



Arbitration CAS 2013/A/3301 FC Red Bull Salzburg v. Union Européenne de Football Association (UEFA), Arsenal London FC & Fenerbahçe Spor Kulübü, award of 7 March 2014

Panel: Prof. Luigi Fumagalli (Italy), President; Mr Michael Gerlinger (Germany); Mr Carlos Del Campo Colás (Spain)

Football

Eligibility to participate in a UEFA competition

Exhaustion of legal remedies under Article R47 CAS Code

Standing to be sued under Swiss law

Nature and ratio legis of a stay of execution with respect to the eligibility of a club

Interpretation of a provision under Swiss law

1. The proper object of a CAS appeal procedure is only a decision after exhausting the internal legal remedies available - condition for an appeal to the CAS (in accordance with Article R47 of the Code).
2. Under Swiss law, the defending party has standing to be sued (*légitimation passive*) only if it is personally obliged by the “disputed right” at stake.
3. A stay means that the decision cannot produce its effects on the addressee. With respect to the eligibility of a club, such club – even if excluded from competition – must be considered eligible as long as the decision excluding it is stayed. The stay is granted, in order to put the club in the same position, as if it was not excluded, until the final decision is rendered, and, subsequently, to safeguard the proper functioning of the competition. Otherwise, the competition organiser would have to stop the competition at that point and to wait for the final award. This means that the eligibility of a club (or a player) is not affected in this period and it is able to continue in the competition.
4. In accordance with the principles of interpretation of the statutes and rules of a sport association under Swiss law, a CAS panel first examines the wording of the rule and the context in which it is to operate. Such interpretation has to be rather objective and always to start with the wording of the rule, which falls to be interpreted. The adjudicating body 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.

1. BACKGROUND

1.1 The Parties

1. FC Red Bull Salzburg FC (“Salzburg” or the “Appellant”) is a professional football club with headquarters in Salzburg, Austria. Salzburg is registered with the Austrian Football Federation (the *Österreichischer Fußball-Bund – ÖFB*), which in turn is affiliated to the Union of European Football Associations (UEFA).
2. The Union of European Football Associations (“UEFA” or the “First Respondent”) is an association under Swiss law and has its registered office in Nyon, Switzerland. UEFA is the governing body of football at European level. It exercises regulatory, supervisory and disciplinary functions over national federations, clubs, officials and players in Europe. UEFA organises and conducts international football competitions and tournaments at European level, which include the UEFA Champions League (the “UCL”) and the UEFA Europa League (the “UEL”).
3. Arsenal London FC (“Arsenal” or the “Second Respondent”) is a professional football club with headquarters in London, United Kingdom. Arsenal is registered with the English Football Federation (the *Football Association – FA*), which in turn is affiliated to UEFA.
4. Fenerbahçe Spor Kulübü (“Fenerbahçe” or the “Third Respondent”) is a professional football club with headquarters in Istanbul, Turkey. Fenerbahçe is registered with the Turkish Football Federation (the *Türkiye Futbol Federasyonu – TFF*), which in turn is affiliated to UEFA.

1.2 The Dispute between the Parties

5. The circumstances stated below are a summary of the main relevant facts, as submitted by the parties in their written pleadings or in the evidence offered in the course of the proceedings. Additional facts may be set out, where relevant, in connection with the legal discussion which follows.
6. On 22 June 2013, the UEFA Control and Disciplinary Body (the “C&D Body”) issued a decision whereby Fenerbahçe was excluded from participating in the following three UEFA competitions for which it would qualify. Such decision was adopted following an investigation into match fixing activities involving officers of Fenerbahçe.
7. On 10 July 2013, such measure was in essence confirmed by the UEFA Appeals Body (the “Appeals Body”) in a decision (the “Fenerbahçe Decision”) excluding the Third Respondent from the next two UEFA competitions for which it would qualify.
8. On 16 July 2013, Fenerbahçe appealed to the Court of Arbitration for Sport (the “CAS”), pursuant to Article R48 of the Code of Sports-related Arbitration (the “Code”), to challenge the Fenerbahçe Decision. The appeal proceedings so started were registered by the CAS Court Office as CAS 2013/A/3256, *Fenerbahçe Spor Kulübü v. UEFA* (the “CAS Proceedings 3256”). Together with the statement of appeal, Fenerbahçe submitted also an urgent request for

provisional measures pursuant to Article R37 of the Code, requesting that the execution of the Fenerbahçe Decision be stayed.

9. The appeal filed by Fenerbahçe was forwarded to UEFA by the CAS Court Office with the indication that a decision on the application for interim measures would be taken on 18 July 2013, and the invitation to UEFA to state its position in its respect.
10. In a letter of 17 July 2013, UEFA remarked that under the applicable UEFA regulations the appeal had to be dealt with in an accelerated procedure, proposed some calendar options for the proceedings and *inter alia* noted that:

“... whilst it has no obligation to do so and without acknowledging in any way an entitlement of the Appellant to enjoy a stay, UEFA does not object to the grant of a stay of execution of the decision issued by the UEFA Appeals Body, provided and assuming that: (1) CAS will issue one of the calendar options for the present procedure as set out below, and (2) CAS will render a final decision on the merits at the very latest by 25 August 2013”.
11. On 18 July, Fenerbahçe informed the CAS Court Office had it agreed with one of the options for an expedited calendar of the proceedings offered by UEFA.
12. As a result, in a letter of 18 July 2013, the CAS Court Office noted the calendar agreed by the parties and confirmed to them, on behalf of the Deputy President of the CAS Appeals Arbitration Division, that:

“in view of the parties’ agreement on the above-mentioned expedited procedural calendar, ... the decision of the UEFA Appeals Body dated 10 July 2013 is stayed”.
13. On 19 July 2013, at the UEFA headquarters, in Nyon, the draw for the third qualifying round of the UCL 2013/2014 took place. As a result of such draw, Salzburg was paired to play with Fenerbahçe.
14. On 31 July 2013, the match between Salzburg and Fenerbahçe, corresponding to the first leg of the third qualifying round of UCL 2013/2014, was played in Salzburg, with the final score of 1-1.
15. On 6 August 2013, the second leg of the third qualifying round of UCL 2013/2014 was played in Istanbul between Fenerbahçe and Salzburg. Such match was won 3-1 by Fenerbahçe, a result which qualified it into the play-offs stage of the UCL. Salzburg, on the other hand, was qualified for the UEL play-offs 2013/2014.
16. On 7 August 2013, Salzburg filed a protest pursuant to Article 49 of the UEFA Disciplinary Regulations (hereinafter also referred to as the “DR”) against Fenerbahçe, indicating that Fenerbahçe had been excluded from participating in the UEFA competitions, and therefore could not compete in the 2013/2014 edition of the UCL. As a result, Salzburg invoked the “*ineligible player’s participation in a match*” (Article 50.1(a) DR) and a “*significant incident that had a decisive influence on the final result of the match*” (Article 50.1(f) DR) as grounds of its protest, requesting that the match played on 6 August 2013 be declared lost 0-3 by forfeit by Fenerbahçe.

17. In a decision dated 9 August 2013 (the “C&D Decision”) the C&D Body declared the protest “not admissible”.
18. On 12 August 2013, Salzburg submitted a declaration of its intention to file an appeal against the C&D Decision. The grounds in support of the appeal were filed on 15 August 2013.
19. On 16 August 2013, the Appeals Body issued a decision (hereinafter also referred to as the “AB Decision”) as follows:
 - “1. *The appeal lodged by FC Salzburg against the decision rendered by the Control and Disciplinary Body on 9 August 2013 is rejected.*
 2. *The costs of the proceedings, totalling € 1,000, shall be borne by FC Salzburg. Consequently, the appeal fee covers the total amount of this proceedings.*
 3. *This decision is final, subject to Article 47 of the UEFA Disciplinary Regulations. ...”.*
20. In the AB Decision, the Appeals Body noted the following:
 - “b) *In the case in hand and as the Control and Disciplinary Body rightfully stated, on 10 July 2013, the UEFA Appeals Body partially upheld the decision of the Control and Disciplinary Body of 22 June 2013 and excluded Fenerbahçe SK from participating in the next two UEFA club competitions for which they would be otherwise qualified.*
On 18 July 2012, CAS decided as follows (CAS 2013/A/3256 Fenerbahçe Spor Kulübü v. UEFA):
“on behalf of the Deputy President of the CAS Appeals Arbitration Division, I confirm that the decision of the UEFA Appeals Body dated 10 July 2013 is stayed”.
Hence, since the UEFA Appeals Body decision of 10 July 2013 is stayed and until the CAS renders a final decision, the participation of Fenerbahçe SK in UEFA competitions is provisionally admitted.
In the light of the above, the Chairman of the Appeals Body cannot reach any other conclusion than the players of Fenerbahçe SK were eligible to play at the UEFA Champions League 2013/2014 third qualifying round second leg match.
 - c) *The Chairman of the Appeals Body believes, as the Chairman ad hoc of the Control and Disciplinary Body did, that, considering the decision passed by the CAS on July 2013, neither the players weren’t eligible to participate during the match nor any other significant incident occurred during the above mentioned match that may have had a decisive influence on the final result.*
 - d) *Finally, the Chairman of the Appeals Body wants to recall that the Appellant lodged a protest under the terms of the article 50 DR. Hence, only legal considerations based on the UEFA relevant regulations can be applied in the present proceedings. Moreover and according to art. 61 and 62 of the UEFA Statutes, it is important to note that the Court of Arbitration for Sport has exclusive jurisdiction in its capacity of an appeals arbitration body to review any decision taken by a UEFA organ. In this regard and for obvious reasons, UEFA is bound by the decisions rendered by the CAS.*
 - e) *Taking into account the above considerations, the appeal lodged by FC Salzburg shall be rejected”.*
21. On 19 August 2013, Salzburg filed an application with the Emergency Panel of the UEFA

Executive Committee (the “Emergency Panel”) requesting it to reschedule the UCL play-offs matches to be played on 21 and 27 August 2013 between Fenerbahçe and Arsenal, or, subsidiarily, that the results of those matches be cancelled, in the event of final confirmation by CAS of the Fenerbahçe Decision, and Salzburg reinstated in the competition.

22. On 20 August 2013, UEFA informed Salzburg that *“the playoff match between Fenerbahçe and Arsenal shall go ahead on 21 and 27 August 2013 and there are no “unforeseen circumstances” for the UEFA Emergency Panel to consider”*.
23. On 21 August 2013, the match between Fenerbahçe and Arsenal, corresponding to the first leg of the UCL play-offs 2013/2014, was played in Istanbul, with the final score of 0-3.
24. On 22 August 2013, Salzburg filed a new application with the Emergency Panel in order, *inter alia*, to request some information concerning the stay of the Fenerbahçe Decision in the CAS Proceedings 3256.
25. On the same day, 22 August 2013, the first leg of the play-offs stage of UEL 2013/2014 was played in Salzburg between Salzburg and VMFD Žalgiris of Vilnius, Lithuania (“Žalgiris”). Such match was won 5-0 by Salzburg.
26. On 27 August 2013, the second leg of the UCL play-offs 2013/2014 was played between Arsenal and Fenerbahçe in London, with the final score of 2-0. As a result, Arsenal was qualified to the group stage of UCL 2013/2014; Fenerbahçe, on the other side, was qualified to the group stage of UEL 2013/2014.
27. On 28 August 2013, the award in CAS Proceedings 3256 was rendered, dismissing the appeal filed by Fenerbahçe against the Fenerbahçe Decision. As a result, the exclusion of Fenerbahçe from the next two UEFA competitions for which it would qualify became final, and Fenerbahçe was not admitted to participate in the UEL 2013/2014 for which it had qualified.
28. In a letter to UEFA dated 28 August 2013, Salzburg referred to the CAS award issued in CAS Proceedings 3256, indicating that *“the rights and interests of FC Red Bull Salzburg have been violated in several ways and the latter treated in an arbitrary way”*. As a result, it requested the Emergency Panel *“to urgently take all appropriate measures to reinstate FC Red Bull Salzburg in the UEFA Champions League competition 2013/2014”*.
29. On 29 August 2013, the Emergency Panel decided, following the award in CAS Proceedings 3256, to replace Fenerbahçe in the UEL 2013/2014 with a new club, to be determined on the basis of a draw.
30. On 29 August 2013, the second leg of the UEL play-offs 2013/2014 was played between Žalgiris and Salzburg in Vilnius, with the final score of 0-2. As a result, Salzburg was qualified to the group stage of UEL 2013/2014.

2. THE ARBITRAL PROCEEDINGS

2.1 The CAS Proceedings

31. On 20 August 2013, Salzburg filed a statement of appeal with the CAS, pursuant to Article R48 of the Code, to challenge the C&D Decision and the AB Decision. In the statement of appeal, the Appellant, *inter alia*, appointed Dr. Michael Gerlinger as an arbitrator, and designated Arsenal, Fenerbahçe and Žalgiris “*as third parties in the sense of R41 of the CAS Code*”.
32. In the statement of appeal, the Appellant submitted also an urgent request for provisional measures pursuant to Article R37 of the Code, requesting that:
 - (a) *The UEFA Champions League Playoff match between Fenerbahce Istanbul and Arsenal London scheduled for August 21, 2013, and the UEFA Europe League Playoff match between Red Bull Salzburg and Zalgiris Vilnius scheduled for August 22, 2013, are postponed until a date after the CAS decided the case Fenerbahce Istanbul vs. UEFA.*
 - (b) *Regardless of the decision about motion 5a): The Respondent is ordered to take all appropriate measures, including but not limited to fixing match dates, in order to reinstate the Appellant into the UEFA Champions League 2013/2014 instead of Fenerbahce Istanbul”.*
33. On 21 August 2013, in view of the utmost urgency of the Appellant’s request, the Deputy President of the CAS Appeals Arbitration Division rendered an *ex parte* Order on Provisional Measures, in accordance with Article R37 of the Code, rejecting the Appellant’s request. The motivated Order was notified to the parties on 22 August 2013.
34. In a letter dated 26 August 2013, UEFA appointed Mr Carlos del Campo Colás as arbitrator.
35. On 26 August 2013, the Appellant requested that Arsenal, Fenerbahçe and Žalgiris Vilnius, which it had previously identified as third parties, be considered as Respondents, since in other CAS proceedings it was stated that, should a club seek to be reinstated in a UEFA competition with the result that other club’s rights might be affected, it would only be possible for CAS to decide so if the third club had been brought as a co-respondent in the proceedings. However, the Appellant expressed its opinion that “*the status, rights and participation of the Co-respondents clubs ... shall be determined in a second time ...*”.
36. In accordance with Article R51 of the Code, the Appellant filed its appeal brief on 5 September 2013. In the appeal brief, the Appellant withdrew its application that Žalgiris be included in the arbitration as a Respondent and specified the following evidentiary requests, seeking to obtain:
 - (i) *from UEFA, the complete file related to the FC Red Bull Salzburg protest;*
 - (ii) *from CAS and/or UEFA and/or Fenerbahce SK, the production of the complete file of the appeal procedure Fenerbahce SK/UEFA that led to the CAS decision dated August 28th, 2013;*
 - (iii) *from CAS and/or UEFA and/or Metalist Kharkhiv, the production of the CAS decisions dated (a) August 16th, 2013 and (b) August 20th, 2013 dismissing the Metalist Kharkhiv requests for the stay of execution/provisional measures against the UEFA exclusion decision and production of (c) the calendar of the procedure;*

- iv) from UEFA, the minute of the Emergency Panel meeting held on August 29th, 2013;*
- v) from UEFA, the scenarios developed in the Sion case to reinstate FC Sion into the Europa League 2011/2012 during the course of the competition”.*
37. On 25 and 27 September 2013 respectively, Arsenal and Fenerbahçe objected to being included as Respondents in the present procedure.
38. On 30 September 2013, UEFA filed its answer in accordance with Article R55 of the Code.
39. In a letter of 7 October 2013, UEFA left to the Panel the final decision on the participation of Arsenal and Fenerbahçe to the arbitration.
40. On the same day, 7 October 2013, the Appellant confirmed the reasons in support of its request that Arsenal and Fenerbahçe be included as Respondents in the present proceedings, and suggested that the Panel render a preliminary decision on the point.
41. By communication dated 21 October 2013, the CAS Court Office informed the parties, on behalf of the Deputy President of the CAS Appeals Arbitration Division, that the Panel had been constituted as follows: Prof. Luigi Fumagalli, President of the Panel; Dr Michael Gerlinger and Mr Carlos del Campo Colás, arbitrators.
42. On 24 October 2013, the Panel decided to treat Arsenal and Fenerbahçe as Respondents in this arbitration, since they were named as such by the Appellant within the deadline to file an appeal against the AB Decision, but without any prejudice to any decision with respect to the CAS jurisdiction in their regard, their standing to be sued and/or any other defence they might raise with respect to the Appellant’s claims.
43. On 8 November 2013, the Second Respondent filed its answer in accordance with Article R55 of the Code.
44. On 12 November 2013, the Third Respondent filed its answer in accordance with Article R55 of the Code.
45. On 20 November 2013, the CAS Court Office informed the parties that the Panel had decided to partially grant the Appellant’s evidentiary request as follows:
- *The request sub (i) does not need to be addressed, since the First Respondent already lodged with CAS, together with its answer dated 30 September 2013, the file regarding the protest filed by the Appellant on 7 August 2013 (Exhibit 3);*
 - *The requests sub (iii), (iv) and (v) are denied, as at this stage of the arbitration they seem irrelevant;*
 - *The request under point (ii) is partially granted, insofar as it relates to the issue of the stay of the decision of UEFA in the Fenerbahçe case (CAS 2013/A/3256). As a result, UEFA and Fenerbahçe are invited to provide the CAS Court Office ... with the exchange of correspondence regarding any agreement on the procedural timetable and the stay of the decision challenged by Fenerbahçe in proceedings CAS 2013/A/3256”.*

46. On 25 and 27 November 2013 respectively, UEFA and Fenerbahçe filed the documents requested by the Appellant and ordered by the Panel.
47. On 6 December 2014, the CAS Court Office, on behalf of the President of the Panel, issued an order of procedure (the “Order of Procedure”), which was accepted and countersigned by the parties.
48. A hearing was held in Lausanne on 23 January 2014 on the basis of the notice given to the parties in the letter of the CAS Court Office dated 5 December 2013. The Panel was assisted at the hearing by Mr William Sternheimer, Counsel to CAS. The following persons attended the hearing:
 - i. for the Appellant: Mr Florian Müller, legal department of Salzburg, and Mr Joachim Rain, counsel;
 - ii. for the First Respondent: Mr Emilio Garcia, UEFA’s Head of Disciplinary and Integrity, Mr Carlos Schneider, UEFA’s Disciplinary Lawyer, Mr James Mungavin, UEFA Disciplinary Researcher, Mr Jean-Marc Reymond and Ms Delphine Rochat, counsel;
 - iii. for the Second Respondent: Ms Susanna Sperls, legal department of Arsenal, and Mr Andrew Jolly, counsel;
 - iv. for the Third Respondent: Mr Christian Keidel, counsel.
49. At the hearing, the parties made cogent submissions in support of their respective cases. At the conclusion, the parties expressly stated that they did not have any objection in respect of their right to be heard and to be treated equally in these arbitration proceedings.
50. In accordance with the Panel’s instructions at the hearing, and within the set deadline of 28 January 2013, the parties filed their respective statements of costs. In a letter of 28 January 2014, the costs claim submitted by Arsenal was criticized as excessive by the Appellant.

2.2 The Position of the Parties

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

a. The Position of the Appellant

52. In its the statement of appeal, the Appellant requested from the CAS the following reliefs:
 - “1. *The before-mentioned decisions [i.e., the C&D Decision and the AB Decision] are set aside;*
 2. *The protest lodged by Red Bull Salzburg against the result of the match Fenerbahçe SK – Red Bull*

Salzburg in date 6 August 2013 (UEFA Champions League, third qualifying round), is upheld.

3. *The above mentioned match is lost by forfeit 3-0 by Fenerbahçe SK.*
 4. *As a consequence Red Bull Salzburg is reinstated into the UEFA Champions League 2013/2014.*
 5. *In event should motions 1 – 4 be rejected, the right of Red Bull Salzburg to the complete compensation of damages shall be reserved.*
 6. *The Respondent shall bear all costs of the CAS procedure including a contribution to the fees of the Appellant's counsels in the CAS procedure of at least 40.000,- CHF. [...]*
53. In its appeal brief, however, the Appellant declared that it *“no longer pursue[s] ... request for relief No. 5 in the pending procedure, but certainly reserve[s] the right and already announce[s] now, that ... will of course pursue their financial claims in a separate procedure”*. As a result, the Appellant confirmed that in these proceedings it *“pursues [only] its right to participate in the UEFA Champions League 2013/2014”*.
54. Preliminarily, the Appellant submits that Arsenal and Fenerbahçe were named, and should remain, parties to the arbitration, for the following reasons:
- i. with respect to Fenerbahçe, because the CAS proceedings started by Salzburg concern a protest filed with regard to a match played with the Third Respondent;
 - ii. with respect to Arsenal, because a new game between the Appellant and the Second Respondent could be one of the possible ways of complying with a CAS award rendered in these proceedings, if in favour of the Appellant.
55. The Appellant, then, confirms that it has a legal interest to appeal: the interest of Salzburg *“is not only obvious on a sporting view”* (as it seeks the reinstatement in the UCL 2013/2014), but also *“on an economical view”* (because, if the protest is admitted, the Appellant should be granted the bonuses devoted to the winner of the 3rd qualifying round) and *“in terms of UEFA Coefficient (individual and national)”*. As a result, *“should UEFA argue – or even prove – that a reinstatement in the current Champions League is not possible ..., Salzburg would ... still have an actual interest to appeal”*.
56. In support of its requests for relief, the Appellant submits the following:
- i. Salzburg is the only club, eliminated by a club finally excluded from UEFA club competitions 2013/2014 following a CAS award, that was not reinstated in the competition and was not granted any sportive compensation for events that were completely beyond its control. This amounts to *“an unequal treatment, that lacks any justification”*. In that regard, the Appellant refers to the cases of:
 - Besiktas Istanbul: the Norwegian club Tromsø FC, that was defeated by Besiktas in the UEL play-offs, was admitted to the group stage of UEL as a substitute for Besiktas;
 - Metalist Charkiv: the Greek club PAOK Saloniki was admitted to, and played, the UCL play-offs replacing Metalist, notwithstanding having lost the third qualifying round against it;

- ii. *“the Appellant ... has never been given any information about the backgrounds of the dispute between Fenerbahçe ... and UEFA although this dispute is obviously of prejudice for the role of the Appellant in the competition”*. As a result, it cannot be blamed for not having been involved in the CAS proceedings relating thereto;
- iii. the acceptance by UEFA of the stay of the Fenerbahçe Decision and of an unreasonably long calendar in the CAS Proceedings 3256, that led to the award of 28 August 2013, constitutes a serious violation of both procedural and material rights of Salzburg;
- iv. the *“pure stay”* of the Fenerbahçe Decision did not require or justify any measure or actions beyond delaying the effectiveness of the stayed decision and postponing the matches to be played by Fenerbahçe. It is therefore *“completely incomprehensible”* why the effect of the stay of the Fenerbahçe Decision was not limited to treating Fenerbahçe as not finally excluded, but was held to justify treating Salzburg as eliminated and Fenerbahçe as a full participant in the UCL;
- v. from today’s point of view, Fenerbahçe was not eligible to play the matches against Salzburg, since the award of 28 August 2013 in the CAS Proceedings 3256 has a retroactive effects, depriving of any ground the stay of the Fenerbahçe Decision agreed on 18 July 2013: indeed, giving effects to the participation of Fenerbahçe in the UEL 2013/2014 would contradict the sanction imposed on the Third Respondent by the Fenerbahçe Decision. As a result, the protest filed by the Appellant with UEFA was justified on the basis of:
 - Article 50.1(a) of the DR, which declares that the participation of an ineligible player in a match is a sufficient ground for a protest, and is *a fortiori* applicable if the whole team is ineligible;
 - Article 50.1(e) of the DR, because the participation of a whole ineligible team has a decisive influence on the result of a match;
- vi. in addition, the revocation of the stay implies the responsibility of UEFA for the damages it caused, which have to be compensated according to Swiss law;
- vii. UEFA has *“an enforceable duty to act in good faith”* towards the athletes and the clubs and to account for their legitimate expectation that the rules will be respected;
- viii. *“the dismissal by UEFA of the protest filed by the Appellant against the result of the match against Fenerbahçe ..., based on a “private” procedural arrangement with the Turkish club amounts to an abuse by UEFA of its dominant (monopolistic) position on the market of the European Club competitions. ... in identical situations ... UEFA acted differently and the clubs being in the same situation as the Appellant were not prejudiced by the exclusion of their direct opponent. ... UEFA acted in a discriminatory way against Salzburg. ... no legitimate reason can justify this behaviour”*. In addition, the AB Decision *“constitutes a discriminatory behaviour of UEFA towards ... Salzburg in the sense of Art. 7 al. 2 lit. b of the Swiss Cartel Law”*.

b. The Position of the Respondents

b.1 The Position of UEFA

57. The First Respondent, in its answer to the appeal brief, requested the CAS to issue an award on the merits:

- *Rejecting the reliefs sought by FC Salzburg.*
- *Confirming the decision under appeal.*
- *Ordering FC Salzburg to pay all the costs of the arbitration and a significant contribution towards the legal fees and other expenses incurred by FIFA in connection with these proceedings”.*

58. At the hearing, then, UEFA indicated that it seeks a declaration by CAS that it complied with its rules and its duty to protect the interests of all the participants in the European competitions, and that Salzburg did (and does) not have a right to be reinstated in the UCL 2013/2014.

59. In support of its requests, the First Respondent underlines that the object of this arbitration is only the AB Decision, i.e. the decision of the Appeals Body which finally dismissed the Appellant’s protest against the match played between Fenerbahçe and Salzburg on 6 August 2013, corresponding to the second leg of the third qualifying round for the UCL 2014/2014. More exactly, the question is whether the Appeals Body correctly applied the relevant UEFA rules to the facts of the case. In that respect, the First Respondent maintains that the AB Decision “*it totally and undeniably correct*” and submits that:

- i. on 18 July 2013, the CAS rendered a decision staying the Fenerbahçe Decision;
- ii. such CAS decision had to be recognized by UEFA;
- iii. as a result of such decision, Fenerbahçe was entitled and eligible to play against the Appellant.

60. At the same time, UEFA emphasizes the following:

- i. Salzburg threatened, but did not file, a protest after the first match against the Third Respondent, and waited only until after being defeated in the second match. By so doing, the Appellant recognized the entitlement of Fenerbahçe to play;
- ii. Salzburg engaged in a “*continuous forum shopping ..., filing multiple motions, briefs and requests with the UEFA disciplinary bodies, the Emergency Panel and CAS*”, showing “*the intention to circumvent the normal procedural, disciplinary way and to obtain different decisions outside the disciplinary proceedings*”;
- iii. such procedural conduct shows the “*inconsistency of ... Salzburg ...and ... a lack of respect to the parties and the CAS*”;
- iv. the Appellant in its appeal “*avoided to make any analysis*” of the AB Decision;
- v. the argument that the award rendered in CAS Proceedings 3256 should have retroactive effects is “*wrong*” and “*misleading*”, since it is a fact that, at the time the matches with Salzburg were played, Fenerbahçe was entitled to play;

- vi. in fact, the stay of the Fenerbahçe Decision meant that the situation existing before it continued to be effective until the final decision on the merits, and that Fenerbahçe could not be excluded from the European competitions;
- vii. at the time the Fenerbahçe Decision was stayed, UEFA did not know which club would have played against the Third Respondent;
- viii. the Appellant had the opportunity to file with CAS a request of intervention in CAS Proceedings 3256, but preferred not to do so;
- ix. in the same way, Salzburg did not file any appeal against the decisions of the Emergency Panel which denied its applications to reschedule the matches to be played with Fenerbahçe and to be reinstated in the UCL 2013/2014;
- x. UEFA does not see any reason to grant a compensation to a club which has been beaten on the field of play.

b.2 The Position of Arsenal

61. The Second Respondent, in the answer to the appeal brief, confirmed its request, specified in preceding correspondence, to
“be removed as a Respondent to the Proceedings”.
62. In support of its request, the Second Respondent makes the following three points:
 - i. Arsenal *“does not have any substantive points to address”*, as the dispute is only between Salzburg and UEFA. Indeed, the Appellant’s submissions do not identify any claim against Arsenal, which merely complied with its obligation to compete. Therefore, the Second Respondent has no comment on the substantive issues between Salzburg and UEFA;
 - ii. *“CAS does not have jurisdiction to arbitrate in respect of AFC [Arsenal] in respect of such matter”*, since there is no dispute between Arsenal and any of the parties: the sporting relief sought by the Appellant (reinstatement in the UCL), actually, would affect not just Arsenal, but also the other clubs in the Arsenal’s group in the UCL 2013/2014, and would impact on all clubs participating in such competition. As a result, Arsenal *“is no more appropriate, or capable of being, a Respondent than any other club participating in the UEFA Champions League 2013/14”*;
 - iii. Arsenal *“has done nothing wrong and any sporting relief granted that affects AFC [Arsenal] would be impractical, unfair to AFC [Arsenal] and prejudicial to AFC’s [Arsenal’s] legitimate interests”*: more in general, such sporting relief *“would ... cause disruption to all other clubs”* currently playing in the UCL 2013/2014, who, like Arsenal, *“have done nothing wrong”*. It is therefore *“clear that financial compensation would be the only appropriate remedy”*.

b.3 The Position of Fenerbahçe

63. The Third Respondent, in its answer to the appeal brief, requested
“the rejection of the claims of Salzburg FC”.

64. In that regard, Fenerbahçe underlines *inter alia* that:
- i. it participated in the matches with Salzburg on the basis of a CAS decision;
 - ii. the final decision rendered in CAS Proceedings 3256 did not remove the result of the matches played by Fenerbahçe with Salzburg;
 - iii. the Appellant's claim that other clubs in the same situation were treated differently is only an "assessment" of Salzburg;
 - iv. the solutions proposed by the Appellant in this arbitration "cannot actually be implemented", and are "legally inapplicable".

3. LEGAL ANALYSIS

3.1 Jurisdiction

65. The Appellant relies on Articles 61 and 62 of the UEFA Statutes as conferring jurisdiction on the CAS to decide the present dispute between the parties.
66. The CAS jurisdiction is contemplated by the Statutes of UEFA as follows:

Article 61

- ¹ *The CAS shall have exclusive jurisdiction, to the exclusion of any ordinary court or any other court of arbitration, to deal with the following disputes in its capacity as an ordinary court of arbitration:*
- a) *disputes between UEFA and associations, leagues, clubs, players or officials;*
 - b) *disputes of European dimension between associations, leagues, clubs, players or officials.*
- ² *The CAS shall only intervene in its capacity as an ordinary court of arbitration if the dispute does not fall within the competence of a UEFA organ.*

Article 62

- ¹ *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.*
- ² *Only parties directly affected by a decision may appeal to the CAS. However, where doping-related decisions are concerned, the World Anti-Doping Agency (WADA) may appeal to the CAS.*
- ³ *The time limit for appeal to the CAS shall be ten days from the receipt of the decision in question.*
- ⁴ *An appeal before the CAS may only be brought after UEFA's internal procedures and remedies have been exhausted.*
- ⁵ *An appeal shall not have any suspensory effect as a stay of execution of a disciplinary sanction, subject to the power of the CAS to order that any disciplinary sanction be stayed pending the arbitration.*
- ⁶ *The CAS shall not take into account facts or evidence which the appellant could have submitted to an internal UEFA body by acting with the diligence required under the circumstances, but failed or chose not to do so.*

Article 63

- ¹ *The CAS is not competent to deal with:*
- a) *matters related to the application of a purely sporting rule, such as the Laws of the Game or the technical modalities of a competition;*
 - b) *decisions through which a natural person is suspended for a period of up to two matches or up to one month;*
 - c) *awards issued by an independent and impartial court of arbitration in a dispute of national dimension arising from the application of the statutes or regulations of an association.*
- ² *Only arbitrators who have their domicile in Europe shall be competent to deal with disputes submitted to the CAS according to the present Statutes.*
- ³ *Moreover, proceedings before the CAS shall take place in accordance with the Code of Sports-related Arbitration of the CAS.*

67. A reference to the rules on CAS jurisdiction set in the Statutes of UEFA is then provided:

- i. at Article 47 of the DR, as follows:

The UEFA Statutes stipulate which decisions taken by the disciplinary bodies may be brought before the Court of Arbitration for Sport, and under which conditions;

- ii. at Article 28 of the Regulations of the UEFA Champions League 2012-2015 Cycle (the “UCL Regulations”), as follows:

In case of litigation resulting from or in relation to these regulations, the provisions regarding the Court of Arbitration for Sport (CAS) laid down in the UEFA Statutes apply.

68. The jurisdiction of the CAS is not challenged by UEFA and Fenerbahçe. It is contested however by Arsenal, which objects to its inclusion as a Respondent in this arbitration. The decision rendered by the Panel on 24 October 2013, to treat Arsenal as a Respondent, since it was named as such by the Appellant, was without any prejudice to any subsequent decision with respect to the CAS jurisdiction in its regard.

69. In order to find jurisdiction, it is necessary for the Panel to identify an arbitration clause binding the parties (jurisdiction *ratione personae*, or personal jurisdiction) and covering the disputed matter (jurisdiction *ratione materiae*, or subject-matter jurisdiction). The questions are therefore (i) whether Arsenal is bound by the arbitration clause invoked by Salzburg as a ground for this Panel’s jurisdiction, and (ii) whether the disputed matter falls within the scope of such clause. On the other hand, whether in the case at stake there is an actual dispute between Salzburg and Arsenal, and/or there is a specific remedy requested by the Appellant against the Second Respondent, is a different issue, pertaining to the merits (standing to be sued or *légitimation passive*: §§ 93-95 below) and not to jurisdiction.

70. As to the first point, it cannot be denied that Arsenal is certainly bound by the arbitration clause laid down in the UEFA Statutes. The Panel remarks in fact that according to Article 2.04 [“Admission Criteria”] of the UCL Regulations:

To be eligible to participate in the competition, a club must fulfil the following criteria: ...

- f) *it must confirm in writing that the club itself, as well as its players and officials, agree to recognise the jurisdiction of the Court of Arbitration for Sport (CAS) in Lausanne as defined in the relevant provisions of the UEFA Statutes and agree that any proceedings before the CAS concerning admission to, participation in or exclusion from the competition will be held in an expedited manner in accordance with the Code of Sports-related Arbitration of the CAS and with the directions issued by the CAS, including for provisional or super-provisional measures, to the explicit exclusion of any State court. ...*

71. In other words, by entering into the UCL, Arsenal expressly accepted the CAS jurisdiction, confirming, to the extent necessary, to be bound by the provisions set in the Statutes of UEFA providing for such jurisdiction.
72. As to the second point, the Panel notes that the substantive scope of the arbitration clause contained in the Statutes of UEFA is rather broad and extends to disputes concerning “*any decision taken by a UEFA organ*” (Article 62.1), provided they do not fall within the categories indicated at Article 63.1. As the matter disputed in this arbitration concerns a decision taken by the Appeals Body to finally deny a protest against a match, it falls within the scope of application *ratione materiae* of the arbitration clause contained in the Statutes of UEFA.
73. In conclusion, this Panel holds that it has jurisdiction with respect to Arsenal. This finding, however, is without prejudice to any determination on the existence of the Arsenal’s standing to be sued in this arbitration.

3.2 Appeal Proceedings

74. As these proceedings involve an appeal against decisions in a dispute which is not of purely disciplinary nature, brought on the basis of rules providing for an appeal to the CAS, they are considered and treated as appeal arbitration proceedings in a non-disciplinary case, in the meaning and for the purposes of the Code.

3.3 Admissibility

75. The admissibility of the appeal is not challenged by the Respondent. The statement of appeal was filed within the deadline set in Article 62.3 of the Statutes of UEFA. No further internal recourse against the AB Decision is available to the Appellant within the structure of UEFA. Accordingly, the appeal is admissible.

3.4 Scope of the Panel’s Review

76. According to Article R57 of the Code,
the Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance.

3.5 Applicable Law

77. The law applicable in the present arbitration is identified by the Panel in accordance with Article R58 of the Code.

78. Pursuant to Article R58 of the Code, the Panel is required to decide the dispute:

... according to the applicable regulations and 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, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.

79. In the present case the “*applicable regulations*” for the purposes of Article R58 of the Code are, indisputably, the UEFA’s regulations, because the appeal is directed against decisions issued by UEFA, which was passed applying UEFA’s rules and regulations.

80. At the same time, the Panel notes that, pursuant to Article 63.3 of the UEFA Statutes,

... proceedings before the CAS shall take place in accordance with the Code of Sports-related Arbitration of the CAS.

81. As a result, in addition to the UEFA’s regulations, Swiss law applies to the merits of the dispute, as Switzerland is the country in which UEFA, i.e. the federation which has issued the challenged decision, is domiciled.

82. The provisions set in the UEFA rules and regulations which are relevant in this arbitration include, *inter alia*, the following:

Article 23 UCL Regulations - *Protests*

23.01 Participating clubs are entitled to protest against the validity of a match result within 24 hours of the end of the match in question in accordance with the relevant provisions of the UEFA Disciplinary Regulations.

Article 49 DR - *Declarations of protest*

¹ *Member associations and their clubs are entitled to lodge protests. In the event of a protest, the disciplinary inspector may make submissions on behalf of UEFA.*

² *Protests must reach the Control and Disciplinary Body in writing, indicating the relevant grounds, within 24 hours of the end of the match in question.*

³ *The 24-hour time limit may not be extended. For the sake of the smooth running of a competition, the corresponding competition regulations may shorten the protest deadline accordingly.*

⁴ *The protest fee is €1,000. It must be paid when the protest is lodged and is reimbursed only if the protest is admitted.*

Article 50 DR - Admissibility of protests

¹ *A protest is admissible only if it is based on:*

- a) *an ineligible player's participation in a match;*
- b) *an unfit field of play, as long as the referee was informed as soon as the problem was reported or observed (whether in writing before the match, or orally by a team captain, in the presence of the captain of the opposing team, during the match);*
- c) *an obvious error by the referee as defined by Article 9 of these regulations, in which case the protest may be directed only at the disciplinary consequences of the referee's obvious error;*
- d) *an obvious violation of a rule by the referee that had a decisive influence on the final result of the match;*
- e) *any other significant incident that had a decisive influence on the final result of the match.*

² *Protests may not be lodged against factual decisions taken by the referee.*

3.6 The Dispute

83. The Appellant is challenging in these proceedings, according to the reliefs it is seeking (§ 52 above), the decisions issued by the UEFA disciplinary bodies that denied its protest against the match played on 6 August 2013 in Istanbul with Fenerbahçe: according to Salzburg, such decisions are to be set aside (relief point 1), the protest upheld (relief point 2) and the match declared lost by forfeit to the advantage of the Appellant (relief point 3), with the consequence that Salzburg is reinstated into the UCL 2013/2014 (relief point 4). The Appellant's requests are denied by the Respondents under a number of perspectives.

84. In light of the foregoing, the issues raised by the parties require the Panel's determination on the following points:

- a. the object of the dispute;
- b. the standing to be sued of the Second Respondent; and
- c. the protest filed by Salzburg.

85. The Panel shall consider each of said points separately.

a. The Object of the Dispute

86. As mentioned, the Appellant is challenging in this arbitration both the C&D Decision and the AB Decision, i.e. the decision of first instance and the decision rendered on appeal therefrom, which, within the UEFA disciplinary system, and in accordance with the applicable procedural rules, dealt with the protest filed by Salzburg against the match played on 6 August 2013. The Panel, however, understands that the proper object of this arbitration is only the AB Decision, i.e. the UEFA final decision on the protest (pursuant to Article 58.7 DR), which closed the proceedings within UEFA in its respect. Indeed, only by obtaining the AB Decision had the Appellant exhausted the internal legal remedies available to it – a condition for an appeal to the CAS (in accordance with Article R47 of the Code). In such context, the C&D Decision is

relevant only to the extent it might explain the procedure within UEFA and assist in the interpretation of the final decision (the AB Decision) which confirmed it: it is in fact clear that even in the event the AB Decision is set aside and a new decision is issued by this Panel, in the exercise of the power granted by Article R57, the CAS award would replace also the C&D Decision.

87. At the same time, and as a consequence of the above, the Panel notes that the object of the dispute to be determined in this arbitration is in essence the protest filed by Salzburg against the match played on 6 August 2013, this being the object of the challenged decision. As a result, the Panel has to decide whether grounds existed, recognized by the applicable UEFA rules, justifying the protest filed by Salzburg. In such exercise, this Panel has full power to review the facts and the law (§ 76 above).
88. On the other hand, the Panel remarks that, however discussed at length by the parties, chiefly at the hearing, two other issues are not the object to be decided by this Panel:
- i. whether the stay of the Fenerbahçe Decision ordered on 18 July 2013 was “legally” granted; and
 - ii. how Fenerbahçe had to be replaced in the European competitions, and therefore whether Salzburg had be reinstated in the UCL 2013/2014 at its place.
89. As to the first point, the Panel notes that it is not for this arbitration to decide whether the actions and decisions of UEFA and/or CAS were proper and consistent with the applicable rules, when the Fenerbahçe Decision was stayed; in the same way, it is not for this Panel to “interpret” the letter of the CAS Court Office dated 18 July 2013, and assess whether the stay was based on an “agreement” between the parties or not. In fact, the stay of the Fenerbahçe Decision related to a different dispute (as underlined at § 90 below), heard by a distinct Panel, with (partially) different parties¹. In addition, any conclusion on the point is irrelevant to the evaluation of the Appellant’s protest: whether “legally” or not, whether based on an agreement or not, the fact is that the Fenerbahçe Decision was stayed; and only the consequences that this fact produced are relevant for the determination of the current dispute.
90. As to the second point, the Panel remarks that the issue of the substitution of Fenerbahçe in the European competitions (following the Fenerbahçe Decision) and the reinstatement, if the case, of Salzburg into the same, was not part of the proceedings before the C&D Body and the Appeals Body of UEFA started by Salzburg, and was not (even to be) decided in the framework of the protest proceedings. Indeed, the reinstatement of Salzburg *could* be one of the consequences of the granting of the protest, but it is (and was) not part of the protest: in fact, in the case at hand, also in the Appellant’s contentions, the reinstatement would not be the consequence *per se* of the exclusion of Fenerbahçe or of the granting of the protest alone, but would derive from a combination of the result of the matches it played (1-1 and 3-0 by forfeit

¹ In other words, any criticism Salzburg might have had against such stay had to be brought within the CAS Proceedings 3256, regarding the exclusion of Fenerbahçe from the European competitions, by applying for an intervention pursuant to Article R41.3 of the Code and requesting the stay to be lifted, by indicating, in those proceedings, that the order (or the agreement underlying it) infringed its rights.

in favour of Salzburg) with Fenerbahçe². Actually, the reinstatement in the competition does not even require a protest, and follows different principles, where the interests of the integrity of the competition and the expectations of all the participants have to be taken into account³. The point has indeed been somehow recognized by the Appellant itself, which filed separate applications, with the Emergency Panel, to obtain it.

91. As a result, there is no issue to be decided regarding any discriminatory treatment, which Salzburg condemns, with regard to reinstatement, and/or any abuse, from the point of view of European and Swiss competition law, that its denial, according to the Appellant, implied. As a result, also the evidentiary measures requested by the Appellant (and denied, at that stage of the proceedings, as per letter dated 20 November 2013: § 45 above) are irrelevant.
92. In the same way, there is no room for a declaration, as sought by UEFA at the hearing, that Salzburg had no right to reinstatement. As said, and claimed by UEFA in its submissions, the object to be decided in the current arbitration concerns only the protest filed by Salzburg against the match played on 6 August 2013: no declaration concerning the substitution of Fenerbahçe is therefore allowed.

b. *The Arsenal's Standing to be Sued*

93. Under Swiss law, applicable to the present dispute pursuant to Article R58 of the Code (§ 81 above), the defending party has standing to be sued (*légitimation passive*) only if it is personally obliged by the “disputed right” at stake (ZÜRCHER A., in: *Kommentar zur Schweizerischen Zivilprozessordnung (ZPO)* (Teil 1), 2010, No. 67 at Art. 59 ZPO, 382; BGE 107 II 82 E. 2a).
94. As noted above, the current arbitration concerns only the protest filed by the Appellant against the match played on 6 August 2013 with the Third Respondent, and *not* the reinstatement of the Appellant in the competition. As a result, the “disputed right”, i.e. the Appellant’s claim to see the match declared lost by Fenerbahçe by forfeit, does not directly affect the Second Respondent, unlike the First Respondent (which denied it) and the Third Respondent (which played said match). Arsenal, in respect of that dispute object of this arbitration, is in no different position than all other participants in the UEFA competitions: it might be factually touched by the effects of a decision on its regard, but is not the party legally obliged to the performance sought by the Appellant. The remedies themselves requested by the Appellant in this arbitration do not aim the Second Respondent.
95. As a result, Arsenal does not have a standing to be sued in this arbitration.

² Point 4 of the relief requested by the Appellant mentions indeed the reinstatement to be the “consequence” of the granting of the reliefs requested at points 1 to 3. It is however clear that, as mentioned in the text, said consequence would not be produced if the result of the first match (not object of the protest) had been different (4-0 in favour of Fenerbahçe): the reinstatement would, in other words, be the effect of a combination of factors, and not an effect necessarily produced *in abstracto* by the forfeit of a match.

³ The Panel only notes that absence of the clearly defined rules on the matter – a point that UEFA is warmly invited to address.

c. *The Protest of Salzburg*

96. Salzburg filed a protest against the match of 6 August 2013 on two grounds: first, it invoked Article 50.1(a) of the DR, which refers to the participation of an ineligible player in a match; second, it made reference to Article 50.1(e) of the DR, which concerns “*any other significant incident*” that has a decisive influence on the result of a match. The Appellant contends that such grounds are triggered by the exclusion of Fenerbahçe from the UEFA club competitions imposed by the Fenerbahçe Decision and the CAS award which confirmed it: in the Appellant’s opinion, Fenerbahçe (and therefore every single player of its team) was not eligible to play the match of 6 August 2013; such circumstance, if not already covered by the first ground, constitutes a significant incident decisively affecting the result of that match.
97. The Panel does not agree with the Appellant’s submissions for a number of reasons.
98. The Panel remarks in fact that, at the time the match of 6 August 2013 was played, Fenerbahçe was eligible to compete. Indeed, on 18 July 2013, the execution of the Fenerbahçe Decision was stayed. Therefore, because of the stay, the Fenerbahçe Decision could not produce its effect, i.e. the exclusion of the Third Respondent from the UEFA competitions. In other words, Fenerbahçe, not excluded, had the right to play the matches scheduled to take place on 31 July 2013 and 6 August 2013 – i.e. to play against Salzburg, as determined following the draw which took place on 19 July 2013. As a result, both grounds invoked by the Appellant are without merit.
99. The Appellant, in order to avoid such consequence, submits first that the stay did not imply *per se* the right of Fenerbahçe to compete, but that it only meant that the matches for which Fenerbahçe was scheduled to play had to be postponed.
100. The Panel does not agree with this contention, which is supported by no legal basis. As mentioned, Fenerbahçe was not excluded; therefore, it was a participant in the competition, with the same rights and obligations of all the other teams. Any other consequence (such as the postponement of the matches scheduled to take place on 31 July 2013 and 6 August 2013), could not be (and was not) produced by the simple stay of the Fenerbahçe Decision.
101. At the same time, the Appellant contends that the final award rendered in CAS Proceedings 3256, which confirmed the Fenerbahçe Decision, had the effect of retroactively lifting the stay of 18 July 2013: in other words, in the Appellant’s opinion, Fenerbahçe was retroactively deprived of its eligibility to play the matches against Salzburg.
102. The Panel finds that also such submission cannot be accepted. In fact, the award in CAS Proceedings 3256, even if confirming in the end the Fenerbahçe Decision, did not have any effect on the stay granted until the final award was rendered. This follows from the nature of a stay of execution and its *ratio legis*. As outlined above, a stay means that the decision cannot produce its effects on the addressee. With respect to the eligibility of a club, such club – even if excluded from competition – must be considered eligible as long as the decision excluding it is stayed. The stay is granted, in order to put the club in the same position, as if it was not excluded, until the final decision is rendered, and, subsequently, to safeguard the proper

functioning of the competition. Otherwise, the competition organiser would have to stop the competition at that point and to wait for the final award. This means that the eligibility of a club (or a player) is not affected in this period and it is able to continue in the competition. If one argued that the final award now takes away the effect of the stay retroactively, this would mean that it is completely unpredictable for the competition organiser and the participants to know, whether the matches played within this period were played by eligible participants or not, and, therefore, whether the results can be challenged and/or are null and void. Since the stay actually serves to safeguard the competition, such interpretation would actually go against the purpose of the stay. Therefore, the Panel finds in fact that the sporting results should be maintained, as matches were played on the field according to the rules governing them: in the Panel's opinion, this conclusion corresponds to a general principle of sports law, to be followed unless the applicable regulations otherwise expressly provide. As a result, Salzburg, absent a specific rule in support of its claim, cannot assert that Fenerbahçe was ineligible at the time the match of 6 August 2013 was played, because the Fenerbahçe Decision was subsequently set aside.

103. However, even assuming (without conceding) the existence of a retroactive effect of the stay, in the Panel's opinion this would not ground the protest filed by Salzburg against the match of 6 August 2013. In fact:
 - i. with respect to Article 50.1(a) of the DR, the Panel remarks that this provision considers only the specific conditions of the individual player, ineligible to take part in a match (chiefly because he had been suspended on disciplinary grounds). It cannot be held to apply to teams as a whole, which, from a disciplinary point of view, have a separate identity with respect to that of its players, and are not the result of the addition of single players. In fact, when a player is ineligible, he cannot compete whatever its team; and the circumstance that a team is ineligible does not imply that so are its players, who could be transferred and "legally" play the same competition with another team. As a result, a supposed ineligibility of Fenerbahçe at the time of the match with Salzburg would not have implied that its individual players were ineligible to play it. Therefore, the ground for a protest under Article 50.1(a) of the DR is not satisfied;
 - ii. with respect to Article 50.1(e) of the DR, the Panel notes that this provision intends to cover situations ("*any other significant incident*": underscore added) not falling within the scope of the other points of Article 50.1 ("*an unfit field of play*", "*an obvious error by the referee*", "*an obvious violation of a rule by the referee*"): as a result it is intended to cover "*incidents*" of the same nature, that are suitable to have (and actually had) a decisive influence on the final result of the match. In that respect the Panel notes that the provision refers to situations which directly affected the conditions and circumstances for the proper conduct of the match on the pitch, and mostly relate to the "rules of the game" and/or "pitch/match conditions". Therefore, it does not cover factors that had no influence on the conduct of the match itself, but were of "administrative" nature, such as the playing of the match by a sanctioned team: in that event, the actions of the match are played according to the rules governing them, and the sanction on the team is not an "incident" regarding them.

104. The Panel reaches this conclusion on the basis of the wording of the rule and the context in which it is to operate, as explained by the fact that a protest must be filed within "*within 24 hours of the end of the match in question*" (Article 23.01 UCL Regulations), in accordance with the

principles of interpretation of the statutes and rules of a sport association under Swiss law. Such interpretation 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 (CAS 2008/A/1673; CAS 2009/A/1810 & 1811; see also ATF 87 II 95 consid. 3; ATF 114 II 193, p. 197, consid. 5.a; decision of the Swiss Federal Court of 3 May 2005, 7B.10/2005, consid. 2.3; decision of the Swiss Federal Court of 25 February 2003, consid. 3.2; and ZEN-RUFFINEN P., *Droit du Sport*, 2002, par. 168, p. 63).

105. As a result, the Panel finds that the protest filed by Salzburg has no grounds. The decisions rendered by the UEFA bodies, and in the end the AB Decision, which denied it are correct.

3.7 Conclusion

106. In light of the foregoing, the Panel holds that the appeal brought by Salzburg is to be dismissed. The AB Decision is confirmed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed on 20 August 2013 by FC Red Bull Salzburg against the decision taken by the Appeals Body of UEFA on 16 August 2013 is dismissed.
2. The decision taken by the Appeals Body of UEFA on 16 August 2013 is confirmed.
3. (...)
4. (...)
5. All other motions or prayers for relief are dismissed.