



**Arbitration CAS 2016/A/4787 Jersey Football Association (JFA) v. Union of European Football Associations (UEFA), award of 28 September 2017**

Panel: Mr José María Alonso Puig (Spain), President; Mr Dirk-Reiner Martens (Germany), Mr Jan Räker (Germany)

*Football*

*Application to become member of UEFA*

*Admissibility of the appeal*

*Standing to sue or to be sued*

*Standing to be sued*

*Priority of associations' statutes and rules over deviating custom*

*Interpretation of statutes and regulations of a (sport) association*

*Competent body within UEFA to deal with applications for UEFA membership*

*Discretion by UEFA Congress when examining applications for UEFA membership*

1. It follows from Article R49 of the CAS Code that a federation may derogate from the 21-day time-limit to appeal in its statutes or regulations. Therefore, in cases in which time-limits to appeal set by the federation differ from Article R49 CAS Code, the rule of the federation prevails (being the *lex specialis*).
2. The question of standing to sue or to be sued is a matter of substantive law. Under Swiss law it is well established that a party must have a current interest worthy of protection that can be addressed or rectified by the claims or appeal being made. This principle is provided in Article 59(2) of the Swiss Code of Civil Procedure (the CCP) and is known as "*Rechtsschutzinteresse*" or "*intérêt digne de protection*". This is generally translated into English by the term "standing" (although standing can have a somewhat different role when applying English or other Common laws).
3. The question of standing to be sued must be resolved on the basis of a weighting of the interests of the persons affected by a decision. In case an association as *e.g.* UEFA renders a decision which is later on appealed against, the question, thus, is who is best suited to represent and defend the will expressed by the organ of the association having rendered the appealed decision. In cases where a claim submitted to CAS would *e.g.* have a bearing on all UEFA members represented in the UEFA Congress in that *e.g.* all of them would be deprived of their discretion in their decision on an application for UEFA membership, UEFA as the mother association of its members and as the association whose body's decision is sought to be predetermined is best suited to represent and defend the interests of its members.
4. Under Swiss law a crucial factor for the interpretation of an association's regulations is how the association itself applies a rule (so-called "*Vereinsübung*"); in this context it is

not required that such application amounts to standard, long-standing practice but a one-time application may suffice to be an “important indication” (“gewichtiges Indiz”) as to how a statutory provision shall be applied. However, it also has to be noted that associations enact regulations and statutes which articulate their functioning. These regulations constitute legal bodies which are mandatory for the association itself (including its organs) and for its members and such regulations have priority over any deviating custom.

5. Statutes and regulations of a (sport) association shall be interpreted and construed according to the principles applicable to the interpretation of the law rather than those applicable to contracts. Furthermore the interpretation of the statutes and rules of a sport association has to be rather objective and always 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. It will further have to identify the intentions (objectively construed) of the association which drafted the rule, and may also take account of any relevant historical background which illuminates its derivation, as well as the entire regulatory context in which the particular rule is located.
6. The UEFA Executive Committee as the head of the administrative governance of UEFA is the competent body within UEFA to first deal with an application for UEFA membership. The question as to how much discretionary power the Executive Committee has when considering a membership application first is answered in the rules and regulations of UEFA, which on the one hand foresee that the Executive Committee has the power to “provisionally” admit a candidate, and on the other hand clearly provide that the final power to accept or refuse an application to membership resides with the UEFA Congress; this is regardless of the competence of the Executive Committee to submit to the Congress its view on the application, its background facts and its merits. In cases where the Executive Committee – despite not being entitled to do so – renders a final and binding decision on whether a candidacy may or may not be rejected the respective decision must be set aside and UEFA has to be ordered to transmit the application for UEFA membership to the UEFA Congress.
7. Under Article 6(2) of the UEFA Statutes the UEFA Congress has discretionary powers to admit new members which fulfil the requirements of Article 5(1) of the UEFA Statutes. However this does not mean that the Congress can take arbitrary decisions without complying with the requirements for membership, as compliance with Article 5(1) of the UEFA Statutes is mandatory for all new potential members. Once this threshold is satisfied the Congress may or may not admit a candidate, and on this lies its discretionary power in accordance with Article 6(2) of the UEFA Statutes. Therefore, a CAS panel requested to decide whether to order the UEFA Congress to “*take all necessary measures to admit an applicant for membership as a full member of UEFA*”, cannot proceed as requested; rather the CAS panel is bound to respect such power of discretion. Put differently, it is not the role of a CAS panel to replace the due discretion of a body of a sports association by its discretionary views.

## **I. PARTIES**

### **A. The Appellant**

1. The Jersey Football Association (“JFA” or the “Appellant”) is the body that co-governs and coordinates football in Jersey.

### **B. The Respondent**

2. The Union of European Football Associations (“UEFA” or the “Respondent”) is an association incorporated under the laws of Switzerland with its headquarters in Nyon, Switzerland. It 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.
3. The Jersey Football Association and UEFA are referred to collectively as the “Parties”.

## **II. FACTUAL BACKGROUND**

4. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions, pleadings and statements adduced at the hearing. Additional facts and allegations found in the Parties’ written submissions, pleadings and statements 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.
5. On 7 December 2015, JFA submitted its application for membership in UEFA.
6. On 1 September 2016, UEFA issued a decision (the “Appealed Decision”), which was received by JFA on 6 September 2016, informing that, in accordance with the standard practice of UEFA, JFA’s membership application was examined by the UEFA administration and was discussed at a meeting of the UEFA Executive Committee on 25 August 2016, with the following outcome:  
  
*“Please be informed ... the UEFA Executive Committee decided that the application should not be forwarded to the UEFA Congress, since the admission criteria set out in Article 5 of the UEFA Statutes are clearly not satisfied, in particular, since Jersey cannot be considered as an independent state within the meaning of this provision”.*
7. Therefore, JFA’s application to become a member of UEFA was rejected by the Executive Committee of UEFA.

### III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

8. On 15 September 2016, in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the “Code”), JFA lodged a Statement of Appeal before the Court of Arbitration for Sport (“CAS”) against UEFA concerning the Appealed Decision.
9. On 26 September 2016, in accordance with Article R51 of the Code, the Appellant filed its Appeal Brief.
10. On 4 November 2016, in accordance with Article R55 of the Code, the Respondent filed its Answer. Together with its Answer, the Respondent objected to the jurisdiction of the CAS.
11. On 9 November 2016, the Appellant requested the CAS for an extension to file its submission on CAS jurisdiction.
12. On 11 November 2016, the CAS informed the Parties about the constitution of the Panel composed of the following members:
  - President: Mr José María Alonso Puig, attorney-at-law in Madrid, Spain
  - Arbitrators: Mr Dirk-Reiner Martens, attorney-at-law in Munich, Germany  
Mr Jan Räker, attorney-at-law in Stuttgart, Germany.
13. On 30 November 2016, in accordance with Article R55 of the Code, the Appellant filed its comments on the issue of jurisdiction. The Appellant also filed comments on the substance of the Respondent’s Answer.
14. On 20 December 2016, the Panel decided not to bifurcate the proceedings and to deal with the issue of jurisdiction together with the merits.
15. On 17 February 2017, the CAS sent to the Parties a draft of the Order of Procedure.
16. On 6 March 2017, the Order of Procedure was signed by the Appellant.
17. On 9 March 2017, the Order of Procedure was signed by the Respondent while maintaining the challenge to CAS jurisdiction.
18. On 6 June 2017, the Appellant submitted a letter requesting permission (i) to present witness evidence in the person of Mr Philip Austin, President of the JFA, (ii) to provide the Panel and the Respondent with hearing bundles, and (iii) to provide the Panel and the Respondent with skeletons arguments.
19. On 8 June 2017, the CAS granted a one-day term to the Respondent to respond to the Appellant’s requests made on 6 June 2017.
20. On 8 June 2017, the Respondent opposed to all requests made by the Appellant.

21. On 9 June 2017, the Panel decided (i) to hear Mr Philip Austin, and (ii) to reject all other requests made by the Appellant on 6 June 2017.
22. On 28 June 2017, a hearing in this case was held at the CAS headquarters in Lausanne, Switzerland. The Panel was assisted by Mr William Sternheimer, Deputy Secretary General of the CAS. The following persons were present at the hearing on behalf of the Parties:

Appellant: Mr Christopher Hancock, Ms Belinda McRae, Mr Jonathan Crystal, Sir Philip Bailhache, Mr Philip Austin, Mr David Brookland.

Respondent: Sir Daniel Bethlehem, Mr Jan Kleiner, Mr Adam Lewis, Mr Luca Tarzia, Mr Emilio Garcia, Mr Jacques Bondallaz.

The Parties did not raise any objection as to the composition of the Panel and the procedure before CAS. Furthermore, the Parties expressly confirmed at the end of the hearing that their right to be heard had been respected.

#### **IV. PARTIES' POSITIONS ON JURISDICTION OF THE CAS**

##### **A. UEFA's position**

23. In its Answer to the Appeal Brief, UEFA argued that the CAS lacks jurisdiction to deal with this Appeal. The main arguments presented by UEFA are condensed below:
24. The JFA is not a member of UEFA.
25. UEFA states that the Appellant completely omits to explain why it would be at all in a position, as a non-member of UEFA, to invoke a provision of the UEFA Statutes.
26. Under Swiss law, the statutes of an association only bind and give rights to members of the association, but not to external third parties.
27. Only if a party acquires membership in an association, does the acquisition, and - correspondingly - the grant of membership status bind the association to the new member and the new member to the association. Only then are the statutes of an association binding on the parties. Only then is an arbitral clause contained in the statutes of the association binding on the parties.
28. In consequence, the UEFA Statutes also oblige and give rights only to members of UEFA and to UEFA itself. They are binding only in the legal relationship between UEFA and its members (and between UEFA members).
29. The Appellant, however, is not a member of UEFA. The UEFA Statutes do not grant any rights to Appellant as an external party, as a non-member.
30. There are some types of disputes between UEFA and non-members that are heard by the CAS pursuant to other specific arbitration clauses. For instance, the CAS hears disputes between

UEFA and clubs participating in UEFA Club Competitions in relation to such competitions. As another example, the CAS hears disputes in disciplinary matters, for instance between UEFA and players or clubs, which are subject to disciplinary sanctions.

31. However, such cases are totally different from the issue at hand. In such disputes, the jurisdiction of the CAS is based on specific arbitration clauses in specific regulations governing such clubs' and players' participation in UEFA's club competitions.
32. Whenever disputes between non-members and UEFA are brought before the CAS, this is done based on specific regulatory provisions expressly providing for it, but never on the basis of the UEFA Statutes alone.
33. The purpose of Article 62 is not to create a jurisdiction for an indeterminate number of appeals. It is, to the contrary, the role of Article 62 to restrict, within the limited number of stakeholders who can rely on the UEFA Statutes, the ability to file a complaint with the CAS to parties who are 'directly affected'.
34. UEFA argues that it is not even alleged, and it is undisputed, that the Appellant and UEFA have not entered into any separate contract or agreement to arbitrate this dispute.

***The “Non-Exception”: Specific Agreement to arbitrate - the Gibraltar case***

35. UEFA states that in that case, CAS jurisdiction only existed because there was an explicit and specific agreement to arbitrate between the parties. That explicit and specific agreement had to be found to exist precisely because, absent it, the CAS would not have had jurisdiction over a dispute between UEFA and a non-member.
36. When years after the dispute with UEFA the Gibraltar Football Association brought a new arbitration against FIFA before the CAS, the CAS was at great pain to identify the agreement to arbitrate between the parties. In its award, the CAS eventually accepted jurisdiction only based on a specific offer to arbitrate, and a respective acceptance of such offer. In other words: the CAS accepted jurisdiction on the basis of an agreement concluded between the parties - but no such agreement exists between the Appellant and UEFA.
37. In the view of UEFA, the example of Gibraltar confirms exactly that a membership applicant cannot invoke a jurisdictional clause contained in the UEFA (or FIFA) Statutes for the benefit of members, precisely because a membership applicant is not a member of UEFA.

**B. JFA's position**

38. The JFA submitted a Reply to UEFA's Answer on the issue of jurisdiction stating that the CAS has jurisdiction to decide the case.
39. The JFA states that the UEFA Statutes have two relevant but disjunctive provisions. The first (Article 61) concerns the CAS as an “Ordinary Court of Arbitration”, which contains an

exclusive list of who may bring a case to the CAS. The second (Article 62) concerns “CAS as Appeals Arbitration Body”, which contains no such limitation.

40. With respect to the provisions mentioned above, the JFA maintains the following:

- (a) These provisions are worded disjunctively, and not conjunctively.
- (b) Both 61(1) and 62(1) have separate side headings in the margin of the UEFA Statutes which both say “*jurisdiction*”.
- (c) They apply to different capacities in which the CAS may adjudicate:
  - (i) As an ordinary court of arbitration, unsurprisingly, jurisdiction to arbitrate is limited to the established UEFA family. The limitation to jurisdiction (side-headed in Article 61(1) as defining CAS’ jurisdiction in respect to such cases) is made explicitly.
  - (ii) As an Appeals Arbitration Body, CAS jurisdiction under Article 62 is plainly defined differently and as a jurisdictional clause clearly separate from Article 61(1). As does the substantive wording, the side-heading to Article 62(1) makes it clear that Article 62 separately defines CAS jurisdiction in respect to such appeal cases. Article 62 does not specify that it is subject to Article 61(1); on the contrary, the plain and natural reading is that it is entirely and intentionally disjunctive.
- (d) UEFA’s argument as to a general principle of membership might have force if Article 61(1) had not created express limits on arbitration. It would certainly have force —although it would be unnecessary— if the stated limits were (as with the FIFA limits) plainly of general application. But a clear difference is created between the provisions.
- (e) Article 62(2) deals with the question who may bring the claim. It is worded in terms of “parties affected”. There is no cross-reference, whether explicit or implicit, to the limitations in Article 61(1). An applicant for membership is plainly a “*party affected*”.
- (f) Article 62(2) goes on to provide for WADA to count as an affected party in doping cases. The JFA observes:
  - (i) This part of Article 62(2) is plainly worded to ensure that the first sentence of Article 62(2) (i.e. “*only parties directly affected ...*”) does not provide an obstacle to WADA’s involvement, even though WADA is not a UEFA member.
  - (ii) Article 62(2) does not address any obstacle in Article 61(1), i.e. the putatively exclusive list of those who can bring claims to the CAS. This is plainly because that list relates to jurisdiction under Article 61(1), not under Article 62(1).
  - (iii) If UEFA’s argument is taken at the height it is pitched (i.e. only members may bring claims to the CAS, and there is no need to construe the relevant association statutes), then this part of Article 62(2) would be ineffective. If a non-member inherently cannot be given under association statutes a right to bring a claim to the CAS, then it does not matter how explicit the association purports to confer such a right. As a non-member it inherently receives nothing.

41. Finally, the JFA cites UEFA's Regulations Governing the Implementation of the UEFA Statutes. In particular, it mentions Articles 1 and 2. The key part for JFA is Article 2(b) of the Regulations, which states the following:

*"The application for admission must include the following:*

*(...).*

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

42. The JFA submits that the effect of Article 2(b) is that the applicant for membership immediately *"undertakes to observe UEFA's Statutes, regulations and decisions at all times"*. Prior to membership, such an undertaking by the applicant would include issues such as exclusivity of CAS jurisdiction under Article 62 of the UEFA Statutes.
43. The JFA argues that much of the purpose and effect of Article 2(b) of the UEFA Statutes is to create a legal relationship between UEFA and the applicant prior to any decisions being made on membership or even on provisional membership.

## **V. PARTIES' POSITIONS ON THE MERITS**

44. The following is a brief description of the Parties' submissions and arguments on the merits in this arbitration. It does not depict in detail all of the Parties' arguments. However, they have all been taken into consideration by the Panel in its deliberations and drafting of the present award.

### **A. The Appellant: JFA**

#### ***a) Standing to sue/standing to be sued***

45. The JFA states that it is the association which has been affected by the decision taken by UEFA.
46. With respect to UEFA's argument, that the English FA should also have been a Respondent and that UEFA alone therefore has no standing to be sued, the JFA argues that the English FA have never stated that their fundamental interests are at stake. In addition, the JFA stresses that it has kept the English FA fully informed from the very beginning of its intention to apply for membership in UEFA and that the English FA never indicated that it had any concerns in this respect.
47. Finally, the JFA states that it was admitted under a special form of membership relating to associations in the British Commonwealth under Rule 44\*c) of the English Football Association Rules. Its affiliation to the English FA was never one of duty, but always one of choice, and no rights of the English FA are affected if such choice is reversed.



**b) *Ultra vires action of UEFA's Executive Committee***

48. First, the Appellant's Appeal Brief states that the Appealed Decision was an *ultra vires* action by UEFA's Executive Committee and that the Appealed Decision should be overturned for this reason alone, affirming that under the UEFA Statutes the power to admit a national football association to membership is vested in UEFA's Congress.

49. The Appeal Brief refers to Article 6(2) of the UEFA Statutes which provides the following:

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

50. Therefore, the JFA states that when the Executive Committee purported to determine the application of JFA it was acting *ultra vires*.

51. During the hearing, the JFA pointed out that, under the UEFA Statutes, the appropriate body to reject a candidate for membership in UEFA is not the UEFA Executive Committee but the UEFA Congress. In this regard, the JFA mentioned the language of Article 23 of the UEFA Statutes:

*"The Executive Committee shall have the power to adopt regulations and make decisions on all matters which do not fall within the legal or statutory jurisdiction of the Congress or another Organ".*

Such priority competence of the Congress is however stipulated in Article 6 of the UEFA Statutes. The subsidiary competence of the Executive Committee therefore does not come into play for this decision.

52. Moreover, the JFA stated that Article 13.2 lit. l) of the UEFA Statutes expressly assigns to the Congress the duty to *consider* membership applications, i.e. not only to engage in the formal act of taking a decision but also to carry out the relevant examinations and deliberations. The language of this article is the following:

*"Matters within the power of Congress shall be the: (...)*

*l) consideration [emphasis added] of membership applications and the exclusion of a Member Association".*

**c) *Article 5 of the UEFA Statutes***

53. Second, the Appellant based its claim that the Congress of UEFA should be ordered to accept JFA as a member of UEFA on the fact that JFA complies with all requirements for membership stated in Article 5 of the UEFA Statutes.

54. The JFA states that it is a national football association in the continent of Europe, and responsible for the organization and implementation of football-related matters in the territory of Jersey.

55. Although the JFA is “affiliated” to the English FA, that association does not result in the English FA having any jurisdiction in Jersey or over the JFA in relation to football-related matters nor does the English FA allow Jersey to vote in any proceedings of the English FA.
56. The JFA also argues that it is “*based in a country recognized by the United Nations as an independent state*” within the meaning of Article 5 as this Article does not require that there should be only one football association per “*country recognized by the United Nations as an independent state*”. This distinguishes Article 5 of the UEFA Statutes from the FIFA Statutes where Article 10.1 and the definition of country has this effect. Unlike the FIFA Statutes, in UEFA there is no requirement that there should only be one such football association per country. Consequently, in the JFA’s view and as an alternative to its other arguments, Jersey is located “*in a country recognized by the United Nations as an independent state*”, i.e. the United Kingdom.

**d) *Discrimination***

57. The JFA maintains that the effect of Article 5 of the UEFA Statutes is that every country in Europe is either already in UEFA or entitled to apply to join (Monaco, Vatican City State), with the exception of:
- (a) Jersey
  - (b) Guernsey
  - (c) Isle of Man.
58. This despite those three countries (together known as the Crown Dependencies) being the most constitutionally independent “*non-sovereign territories*” in the world, the JFA claims.
59. Therefore, the JFA states that the rule as applied by UEFA is discriminatory. Whilst it was rational to promote a rule to stop UEFA being drawn into future territorial disputes or secession issues, the consideration of Article 5 had to consider the position of the principal and permanent subjects of its application, namely the Crown Dependencies. The result of UEFA’s application of Article 5 is to leave the Crown Dependencies in a unique position of exclusion from international football.

**e) *Irrationality***

60. The JFA states that to construe the eligibility rule in Article 5 as being either that of “*recognition by the international community*” or “*UN membership*” would be irrational for the following reasons:
- (a) The rule goes beyond what is necessary to achieve the stated objective of avoiding UEFA being brought into territorial disputes;
  - (b) There is no evidence that UEFA considered the merits of the application of the new rule on the very limited number of countries affected; and

(c) The use in Article 5 of classic international law notions of independence as a yardstick for footballing nationhood was particularly inappropriate to be introduced in Europe in 2001 given that in modern Europe state sovereignty and independence are increasingly relative and disputed concepts. This has particular relevance to the position of Jersey as on a modern approach to meaningful independence in Europe, Jersey fulfils almost all of the requirements for state sovereignty - the exception being the use of military force external to its borders - as well as other classic requirements absent from modern definition.

61. The JFA's Prayers for Relief contained in the Appeal Brief were the following:

*"Jersey FA makes essentially four submissions.*

*First, it is submitted that the action of the Executive Committee in refusing the application was ultra vires.*

*Secondly, as explained in paragraphs 20-24 above, it is submitted that one construction of Article 5 is that Jersey FA is indeed "based in a country which is recognised by the United Nations as an independent state" (namely the United Kingdom).*

*Thirdly, it is submitted that it would be discriminatory, irrational and unfair to exclude the JFA from UEFA membership.*

*Fourthly, as explained in Appendix 1, it is submitted that, on an objective assessment, Jersey has sufficient characteristics of independence to be regarded for the purposes of Article 5 as an independent state.*

*The Jersey FA respectfully requests that the relief sought in the Notice of Appeal should be granted, namely, an Order:*

*'Directing the UEFA Executive Committee to transmit Jersey FA's application for UEFA membership to the UEFA Congress which shall take all necessary measures to admit the Jersey FA as a full member of UEFA without delay'".*

## **B. The Respondent: UEFA**

### **a) Standing to sue/standing to be sued**

62. UEFA states that because the Appellant's legal position is that of an affiliated county association of the English FA, the Appeal concerns fundamental interests of the English FA.
63. UEFA mentions that under CAS case law whenever fundamental interests of a third party are directly concerned - and thus potentially affected by a CAS award on the merits - this third party must be included in the respective proceedings in front of the CAS.
64. In line with the above, UEFA argues that, as the sole Respondent in the present proceedings, UEFA has no standing to be sued and the Appeal should be inadmissible or rejected on this ground alone.

**b) *The Procedure for UEFA Membership Applications***

65. The admission procedure for UEFA membership is established in Article 6 of the UEFA Statutes and defined more in detail in the Regulations Governing the Implementation of the UEFA Statutes.
66. Pursuant to Article 1 of these Regulations, a national football association that wishes to become a member of UEFA must (i) submit a written application to the UEFA Administration, for (ii) submission to the UEFA Congress.
67. The written application must first be sent to the UEFA Administration. According to the long and well established practice of UEFA, this means that a first assessment is made by the UEFA Administration and the UEFA Executive Committee. In this framework, the UEFA Administration and the UEFA Executive Committee examine in detail whether the applicant meets all the necessary legal requirements for membership with UEFA.
68. UEFA states that only if, according to this first-step examination, the necessary legal requirements are met, the application file (upon a formal decision of the UEFA Executive Committee) is transmitted onwards to the UEFA Congress for the decision as to whether or not the applicant shall be admitted.
69. This second step, i.e. the decision of the UEFA Congress, is then a discretionary decision of the members of UEFA. This is reflected in Article 6(2) of the UEFA Statutes, which establishes that *“The Congress shall have the power in its discretion to accept or refuse an application for membership”*.
70. UEFA argues that this procedure was followed in this case, in the same way as in all other membership applications of the past years: over the course of several months, various meetings were held with representatives of the Appellant, documents were examined, explanations were given, and legal assessments were made as to the question whether the Appellant meets the necessary legal requirements for UEFA membership.
71. The reason provided by UEFA for this two-step examination is that, before the decision is taken by the UEFA Congress about a membership application, there must be an initial examination by the UEFA Administration and the UEFA Executive Committee as to whether the necessary legal requirements are met in the first place. If this first examination were not required, any random membership application would have to be forwarded to the UEFA Congress, even if it is totally without merit. This is what the relevant regulatory and statutory provisions of UEFA seek to avoid and indeed have avoided for several years now.
72. From a practical perspective, it is inconceivable for UEFA that the necessary legal assessment could be carried out during a UEFA Congress with the involvement of 55 Member Associations.
73. Accordingly, UEFA states that the above-described two-step mechanism has been the standard practice of UEFA over many years, and it has never been put into question, because it is a

guarantee of a fair treatment of all applications, that are considered in detail and within an appropriate time frame.

74. In addition to the above, according to UEFA this application of its regulations and Statutes is also perfectly in line with Swiss association law.

1. *The substantive prerequisites for UEFA membership*

75. There are three key elements that must be met in order to be eligible to become a UEFA member:

(i) The applicant must be “*a national football association situated in the continent of Europe*”.

(ii) The applicant must be “*based in a country which is recognized by the United Nations as an independent state*”.

(iii) The applicant must be “*responsible for the organization and implementation of football-related matters in the territory of their country*”.

76. Overall, therefore, the key criteria for membership presented by UEFA are as follows:

(i) The association must be a national football association, and not a regional association, situated in the continent of Europe;

(ii) The national football association must be based in a country recognised as an independent state by the majority of the members of the United Nations; and

(iii) The national football association must be responsible for the organization and implementation of football-related matters in the territory of its country recognised as an independent state.

77. The ratio of the current wording of Article 5 of the UEFA Statutes provided by the Respondent is that UEFA wanted to (i) protect its current member associations and prevent the fraction of such associations into several (regional) associations in their territory, which could then all apply for UEFA membership. Likewise, UEFA wanted (ii) to make sure that for future membership applications, a clear criterion - i.e. recognised independence of the respective country - would exist.

2. *The JFA fails to meet several criteria for UEFA membership*

78. First, UEFA states that the JFA is not a “*national football association*” as required by Article 5 of the UEFA Statutes.

79. UEFA states that the Appellant is a regional football association, affiliated to the English FA, arguing that this is confirmed by the Appellant itself on its website.

80. UEFA argues that the Appellant operates under the English FA and it does not have the necessary responsibility for organizing football on its territory.
81. UEFA recognizes that as a regional association (county association) of the English FA, the Appellant has some responsibility to organize football on local level. However, this responsibility can be exercised always and only within the framework established by the English Football Association.
82. It is only under the overall governance of the English FA that the Appellant has certain organizational responsibilities on its local level, i.e. for the territory of Jersey.
83. The Appellant has some limited competencies on its regional level, but only within the regulatory framework granted to it by the relevant national association, which in this sense is the “superior” body.
84. The responsibility of a county association is always and only subsidiary to the overriding responsibility of the English FA. The very fact that the Appellant only operates under the English FA demonstrates that it is not the Appellant, but the English FA that has such required responsibility. In this respect, UEFA cites the “Memorandum of Association” of the Appellant, which reads (in its Article 2) as follows:

*“Without prejudice to the generality of the foregoing, the Association is able:*

*(...).*

*(12) to provide by rules, regulations, conditions, bye-laws, or otherwise, for deciding and settling all differences that may arise between associations, clubs, competitions, players or any persons who are members of or who are employed or engaged by any such association, competition or club, or any other person in reference to due compliance with the Laws of the Game (as from time to time prescribed by The Football Association Limited) or the rules, regulations, conditions or bye-laws of the Association or of The Football Association Limited, or in reference to contracts, or to any other matter of dispute or difference arising between such, or persons, or any of them, and whether the Association is concerned in such dispute or difference or not, and to make such provisions for enforcing any award or decision as shall be thought proper;*

*(...).*

*(14) to co-operate with The Football Association Limited in all matters relating to the game, including compliance with the Rules of The Football Association Limited and the rules and regulations of any body to which The Football Association Limited is affiliated;*

*(15) to adopt and carry out all such rules and regulations, conditions, bye-laws, agreements and arrangements of The Football Association Limited, as are now in existence and from time to time, and to comply with or to enforce the due compliance with the same unless and until the same shall have been duly varied in accordance with the terms thereof”.*

85. The fact that the Appellant is legally integrated into the hierarchy established by the English FA is furthermore reflected also in the “*Rules of the English Football Association*”. Article 4 of these Rules establishes the following prerequisites for the status of a “*County Association*”:

*“4 (a) Conditions of Affiliation*

*(i) Each County Association shall cover a defined area and shall neither extend nor alter such area without first having obtained the written consent of The Association and accordingly, only on the written confirmation by The Association shall an association be accorded the status of a County Association”.*

86. As a final remark in this respect, the Respondent adds that football players born in Jersey (such as Graeme Le Saux) suffer no prejudice whatsoever due to Appellant’s non-membership with UEFA, precisely because the Appellant’s affiliation with the FA allows such players to be eligible to play for the national team of England. This is, again, a fundamental difference between this matter and the Gibraltar case.
87. Moreover, UEFA states that Jersey is not an independent State, and it is not recognized as such by any member of the international community.
88. UEFA argues that the Appellant fails to draw the one correct conclusion: the Appellant is not a country, it is not an independent state, it is not recognized as such, and it cannot therefore be a UEFA member.
89. While treaties and other international agreements concluded by the United Kingdom may be extended to the Crown Dependencies, a mechanism, known as Letters of Entrustment, has been developed to enable the Crown Dependencies to conclude treaties and agreements in their own right addressing certain matters, notably those concerned with international taxation. However, the defence and the international representation is the responsibility of the United Kingdom.
90. Finally, UEFA argues that Jersey is not recognized as an independent State by any other State, whether in Europe or elsewhere.
91. UEFA’s Prayers for Relief included in its Answer to the Appeal Brief were the following:

*“Based on the foregoing, UEFA respectfully requests CAS primarily to issue an Award on Jurisdiction, declaring that CAS has no jurisdiction to hear this case.*

*164. Only for the sake of completeness, and under the express reservation of its plea of lack of jurisdiction made above, UEFA submits the following Prayers for Relief:*

- (a) Primarily: CAS shall declare this Appeal inadmissible;*
- (b) In any event, CAS shall reject all reliefs sought by Appellant, insofar as they are admissible;*
- (c) In any event, CAS shall confirm the Decision under Appeal; and*

*(d) In any event, CAS shall order Appellant to bear all of the costs of these arbitration proceedings and award UEFA a contribution of at least EUR 50,000 towards the legal fees and expenses that UEFA has incurred”.*

## VI. JURISDICTION OF THE CAS

92. Pursuant to Article R47 of the Code:

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

*An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned”.*

93. Thus, within the context of appeal arbitration procedures, CAS jurisdiction is limited to the adjudication of appeals against a decision of a sports body, where the following three requirements are satisfied cumulatively: (i) the statutes or regulations of the sports body contain an arbitration clause providing for appeal to the CAS or where the parties have agreed on an arbitration agreement; (ii) the sports body has issued a decision; and (iii) said decision is final, meaning that the appealing party has exhausted all available internal remedies.

94. Article 62 of the 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.*

*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.*

*The time limit for appeal to the CAS shall be ten days from the receipt of the decision in question.*

*An appeal before the CAS may only be brought after UEFA’s internal procedures and remedies have been exhausted”.*

95. The Appealed Decision was rendered by the UEFA Executive Committee, which is an organ of UEFA according to Article 11 of the UEFA Statutes.

96. Article 62(2) of the UEFA Statutes states that *“Only parties directly affected by a decision may appeal to the CAS”*. The JFA is a party directly affected by the Appealed Decision. In this respect, it is obvious that the Appealed Decision concerns nobody but the Appellant.

97. The Panel does not share UEFA’s view that Article 62 only applies in favour of UEFA members. The wording of Article 62(1) is very broad, stating that *“Any”* decision of UEFA



organs can be appealed before the CAS. Unlike in Article 61, which governs claims to the CAS in ordinary procedure, there is no finite list of entitled institutions for appeal proceedings.

98. The Panel wants to draw the attention to the fact that Article 62(2) does not exclusively refer to members affected by the decision by UEFA organs but to any “parties”. Further Article 62(2) does expressly mention a non-member of UEFA (WADA) as a party entitled to appeal decisions of UEFA organs before the CAS, which mention would be unnecessary if appeals were reserved to UEFA members. It is therefore clear that the meaning of this clause should be broader than finding CAS jurisdiction only for appeals lodged by members of UEFA.
99. Based on the above, the Panel holds that the CAS has jurisdiction to hear this case.

## VII. ADMISSIBILITY OF THE APPEAL

100. Article R49 of the Code provides as follows:

*“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or 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”.*

101. According to Article R49 of the CAS Code, a federation may derogate from the 21-day time-limit in its statutes or regulations. Article 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 Article R49 CAS Code, the rule of the federation prevails (being the *lex specialis*) (see CAS Code Commentary, MAVROMATI/REEB, Article R49 n. 91).
102. The Appealed Decision was communicated to the JFA on 6 September 2016 by the UEFA Executive Committee. On 15 September 2016, the Appellant filed its Statement of Appeal against the Appealed Decision with the CAS Court Office.
103. Consequently, the Appellant complied with the time limits prescribed by Article 62(3) UEFA Statutes. The Appeal was, therefore, filed on time.

## VIII. APPLICABLE LAW

104. Pursuant to Article R58 of the Code:

*“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 the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*

105. In this case, the applicable rules are the UEFA regulations and, in particular, the UEFA Statutes. Subsidiarily, pursuant to Article R58 of the Code, Swiss Law is applicable. This was not disputed by the Parties.

## **IX. MERITS OF THE DISPUTE**

### **A. Standing to sue/standing to be sued**

106. The question of standing to sue or to be sued is a matter of substantive law. Several awards have established this doctrine, in particular CAS 2016/A/4602, CAS 2013/A/3047, CAS 2008/A/1639, CAS 2008/A/1583 & 1584. The award in CAS 2008/A/1639 stated:

*“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”.*

107. In Swiss law it is well established that a party must have a current interest worthy of protection that can be addressed or rectified by the claims or appeal being made. This principle is provided in Article 59(2) of the Swiss Code of Civil Procedure (the “CCP”) and is known as “*Rechtsschutzinteresse*” or an “*intérêt digne de protection*”. It is generally translated into English by the term “standing”, and the Panel adopts that term for convenience (although standing can have a somewhat different role when applying English or other Common laws).
108. The Panel comes to the conclusion that the JFA has demonstrated a sufficient actual and present interest to provide standing for its Appeal. In particular, the Appellant has demonstrated that the reversal of the Appealed Decision of the UEFA Executive Committee would have significant importance to the JFA in going forward in its candidacy to become a member of UEFA.
109. With respect to the standing to be sued, the CAS on several occasions in appeal proceedings held 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”* (CAS 2015/A/3910, para. 138, endorsed by CAS 2016/A/4602, paras. 81 ff.).
110. UEFA as the organization (through an organ of the association) that issued the Appealed Decision should *prima facie* have standing to be sued in the present proceedings.
111. In light of the challenges brought forward by UEFA, the question arises though, if UEFA also has standing to be sued as the sole Respondent of this proceeding or if the JFA had to direct

its Appeal against both UEFA and the English FA and, if so, what legal consequence follows from JFA's failure to do so.

112. For the evaluation of this question, the *petitum* of the Appellant must first be looked at. The *petitum* by the Appellant included in its Statement of Appeal reads as follows:

*“The JFA’s request for relief is for an Order:*

*Directing the UEFA Executive Committee to transmit the JFA’s application for UEFA membership to the UEFA Congress which shall take all necessary measures to admit the JFA as a full member of UEFA without delay”.*

113. Despite being phrased together in one sentence, the Panel understands that it has to decide on two different issues:

- i. first, whether to *“transmit the JFA’s application for UEFA membership to the UEFA Congress”*, and
- ii. second, whether to order the UEFA Congress to *“take all necessary measures to admit the JFA as a full member of UEFA without delay”*.

114. The first request of JFA concerns a challenge of the internal decision-making process at UEFA. The Panel holds that whether a decision on JFA's membership application is taken by the UEFA Executive Committee or by the UEFA Congress does not affect the legal interests of the English FA in any way.

115. The Panel therefore holds that UEFA does have standing to be sued as the sole Respondent for the first request of JFA.

116. With its second request, the JFA seeks to predetermine the result of the UEFA Congress' decision on JFA's membership application. The JFA therefore seeks the UEFA Congress, and thereby the national FAs, who are the members of UEFA and whose delegates constitute the UEFA Congress, to have no discretion in their decision on the application of JFA, once it has been transmitted to the UEFA Congress as requested.

117. The Panel notes that such request would have a bearing on all UEFA members represented in the UEFA Congress as all of them would be deprived of their discretion in their decision on JFA's membership application. The Panel therefore takes the view, that in such situation, UEFA as the mother association of its members and as the association whose body's decision is sought to be predetermined is best suited to represent and defend the interests of its members.

118. The Panel further considers that the most pertinent issues behind the legal questions which need to be addressed in order to evaluate the merits of JFA's membership application are much more of general nature than resembling an antagonistic situation in which one party seeks to get something at the other's expense. This proceeding is about what kind of members are entitled to UEFA membership under its regulations and not about a claim of one FA against another which defends its rights and possession against a potential loss.

119. It is noted that this approach is also in line with prior CAS jurisprudence in the case CAS 2016/A/4602, in which the Panel held that a newly admitted member of UEFA did not have to be a Co-Respondent aside UEFA in a proceeding challenging its admission, i.e. in a proceeding which could lead to a much more severe consequence for such FA than the English FA might suffer from if the request of JFA was granted by the Panel.
120. The Panel finally observes that UEFA neither treated the English FA as a party to the membership application procedure of JFA, nor did they attempt to cause the English FA to participate in the current proceeding, despite being able to do so in line with Article 41.2 of the CAS Code. Equally, despite being aware of the current proceeding being initiated, the English FA never sought to intervene with it in line with Article 41.3 of the CAS Code.
121. On the basis of the aforementioned the Panel therefore holds that UEFA does have standing to be sued as a sole Respondent for both requests of the Appellant.

#### **B. Transmission of JFA's application to the UEFA Congress**

122. In support of its request to transmit its membership application to the UEFA Congress the Appellant argues that the decision rejecting a candidate for membership in UEFA is vested in the UEFA Congress and not in the UEFA Executive Committee. The Appellant therefore submits that the Appealed Decision does not comply with substantive provisions in the UEFA Statutes and regulations.
123. On the other hand, the Respondent argues that the Executive Committee is the head of the administrative governance of UEFA and that it is one of its duties to provide a legal analysis of compliance with the requirements for candidates to become members of UEFA. The Respondent stated that it would be completely inefficient to make the Congress decide on every application for membership to UEFA.
124. The Respondent also argues that under Swiss law a crucial factor for interpretation is how an association itself applies a rule in question (so-called "*Vereinsübung*"), stating that it is not even required that such application amounts to standard, long-standing practice but a one-time application may suffice to be an "important indication" ("*gewichtiges Indiz*") as to how a statutory provision shall be applied.
125. In principle the Panel agrees with what has been pointed out in the previous paragraph. However, the Panel holds that associations enact regulations and statutes that articulate its functioning. These regulations constitute legal bodies which are mandatory for the association itself (including its organs) and for its members and such regulations have priority over any deviating custom.
126. Whether and to what extent the Appealed Decision complies with substantive provisions in the UEFA Statutes and regulations depends – *inter alia* – on the principles applicable to their interpretation. In this respect, statutes and regulations of an association shall be interpreted and construed according to the principles applicable to the interpretation of the law rather than those applicable to contracts; see BSK-ZGB/HEINI/SCHERRER, Article 60 SCC no. 22; BK-

ZGB/RIEMER, 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).

127. In the case at hand, it is evident that UEFA is an association incorporated in Switzerland and, consequently, shall respect Swiss law. In addition, the rules and regulations for the governance and the procedures of the association are included, in the first instance, in the UEFA Statutes, the Rules of procedure of the UEFA Congress, and the Regulations governing the Implementation of the UEFA Statutes.
128. In order to decide whether the procedure that was internally followed by UEFA when deciding about JFA’s application for membership was correct, the Panel has taken into account the following relevant provisions of the UEFA Statutes:
- a. Article 6(2): *“The Congress shall have the power in its discretion to accept or refuse an application for membership”*.
  - b. Article 6(3): *“The Executive Committee may admit a national football association into membership on a provisional basis. A decision on full admission must be taken at the next Congress”*.
  - c. Article 13(2) l): *“Matters within the power of Congress shall be the: (...) l) consideration of membership applications and the exclusion of a Member Association”*.
  - d. Article 23(1): *“The Executive Committee shall have the power to adopt regulations and make decisions on all matters which do not fall within the legal or statutory jurisdiction of the Congress or another Organ”*.
129. In the case at hand, the Appealed Decision was taken by the Executive Committee. Then, in order to determine if the Executive Committee is entitled to reject a candidate for membership of UEFA the Panel has to follow a logical sequence, which results from answering to the following questions:
- 1) Which organ has the power to analyse the application at first?
  - 2) Which organ has the power to admit or reject definitely an application for membership in UEFA?
130. The Panel considers uncontested between both Parties that the UEFA Executive Committee is competent to deal with an application for UEFA membership first. The Panel considers that it would not properly reflect the role of the Executive Committee as the head of the administrative

governance of UEFA, if the Executive Committee was obliged to serve as a mere postman and to forward any application to the Congress irrespective of merit. The Panel therefore holds that the Executive Committee did have the power to analyse the application of JFA at first.

131. The question is then, how much discretionary power the Executive Committee has in these respects. For the evaluation of this issue, the Panel refers to Article 6(3), under which the Executive Committee has the power to “provisionally” admit a candidate. However, as stated in Article 6(2), the final power to accept or refuse an application to membership resides with the UEFA Congress. Moreover, Article 13 (2) lit. 1) establishes that one of the attributions to the UEFA Congress is the “*consideration of membership applications*”. It is therefore clear that the UEFA Statutes provide the Congress with the primary power and discretion to make final decisions on the merits of membership applications. Article 23(1) does not leave room for interpretation when stating “*The Executive Committee shall have the power to adopt regulations and make decisions on all matters which do not fall within the legal or statutory jurisdiction of the Congress or another organ*” (emphasis added).
132. Therefore, the competent organ for denying an applicant to become a member of UEFA is not the Executive Committee but the Congress, regardless of the competence of the former to submit to the Congress its view on the application, its background facts and its merits, thereby properly preparing and recommending the decision of Congress on the eventual fulfilment of the requirements and the convenience for an association to become a member. Such application of the Statutes also serves to free the Congress from impractical burdens of extensive determinations of facts. But the final decision to admit or reject the application has to be taken by the Congress.
133. In conclusion, in order to respond to the first part of the *petitum* (i.e. whether the Panel decides to “*transmit the JFA’s application for UEFA membership to the UEFA Congress*”), it is the Panel’s view that, in accordance with the UEFA Statutes, the UEFA Executive Committee was not entitled to render a final and binding decision on whether a candidacy may or may not be rejected. The application should have been transmitted to the UEFA Congress for decision-making. The Appealed Decision must therefore be set aside and UEFA is ordered to transmit the JFA’s application for UEFA membership to the UEFA Congress.

### **C. Admission of the JFA as member of UEFA**

134. The Appellant further requests the Panel to order the UEFA Congress to “*take all necessary measures to admit the JFA as a full member of UEFA without delay*”.
135. Article 6(2) of the UEFA Statutes provides that the Congress has discretion to accept or refuse an application for membership. But discretion cannot mean that the Congress can take arbitrary decisions without complying with the requirements for membership stated in Article 5(1) of the UEFA Statutes (with the only exception of the territories mentioned in Article 69(1)).
136. The discretion of the Congress cannot be confused with arbitrariness, and the compliance with Article 5(1) is mandatory for all new potential members. Once this threshold is satisfied, then

the Congress may or may not admit a candidate, and on this lies its discretionary power in accordance with Article 6(2) of the UEFA Statutes.

137. The Panel is therefore bound to respect such power of discretion. It is not the role of the CAS to replace the due discretion of a body of a sports association by the discretionary views of the respective Panel. In order to reach the conclusion that the UEFA Congress should be ordered to admit the JFA as a UEFA member, the Panel holds that it would have to reach the conclusion that, even after the consideration of all due discretion, such order would be the only legitimate outcome of the evaluation of the Appellant's application.

138. The Panel points out that, after the change introduced by the Extraordinary Congress held in October 2001, the decisive provisions of Article 5(1) of the UEFA Statutes now read 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".*

139. As already explained, this provision contains different requirements that must be cumulatively met by any potential candidate. These requirements are:

- a. The applicant must be a national football association situated in the continent of Europe;
- b. The applicant must be based in a country which is recognised by the United Nations as an independent state;
- c. The applicant must be responsible for the organization and implementation of football-related matters in the territory of their country.

140. The question whether or not the JFA is a "national" FA within the meaning of the Statutes is closely connected to the question whether or not Jersey is a nation. Such question touches on very fundamental and disputed issues of nationhood. For the purpose of this award, the answer to such questions can however be left open, as the Panel holds that the requirement that the applicant "must be based in a country which is recognised by the United Nations as an independent state" is not met.

141. As acknowledged by both Parties, the wording of the provision is suboptimal, as it is undisputed that the United Nations do not recognise countries. Only states, such as the member states of the United Nations can recognise other states. A literal understanding of the requirement must therefore be rejected, as otherwise no applicant could ever meet the requirement. The meaning of the requirement must therefore be determined by other means of legal interpretation.

142. Such interpretation of the meaning of the very provision at hand was carried out extensively by the Panel in the award in CAS 2016/A/4602. The Panel in that award concluded its extensive deliberations that the second requirement in Article 5 must be interpreted as requiring the applicant to be based in a country which is recognised as an independent State "by the majority of UN members" (see para. 133 of the award).

143. The Panel, fully conscious of its legal power to reach a different conclusion, concurs with the view of the Panel in the case CAS 2016/A/4602 for the reasons elaborated therein.
144. In any event, the Appellant has not established that Jersey has been recognized as an independent State by any other State and even less so by the majority of the United Nations members.
145. Jersey therefore does not meet this second requirement of Article 5(1).
146. Whether or not the JFA has full responsibility for organizing football on its territory therefore does not need to be considered further.
147. For the above reasons, it is the Panel's view that the JFA does not meet the requirements stated in Article 5(1) of the UEFA Statutes. Therefore, the Panel cannot come to the conclusion that the only legitimate outcome of the consideration of the Appellant's membership application by the UEFA Congress would be the acceptance of the application. To the contrary, irrespective of the UEFA Congress' persisting discretion to decide otherwise, the Panel is convinced that the Respondent made the right decision, albeit taken by the wrong body.

## **X. CONCLUSION**

148. The Panel concludes that, when deciding on whether to "*transmit the JFA's application for UEFA membership to the UEFA Congress*", in accordance with the UEFA Statutes, the Appealed Decision should have been taken by the UEFA Congress and not by the UEFA Executive Committee and, therefore, the Appeal must be partially upheld. Consequently, the respective decision must be made by the UEFA Congress which, under Article 13.2. 1) of the UEFA Statutes, is the competent body for the consideration of membership applications.
149. On the other hand, the Panel concludes that when deciding on whether to order the UEFA Congress to "*take all necessary measures to admit the JFA as a full member of UEFA without delay*", the Panel cannot proceed as requested by the Appellant because the UEFA Congress has discretionary powers to admit new members, and it is the Panel's understanding that JFA does not fulfil the requirements of Article 5(1) of the UEFA Statutes.



## ON THESE GROUNDS

### The Court of Arbitration for Sport rules:

1. The Appeal filed by the Jersey Football Association on 15 September 2016 against the Decision of the UEFA of 1 December 2016 is partially upheld.
  2. The decision rendered by the UEFA Executive Committee on 1 September 2016 informing the Jersey Football Association that its application should not be forwarded to the UEFA Congress is set aside.
  3. UEFA is ordered to transmit the Jersey Football Association's application for UEFA membership to the UEFA Congress.
  4. The petition to order the UEFA Congress to "*take all necessary measures to admit JFA as a full member of UEFA without delay*" is dismissed.
- (...)
7. All other motions or prayers for relief are dismissed.