in the territory of Kosovo. The fact that certain clubs in Northern Kosovo currently play under the auspices of FSS does not undermine FFK's general organizational authority in its territory, which has been evidenced by FFK's membership application. This is all the more true, since Art. 5 (1) UEFA Statutes does not require that the applicant is the sole authority on the respective territory. Consequently, the Panel finds that the first prerequisite of Art. 5 (1) is fulfilled.

108. The more difficult question to answer, however, is whether FFK is *"based in a country which is recognised by the United Nations as an independent state"*. The starting point of any interpretation of this term certainly is the wording (HONSELL, BSK-ZGB, Art. 1 no. 9). However, both parties agree, in essence, that the provision – if applied literally – makes little sense, because it is undisputed that the United Nations do not recognise countries. Only countries may recognise other countries. No further guidance may be obtained from the German or French version of Art. 5 UEFA Statutes. Also these language versions are nonsensical when interpreted literally. The provision thus requires further analysis.

i. The interpretation advocated by the Parties

109. The parties provide, in essence, the following two opposing interpretations for Art. 5 (1) UEFA Statutes. According to the Appellant the provision must be read as requiring that the applicant is based *"in a country that is a member of the United Nations"*. According to the Appellant "recognition" by the United Nations requires that a country is admitted as a member to the United Nations according to the formal admission procedure. If one were to follow this interpretation FFK would not comply with Art. 5 (1) UEFA Statutes, since Kosovo is – undisputedly – not a member of the United Nations.

110. The Respondent, on the contrary, proposes that the rule be read as meaning that the applicant is based *"in a country recognised by the majority of the members of the United Nations"*. If one were to follow this line of interpretation, the respective prerequisite for membership would be fulfilled, since the simple majority of the member states of the United Nations do recognise

Kosovo as an independent state (109 out of 193 UN members as of March 2016, see Exhibit 10).

ii. The Position of the Panel

(1) Genesis of Art. 5 (1) UEFA Statutes

111. A circumstance that might shed light on the contents of Art. 5 (1) UEFA Statutes may follow from the genesis of the provision. Before 2001, Art. 5 (1) UEFA Statutes provided as follows:

> *Membership of UEFA is open to national football associations situated in the continent of Europe which are responsible for the organisation and implementation of football-related matters in their particular territory.*

112. The Appellant has submitted the IX. Extraordinary Congress Agenda (11 October 2001). According thereto the reasons for changing the wording of Art. 5 (1) UEFA Statutes were exposed as follows:

> *In the current Statutes, it is of no importance as regards UEFA membership whether or not the territory in which a European association is responsible for the organisation and staging of football is an independent state. The proposed amendment to the Statutes is designed to change this situation for two main reasons:*
>
> - *Protection of existing associations, to prevent the emergence of several associations in their country, i.e. in their territory.*
>
> - *UEFA membership in future should depend on unequivocal criteria (a country which is recognised by the United Nations as an independent state).*

113. It follows from the above that UEFA's main concern at the Extraordinary Congress in 2001 was to admit federations only from territories that are "independent states". The amendment wanted to ensure that there is only one federation per "independent state". The main focus of the amendment, thus, was on the element of independence as a prerequisite for membership. The criteria to assess whether or not a state is independent shall – according to the will expressed in the legal materials – be "unequivocal". Unfortunately, the criteria chosen by UEFA (*"recognised by the United Nations as an independent state"*) do not serve this purpose, since the United Nations do not recognise states as independent. Thus, the criteria chosen were ambiguous rather than unequivocal.

(2) Systematic interpretation

114. It is undisputed between the parties that Art. 5 (1) UEFA Statutes has to be read together with Art. 69 (1) UEFA Statutes. The latter provision lists the territories that are exempted from Art. 5 (1) UEFA Statutes. The provision reads as follows:

Art. 5 does not apply to the following member associations: England, Scotland, Northern Ireland, Wales, Faroe Islands and Gibraltar.

115. The Appellant follows from a systematic reading of Art. 5 (1) and Art. 69 (1) UEFA Statutes that Art. 69 (1) UEFA Statutes is intended to list exhaustively the territories that – despite not being members of the United Nations – are eligible to become UEFA members. By contrast, the Respondent argues that there are territories that are not listed in Art. 69 (1) UEFA Statutes and that are not members of the United Nations, but which are nevertheless UEFA members. As an example the Respondent points to the Swiss Football Federation. The latter is a UEFA member since 1954. However, in 2001 when the amendment of the Art. 5 (1) UEFA Statutes was passed Switzerland was not yet a member of the United Nations in 2001. If, however, Switzerland is not included in the list of territories in Art. 69 UEFA Statutes and supposing that the non-inclusion of Switzerland in Art. 69 (1) UEFA Statutes occurred purposefully, then UN membership of the territory in which the football federation is located cannot be a prerequisite to UEFA membership.

116. The reasoning of the Respondent, however, is not totally convincing. Switzerland became a member of the United Nations shortly after the amendment of Art. 5 (1) UEFA Statutes, i.e. in 2002. Thus, it might be argued, that Switzerland was purposefully not included in the list of territories in Art. 69 (1) UEFA Statutes because Swiss membership in the United Nations was imminent. Furthermore, it could be argued that the amendment of Art. 5 (1) UEFA Statutes was only intended to alter the admission requirements to UEFA for future applications. As a result, the status of existing members would have remained unchanged despite the amendment of Art. 5 (1) UEFA Statutes, since termination of membership in UEFA is provided for in a different provision, i.e. in Art. 8 UEFA Statutes (and not in Art. 5 (1) UEFA Statutes). To sum up, the Panel therefore finds that little if anything can be drawn from the fact that Switzerland was not included in the list of territories in Art. 69 UEFA Statutes. Consequently, also a systematic interpretation of Art. 5 (1) together with Art. 69 (1) UEFA Statutes does not advance the interpretation of Art. 5 (1) UEFA Statutes.

(3) Common practice and understanding ("Vereinsübung")

117. It has been submitted that another source of interpretation is the common practice and understanding of a certain provision (cf. RUSCH, Obervanz und Übung, Erwirkung und Rechtsschein, Jusletter 18. September 2006, no. 4 et seq.). The main prerequisite of such "Vereinsübung" is that a certain understanding or application of a rule is practised over a certain period of time, and that such practice reflects the majority opinion of the stakeholders (cf. also RIEMER, Vereins- und Stiftungsrecht, 2012, Art. 60 no. 22). The parties in these proceedings have availed themselves of different circumstances that may constitute a common practice and understanding of Art. 5 (1) UEFA Statutes.

(i) CAS jurisprudence

118. The Appellant, e.g., has referred to the case CAS 2002/O/410. That dispute dealt with the application of Gibraltar's football federation ("GFA") for UEFA membership. The decision of the CAS Panel reads in its pertinent parts as follows (no. 5 et seq.):

> *At the time when the GFA applied for membership to FIFA, and when FIFA subsequently forwarded the GFA's application file to UEFA, the criteria for eligibility as a member of UEFA provided for under Article 5 paragraph 1 of the UEFA Statutes were set out as follows:*
>
> > *"Membership of UEFA is open to national football associations situated in the continent of Europe which are responsible for the organisation and implementation of football-related matters in their particular territory" ... (hereinafter the "Old Rule").*
>
> *Article 5 paragraph 1 of the UEFA Statutes was amended by the UEFA Congress on 11 October 2001 … (hereinafter the "New Rule"). The Panel interprets this text to mean that the respective country must have been admitted as a member of the United Nations[2]. The United Nations do not "recognize" countries in the strict sense of the word. However, what is clear is that under the New Rule, the GFA would not be eligible as a member of UEFA, since Gibraltar is not an independent State admitted to membership in the United Nations.*
>
> *The first question which the Panel must address is therefore to establish whether today, taking into account the circumstances of this particular case, UEFA may validly rely on the New Rule to appraise (and hypothetically dismiss) the GFA's application, although such application was filed and dealt with for a period of several years on the basis of the Old Rule. …*
>
> *This provision [Art. 5 (1)][3] sets out the substantive conditions that any applicant will need to fulfil in order to become a member. For this first reason, in accordance with the general principle of non-retroactivity of laws and rules, the Panel may have to consider that the New Rule may not apply to the GFA's application. …*
>
> *To apply the New Rule to the Claimant's case under these circumstances would be unfair and contrary to the above mentioned general principles of law. It were the actions of UEFA itself which created legitimate expectations that the GFA's application would be processed under the Old Rule, with adequate speed or at least upon receipt of and in compliance with the advice of the Expert Panel that UEFA had appointed specifically for that purpose.*
>
> *The GFA's application to be admitted as a provisional UEFA member shall therefore be examined on the basis of the Old Rule, namely the rule applicable when the application was made and on the basis of which the Expert Panel appointed by the UEFA rendered its opinion.*

119. The CAS panel in the above cited decision decided that Art. 5 (1) UEFA Statutes shall be construed *"to mean that the respective country must have been admitted as a member of the United Nations"*. The Panel wishes to note first and foremost that CAS awards do not have a stare decisis effect

[2] Emphasis added.
[3] Inserted for better understanding.

or precedential value. Panels are therefore not obliged to follow the legal analysis conducted by previous Panels (MAVROMATI/REEB, CAS Code Commentary, Art. R46 no. 47). In addition, the Panel notes that the interpretation given by the Panel to Art. 5 (1) UEFA Statutes was a pure *obiter dictum*. The question how to interpret Art. 5 (1) UEFA Statutes was neither material to the outcome of case CAS 2002/O/410 nor did the panel explain how it derived its construction of the rule from the legislative text. This way of proceeding of the CAS panel was perfectly justifiable at the time, since the main issue in the dispute CAS 2002/O/410 was whether or not the substantive requirements for membership followed from the "Old" or "New Rules". The panel in the case CAS 2002/O/410 found that the "Old Rules" applied to GFA's application and, thus, did not need to dive into Art. 5 (1) UEFA Statutes in any detail. This Panel finds that in view of the nature of the dispute in CAS 2002/O/410 the findings of the respective panel are neither binding for these proceedings nor do they constitute a common understanding of the relevant stakeholders that could be used as a source of inspiration when determining the scope and contents of Art. 5 (1) UEFA Statutes.

(ii) The proposal for amendment at the 40th UEFA Congress

120. Both parties also point to another incident in order to evidence that there existed a common understanding of Art. 5 (1) UEFA Statutes that should be taken into account when interpreting the rule. One of the other items on the agenda of the 40th Ordinary Congress was a proposal to amend Art. 5 (1) UEFA Statutes. The proposal on which the member federations were invited to vote was to replace the term *"recognised by the United Nations as an independent state"* with the term *"recognised as an independent state by most of the international community on the continent of Europe"*. It is uncontested that the proposal gained the support of the majority of the member federations (33 in favour, 20 against and 1 abstention). However, the quorum required for an amendment of the UEFA Statutes (i.e. a 2/3 majority) was not attained. Consequently, the proposal for an amendment of Art. 5 (1) UEFA Statutes was rejected.

121. Appellant and Respondent draw different conclusions from the above incident. The Appellant submits that the proposal is a clear indication that the common understanding of Art. 5 (1) UEFA Statutes was that the applicant needed to be located in a country that is a UN member, because otherwise the amendment would not have made any sense. The Respondent objects to this conclusion and submits that the amendment was not intended to change the meaning of Art. 5 (1) UEFA Statutes, but only its wording. The amendment was – according to the Respondent – intended to bring the wording in line with the "correct" interpretation of said provision and, thus, to facilitate its application.

122. The only conclusion that can be drawn from the above incident in the view of the Panel is that there was obviously a need for clarification with respect to Art. 5 (1) UEFA Statutes, because the term *"recognised by the United Nations as an independent state"* is ambiguous. Whether the idea was to eliminate this ambiguity by changing the contents of the rule altogether or by bringing it in line with the common understanding of its stakeholders is impossible to tell from the documents submitted by the parties to this Panel. Consequently, also this incident is no indication for how Art. 5 (1) UEFA Statutes shall be construed.

(4) The ratio of the provision

123. A further issue that sheds light on how to determine the contents of Art. 5 (1) UEFA Statutes is the purpose of this provision. The history of the rule shows that the intent of the provision is to limit the number of member federation, i.e. to have – in principle – only one member federation per country. The genesis of the provision also evidences that the main purpose of the term "recognised" is to protect the existing football federations. Secessions shall only be accepted and lead to new memberships within UEFA where they are politically motivated, i.e. where the territory in which the federation is domiciled is regarded – unequivocally – as an "independent state". The concept of "state" is, thus, subject to political developments. This being said, the Panel is well aware that in a sporting context the term "state" or "country" need not be understood in the same way as in public international law[4]. However, striving for cooperation between national sports entities within an international sporting framework and thereby ignoring the political realities is in most instances bound to fail. Thus, the attempt to mirror the solutions and realities of the political map onto the sporting world makes a lot of sense. This is all the more true in a case where the association seeks "unequivocal" guidance. The latter is far easier if reference is made to established principles of international public law than creating and defining a specific sporting term and understanding. As a starting point, thus, whatever constitutes an independent state or country within the meaning of public international law should be regarded as a "territory" eligible for membership according to Art. 5 (1) UEFA Statutes.

124. The question is whether Art. 5 (1) UEFA Statutes besides taking account of the political realities also serves other purposes that warrant a more restrictive understanding of the term "independent state" compared to public international law. It is undisputed that the circle of countries that are members of the United Nations is smaller than the community of states that – on the basis of public international law – are considered "independent states". A restrictive approach could be warranted if Art. 5 (1) UEFA Statutes were also to pursue a specific sporting interest, i.e. to keep the number of national federations as low as possible in order to facilitate the organization of sports competitions. Such goal, however, appears rather doubtful. Of course the preparation and execution of European sporting events evidently benefits from a stable basis of members. It is equally true that the ability to compare results as well as performances of national teams over the years certainly forms the core element of European competitions. However, this neither means that the current membership pool is a closed system nor that the term "independent state" must be construed overly restrictive. This is all the more true, since the UEFA Statutes contain exceptions allowing federations to become members that are located in territories that do not even comply with the (wider) notion of "independent state" according to public international law (cf. Art. 69 UEFA Statutes). The Panel, thus, is of the opinion that the reference to the United Nations in Art. 5 (1) UEFA Statutes is not designed or intended to restrict the notion of "independent state" beyond the threshold in public international law. Consequently, the Panel holds that Art. 5 (1) UEFA Statutes shall be interpreted as meaning that the territory in which the federation is located

[4] Cf. *"the concept of "nation" or "country" in the sports environment must not necessarily be "understood within its common political meaning" (…)"* (CAS 2002/O/410 par. 23).

must be recognised by the majority of the UN member states as an "independent state". The Panel finds that this prerequisite is fulfilled with respect to FFK.

125. The view held by this Panel is further backed when looking at the overall sporting context, i.e. the sporting reality in which the UEFA provisions are embedded. The Panel refers in this context to the respective rules in the FIFA Statutes, i.e. to the rules within the same football family. Art. 11 FIFA Statutes 2016 provides for the following prerequisites for membership in FIFA:

> *(1) Any association which is responsible for organising and supervising football in all of its forms in its country may become a member association. (…) Subject to par. 5 and par. 6 below, only one association shall be recognised as member association in each country. (…)*
>
> *(6) An association in a region which has not yet gained independence may, with the authorisation of the member association in the country on which it is dependent, also apply for admission to FIFA.*

126. The term "country" used in Art. 11 FIFA Statutes is a defined term and is circumscribed in the definition section of the FIFA Statutes as follows:

> *country: an independent state recognised by the international community.*

127. FIFA similarly to UEFA has introduced the independence-test as a prerequisite for membership. However, the decisive criteria to determine independence is – according to the FIFA Statutes – not membership in the United Nations, but recognition *"by the international community"*. In application of this provision, FFK – since 13 May 2016 – has become a member of FIFA.

128. A similar definition of "country" as in the FIFA Statutes can be found in Rule 30.1 of the Olympic Charter. The latter reads as follows:

> *In the Olympic Charter, the expression "country" means an independent State recognised by the international community.*

129. The definition of "country" as purported by the Olympic Charter is, hence, congruent with FIFA's definition. Consequently, it does not come as a surprise that the national Olympic committee of Kosovo has been recognised by the IOC. Furthermore, it is noteworthy that the respective sport federation of Kosovo has been admitted as member association by a number of other international federations (e.g. FIBA, FINA, UCI, IAAF, FIS, etc.).

130. Thus, if the UEFA Statutes are interpreted in line with the common understanding in the sporting community, it becomes evident that FFK fulfils the membership criteria in Art. 5 (1) UEFA Statutes, since Kosovo's independence is recognised by the majority of the international community.

(5) Side note and subsidiary considerations

131. As a side note the Panel wishes to note that even if – contrary to the view held here – the classic means of interpretation would not lead to a clear or fully convincing understanding of Art. 5 (1) UEFA Statutes, the Panel would give preference to the interpretation favoured by the Respondent. The FFK has been adhered to by the majority of the member federations at the UEFA Congress. Absent any indications to the contrary this vote mirrors the current interest and understanding of the rules by the relevant stakeholders, i.e. the members of the association (HEINI/SCHERRER, BSK-ZGB, Vor Art. 60-79 no. 22; cf. also German Federal Tribunal, 6. 3. 1967 - II ZR 231/64, NJW 1967, 1268, 1271).

132. Furthermore, it is established that if the interpretation of the statutes of an association does not provide a clear and unambiguous result, priority may be accorded to "the most reasonable and rational solution" (RIEMER, BK-ZGB, Systematischer Teil no. 344). As previously explained, in the view of the Panel there is no interest worthy of protection to raise the threshold of the term "independent state" beyond its ordinary meaning in public international law. As a final point, the Panel notes that the protection of legitimate expectations of a new member may (exceptionally) be taken into account in this context (RIEMER, BK-ZGB, Systematischer Teil no. 347), since new members usually neither have insight in the founders legislative intent nor the legislative history of the provision in question. Generally, interpreting statutes based on the legitimate expectations of a member has been more common in the past. Nowadays, this approach, which focusses on the protection of good faith of new members, has taken a back seat (HEINI/SCHERRER, BSK-ZGB, Vor Art. 60-79 no. 22). However, the applicant's legitimate expectations created by the Respondent's behavior may also give evidence on how the federation wishes to apply Art. 5 (1) UEFA Statutes, and thus can be taken into account in the case at hand.

iii. Conclusion

133. To conclude, the Panel therefore finds that the better arguments speak for interpreting Art. 5 (1) UEFA Statutes in line with the Respondent's interpretation of said provision, thereby including countries recognised by the majority of UN members. Consequently, FFK fulfills the prerequisites for membership according to Art. 5 (1) UEFA Statutes. As a result of all of the above, the Appellant's prayer for relief must be dismissed.

d. No Breach of statutory provision

134. It is disputed between the parties, if the Resolution breaches statutory provisions. The Appellant refers – *inter alia* – to Art. 12 EU Charter of Fundamental Rights. Whether such provision is applicable to a Swiss association appears rather doubtful, since the relationship between the association and its member is submitted to the subsidiarily applicable Swiss law. This being said, the Panel acknowledges, however, that the Appellant can avail itself of the principle of freedom of association, a principle that is well enshrined in Swiss law as well as in Art. 11 ECHR. This principle protects an association's right to regulate its association life. However, such right is not absolute. Whether or not the freedom of association has been

infringed must be assessed on the basis of a balance of interests. In this context it must be taken into account that the Appellant's association life is not situated in a legal vacuum. Instead, it has submitted itself to the rules and regulations of UEFA by applying and being granted UEFA membership.

135. The Panel is of the view that in the case at hand no breach of the Appellant's freedom of association has occurred. The Appellant has gained membership in UEFA subject to the rules and regulation of the latter. The membership rights and the status of the Appellant are, thus, submitted to a dynamic evolution. The Appellant has no protected right that its status within UEFA remains unchanged. If, thus, the status of the FSS is affected by a resolution of the UEFA Congress taken in conformity with the rules and regulations of UEFA it is difficult to see how such resolution may – illicitly – interfere with the Appellant's freedom of association.

136. This being said, the Panel could see how in particular circumstances a breach of the principle of freedom of association could be envisaged also in the case at hand. This would be true in case FSS could avail itself of a privilege according to the UEFA Statutes or according to a decision by UEFA that its legal status remains unchanged. The same may be true in a case where a resolution of the UEFA Congress calls into question the very existence of FSS. Neither of these exceptions, however, apply in the case at hand. No privilege was granted to FSS that the territory in which it exercises its authority remains unchanged. In addition, the Panel fails to see on what ground clubs organized in the FSS will be forced to leave and forced to join the FFK. In addition, the Panel fails to see how the Resolution taken by the UEFA Congress calls into question the very existence of the FSS. Consequently, the Panel finds that – based on a balance of interests – no breach of FSS's right of freedom of associations has occurred.

e. Conclusion

137. In summary, the Panel concludes that despite all objections raised by the Appellant (even if not specifically mentioned above) against the Resolution, the latter complies with the rules and regulation of UEFA and the provisions of statutory law. Therefore, the appeal lodged by the Appellant against the Resolution must be dismissed. Consequently, the membership contract entered into between UEFA and FFK is also valid and the request for declaratory relief filed by the Appellant according to which the membership contract shall be declared null and void must be equally dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by the Football Association of Serbia on 13 May 2016 is dismissed.

2. (…).

3. (…).

4. All further claims are dismissed.