Arbitration CAS 2012/A/2702 Győri ETO v. Union des Associations Européennes de Football (UEFA), award of 8 May 2012

Panel: Mr Rui Botica Santos (Portugal), President; Mr Stuart McInnes (United Kingdom); Prof. Denis Oswald (Switzerland)

Football
Financial Fair-Play
Alleged mistakes in the interpretation of the events and the law before the previous instance and CAS power of review
Jurisdiction of the UEFA Appeals Body with respect to a violation of the UEFA Club Licensing Regulations
Duty of disclosure
Irrelevance of domestic laws
Discretion of the UEFA deciding bodies in sanctioning member associations for violations of the UEFA Regulations
Exception from the UEFA Club Licensing Regulations

1. **Article R57 of the CAS Code grants a CAS panel power to review the facts and the law and any prejudice suffered by a party before the UEFA Appeals Body has been cured by virtue of the appeal to the CAS, in which the party is able to present its case afresh. Therefore, the CAS panel does not have to examine whether the alleged mistakes and errors in the interpretation of the events and the law have indeed been established.**

2. **The UEFA Control and Discplinary Body is competent to assert its jurisdiction in disputes relating to whether a club breached the UEFA Club Licensing Regulations; any possible clause inserted in a transfer agreement can only provide for FIFA jurisdiction with regard to disputes related to said transfer agreement but not with regard to any violation of the UEFA Club Licensing Regulations.**

3. **The aim of the duty of disclosure is to ensure that the clubs participating in a UEFA competition have adequate level of management and organization, improve their economic and financial capability, by increasing their transparency and credibility, and placing the necessary importance on the protection of creditors; and promote financial fair play in UEFA club competitions. The disclosure obligations are essential for UEFA to assess the financial situation of the clubs that are participating in its competitions and for this reason, the disclosure must be correct and accurate.**

4. **Under the UEFA regulations, domestic laws are irrelevant and cannot be considered in assessing issues related to UEFA club licensing.**

5. **Article 14.2 of the UEFA Disciplinary Regulations grants the deciding body a wide discretion when it comes to sanctioning member associations and clubs for violating the UEFA regulations, and account must be taken of any aggravating or mitigating circumstances.**

6. According to the UEFA Club Licensing Regulations, the decision on whether or not to grant a club any exception from the UEFA Club Licensing Regulations solely lies with the UEFA Administration on the basis of its discretion, and in order to benefit from any such exception, an applicant must file a clearly written and well founded exception request to the UEFA.

Györi ETO (the "Appellant" or the "Club") is a Hungarian professional football club and a member of the Hungarian Football Federation (HFF). The latter is a member of the Fédération Internationale de Football Association (FIFA) and the Union des Associations Européennes de Football.

The Union des Associations Européennes de Football (the "Respondent" or UEFA) is the body in charge of running football in the continent of Europe working with and acting on behalf of Europe's national football associations.

This appeal was filed by the Club against the decision rendered by the UEFA Appeals Body (the "UEFA Appeals Body") passed on 29 November 2011 (the "Appeal Decision"). The grounds of the Appeal Decision were notified to the Parties on 12 January 2012.

On 13 February 2009, the Appellant entered into an agreement with Estonian club FC Flora Tallinn ("Flora") for the transfer of the player J. (the "Player") from Flora to the Appellant (the "Transfer Agreement").

Under clause 1.2 of the Transfer Agreement, Flora agreed to transfer the Player to the Appellant in exchange for a fee (the "Transfer Fee") of EUR 100,000 to be paid in two instalments:

> *"(…) first half in 50.000 euro (fifty thousand euro) within 15 (fifteen) days from the date of signing this transfer contract, other half 50.000 (fifty thousand euro) until 30.06.2009".*

Flora and the Appellant specifically agreed under clause 1.3 of the Transfer Agreement that *"[t]he transfer fee shall be paid according to the Transferring Club's invoices and transferred by bank transfer to the invoice mentioned bank account".*

On 17 February 2009, Flora issued the invoice related to the first instalment in the amount of EUR 50,000 with number 90205 (Annex 4 of the Appeal Brief).

On 18 February 2009, the Appellant asked Flora to send the *"original invoice - signed, stamped – by post"* (Annex 3 of the Appeal Brief).

On 20 February 2009, the Appellant received the invoice related to the first instalment with number 90205 dated 17 February 2009 (Annex 4 of the Appeal Brief).

On 10 March 2009, the Appellant requested Flora to extend the deadline for paying the first instalment to 31 March 2009. It made a "100% guarantee" to pay the Transfer Fee by 31 March 2009 (Annex 2 of the FIFA File related to the dispute between the Appellant and Tallinn). This request was accepted by Flora.

On 31 March 2009, the Appellant *"(…) confirm[ed] and guarantee[d] that the transfer fee in the amount of 100.000 Euro (…) for the player J. will be paid until 30th of April 2009. The above mentioned amount will be transferred into Jalgpalliklubi FC Flora's bank account which will be written in the invoice"* (Annex 6 of the Appeal Brief).

On 22 April 2009, Flora issued the invoice related to the second instalment in the amount of EUR 50,000 with number 90431 (Annex 22 of the Appeal Brief). The Parties dispute the date when this second invoice was received.

On 29 April 2009, Flora issued:

- a further invoice, related to the first and second instalments in the amount of EUR 100,000 with number 90429; and
- a Credit Note in the amount of EUR 50,000 with number 90430 cancelling the invoice number 90205 in the amount of EUR 50,000. This Credit Note was issued following the requested extension for payment of the 100% of the Transfer Fee (Annex 22 of the Appeal Brief).

By 16 July 2009, Flora had not received any payment. It sent a claim against the Appellant to the Estonian Football Association (EFA) and asked the EFA to lodge it with FIFA.

On 20 July 2009, the EFA filed the claim before FIFA on Flora's behalf, asking it to intervene, alleging that the Appellant had failed to pay.

Between 20 July 2009 and 26 February 2010, correspondence was exchanged between the EFA and the HFF on behalf of the Parties in relation to whether any term of the Transfer Agreement or the UEFA Club Licensing Regulations (the "UEFA Club Licensing Regulations") had been breached.

On 26 February 2010, the EFA informed UEFA that the Transfer Fee due from the Appellant had not been paid.

In order to prove that it has no payables overdue towards other football clubs as at December of the year preceding the season to be licensed, Article 47 of the UEFA Club Licensing Regulations requires clubs, to prepare and submit to the licensor a transfer payables table disclosing all transfer activities, including loans, which have been undertaken up to 31 December.

The Appellant states that when it received the first invoice dated 17 February 2009 this debt *"(…) was recorded into the accounts of Györi and included in its license application for the 2010/2011 season under overdue payables. Payment of such was effected, in accordance with the UEFA Club Licensing Regulations (…) on 31 March 2010*" (Paragraph 6 of the Appeal Brief).

Thereafter, on 10 March 2010, the Appellant prepared its transfer payables table (the "Transfer Payables Form") and sent it to the HFF (Annex 12 of the Answer).

In the Transfer Payables Form, the Appellant declared that its transfer payable due as at 31 December 2009 was 13'542 Hungarian Forint "thousand HUF". It is therefore the Panel's understanding that this amount translated to 13,542,000 Hungarian Forint, which is the equivalent of EUR 50,000. This was also confirmed in the Respondent's Answer (paragraph 23).

The Appellant was granted a UEFA club competition license and took part in the UEFA Europa league club competition for the 2010-2011 season, receiving EUR 360,000 from UEFA as participation fees.

On 31 March 2010, the Appellant paid Flora EUR 50,000. The Appellant's bank statement states as reference of the payment *"90205B0119/2009; Jarmo Apjupera 50.000,00 EUR"* (Annex 5 of the Appeal Brief). The transfer refers to payment of invoice 90205, but this invoice was cancelled by the credit note number 90430 dated 29 April 2010.

On 8 April 2010, the EFA wrote to the HFF, acknowledging receipt of EUR 50,000 on behalf of Flora. It however informed the HFF that the Appellant was yet to pay more than half of the Transfer Fee according to the Transfer Agreement, which comprised EUR 50,000 along with the following interest:

- 5% per year out of 50,000 EUR for the period 01.03.2009-30.06.2009 (836 EUR)
- 5% per year out of 100,000 EUR for the period 01.07.2009-05.04.2009 (3 822 EUR)
- 5% per year out of 50,000 EUR for the period 06.04.2010 until the day of payment.

The Parties exchanged correspondence in relation to the second instalment, and on 12 April 2010, the Appellant informed the HFF that *"[b]y the Public Accounting Law described document which was sent by FC Folra Tallin to our club, the Györi FC Kft.paid that by transfer. Our company not became due obligation towards to the Estonian club. In the letters between the two clubs never arose to pay any default interest, so the Estonian Football Association is not entitled to require that from us"* (Annex 16 of the Appeal Brief).

On 1 July 2010, the EFA informed UEFA's Club Licensing Unit that the HFF had issued the Appellant with a UEFA License although the latter had failed to meet Article 47 annex VIII of the UEFA Club Licensing Regulations by defaulting in paying the second instalment of EUR 50,000 due to Flora on 30 June 2009, together with the then accrued interest of EUR 5,158.

On 30 July 2010, the EFA sent the Appellant a copy of an invoice of EUR 50,000 related to the payment of the second instalment. This invoice is numbered 90431 and dated 22 April 2009.

On 3 August 2010, the Appellant informed the EFA that the invoice received and mentioned in the previous paragraph did not comply with Hungarian and European Union laws. It requested the EFA to inform Flora to send the *"(…) original, invoice signed and sealed, as they did in the case of sending the invoice for the first 50,000 EUR"* (Annex 23 Appeal Brief).

On 9 August 2010, through the EFA, and in response to the Appellant's letter dated 3 August 2010, Flora sent a copy of the invoice number 90431 dated 22 April 2009. It contained Flora's stamp and signature and was received by the Appellant on 16 August 2010.

The Appellant paid the second instalment of EUR 50,000 as follows:

- EUR 25,000 on 21 September 2010;
- EUR 20,000 on 9 November 2010; and
- EUR 5,000 on 17 November 2010.

On 18 May 2011, the UEFA Club Financial Control Panel (CFC) issued its report in relation to the licence granted by the HFF to the Appellant (the "CFC Report").

The CFC Report found that the Appellant had failed to meet a number of criteria laid down in the UEFA Club Licensing Regulations 2008. The CFC and the UEFA Control and Disciplinary Body opened disciplinary proceedings.

On 16 June 2011, the UEFA Control and Disciplinary Body issued its decision, (the "UEFA Disciplinary Decision"). It found both the Appellant and the HFF guilty of violating the UEFA Club Licensing Regulations and issued the following sanctions:

a. The HFF was fined EUR 100,000, half of which was suspended for a probationary period of 2 years.

b. The Appellant was disqualified from taking part in the next UEFA competition for which it qualified for the next 3 seasons, 2011-2012, 2012-2013 and 2013-2014, and fined EUR 50,000.

c. The UEFA Disciplinary Decision was based in the following grounds:
   i. The Appellant had failed to prove that it had no overdue payables on 31 December of the year preceding the season to be licensed.
   ii. The Appellant had committed a serious offence. The absence of any previous infringement was not a decisive factor. The importance of the UEFA club licensing system, which aims at protecting the integrity of UEFA club competitions, was also considered.
   iii. The fact that the Appellant had received EUR 360,000 from UEFA for taking part in the 2010-2011 UEFA Europa League and the fact that its participation was based on a license given on the basis of misleading documents was considered; and
   iv. The HFF was liable for failing to undertake due diligence, and for granting the Appellant a license despite the latter's failure to meet the criteria.

On 15 and 20 July 2011, the HFF and the Appellant respectively appealed against the UEFA Disciplinary Decision.

In its appeal, the Appellant stated that it was not required to indicate the full sum due on 31 December 2009 because Flora had neither sent an invoice nor indicated the bank account number into which the payment was to be made. It further argued that the second instalment was not an overdue payment because Flora had filed proceedings before FIFA.

On 29 November 2011, the UEFA Appeals Body rendered the Appeal Decision, partially upholding the Appellant's appeal and held as follows:

a. The UEFA Disciplinary Decision suspending the Appellant from the next 3 UEFA club competitions which it would otherwise have qualified for was set aside. This decision was replaced with a decision only suspending the Appellant from the UEFA club competition for the 2011-2012 and 2012-2013 seasons, in case it qualified. The disqualification related to the 2013-2014 season was suspended.

b. The UEFA Disciplinary Decision fining the Appellant EUR 50,000 was upheld.

c. The Appellant and the HFF were jointly and severally liable for the legal costs related to the UEFA appeal proceedings EUR 6,000. Each party was to pay EUR 3,000.

The Appeal Decision was based on the following grounds:

a. The fact that Hungarian law obliges creditors to send debtors invoices and to indicate the bank account number into which the amount due is to be paid is not effective against UEFA's club licensing rules.

b. The Appellant had failed to prove that it did not have any payments overdue as at 31 December 2009 as required under Article 47.1 of the UEFA Club Licensing Regulations.

c. The Appellant had not proved that it had entered into an agreement with Flora postponing the deadline for paying the second instalment. The fact that Flora had not requested for payment of the second instalment did not mean that the deadline stipulated in the Transfer Agreement had been extended.

d. The Appellant cannot take advantage of the FIFA proceedings opened by Flora because a debtor who is the subject of a procedure for payment opened by a creditor cannot be treated more favourably than a debtor against whom such a procedure has not been opened.

e. Contrary to Article 47 of the UEFA Club Licensing Regulations, the Appellant had failed to provide the information required in relation to debts, more specifically those relating to the payment due from the Transfer Agreement.

f. Pursuant to Article 14.1 of the UEFA Disciplinary Regulations, a disciplinary body has wide discretion to impose fines ranging between EUR 100 and EUR 1,000,000. Given the fact that the Appellant had unduly received EUR 360,000 from UEFA for taking part in the UEFA 2010-2011 Europa League, the fine of EUR 50,000 imposed by the UEFA Disciplinary Decision was appropriate.

g. The UEFA Disciplinary Decision to disqualify the Appellant from the next 3 UEFA Club competitions it qualifies was harsh because the Appellant trusted the HFF, which

despite being informed of the existence of the overdue payment, did not bother seeking the Appellant's explanation.

h. Supposing it qualifies, the Appellant was disqualified from the UEFA competition 2012-2013. The Appellant's disqualification from the UEFA competition 2013-2014 was suspended for a probationary period. In case the Appellant committed any further offences during the licensing procedure for the 2012-2013 season, the original sanctions issued by the UEFA Disciplinary Decision would be re-activated.

On 20 January 2012, the Appellant filed its Statement of Appeal at the Court of Arbitration for Sport (CAS).

On 3 February 2012 the Appellant requested the CAS Court Office to treat the matter as an expeditious proceeding, stating that an award ought to be issued before the end of May 2012 so that the Appellant would know whether it was eligible to take part in the next UEFA club competition.

On 7 February 2012, the Respondent agreed with the Appellant's request that the matter be treated expeditiously.

On 22 February 2012, the Respondent requested a 5 day extension to its deadline to file the Answer. On the same day, the Appellant expressed its consent to the said request.

On 22 February 2012, the CAS Court Office extended the Respondent's deadline for filing its Answer to 27 February 2012.

On 27 February 2012, the CAS Court Office requested the Parties to state whether they wanted a hearing or preferred the matter to be decided on the basis of written submissions.

On 27 February 2012, the Appellant expressed its wish for a hearing.

On 19 March 2012, the CAS Court Office took some preliminary and evidentiary measures, inviting the Parties to:

a) State when FC Flora sent the second invoice

b) Adduce a copy of the second invoice

c) Adduce any correspondence in relation to the payment, in addition to those adduced by the Appellant.

On 20 March 2012, the CAS Court Office informed the Parties that the matter would be heard on 27 April 2012 at the CAS headquarters. They were invited to state whether they intended to call any witnesses or had any witness statements to adduce.

On 22 March 2012 the Order of Procedure was sent to the Parties, who both signed the same.

On 26 March 2012, the Appellant informed the CAS Court Office that the second invoice was sent on 10 August 2010 and enclosed a copy of the said invoice. In addition to the documents adduced

in the Appeal Brief, it did not adduce further correspondence in relation to the payment. The Appellant also sent a list of the people who would attend the hearing on its behalf.

On 26 March 2012, the Respondent informed the CAS Court Office of the people who would attend the hearing on its behalf. It stated that the second invoice was sent on 29 April 2009 and requested that the CAS ask for a copy of the FIFA file involving the dispute between Flora and the Appellant in order to see whether further documents in relation to the second invoice would be found. It also challenged the admissibility of the witness statements adduced by the Appellant in the Appeal Brief as annex 32, 35, 36 and 37, stating that they were mere allegations and constituted opinions which cannot be regarded as evidence, whether confirmed or not in person by the witnesses in question.

On 27 March 2012, the Appellant reiterated its wish for the FIFA file to be produced with a view to ascertaining when Flora sent the second invoice.

On 28 March 2012, the Appellant informed the CAS Court Office that the witness statements whose admissibility the Respondent had challenged related to facts which occurred during the licensing process and also during the FIFA proceedings. It also informed the CAS Court Office that one of the witnesses was an independent auditor who would give direct evidence. It reiterated that the second invoice was sent on 10 August 2010.

On 29 March 2012, the CAS Court Office informed the Parties that the issues raised by the Respondent in relation to the witness statements would be addressed during the hearing, where the Parties would be given the chance to raise their views. The Parties were requested not to send any further correspondences unless invited by the Panel. Furthermore, the CAS Court office asked FIFA to adduce a copy of the file related to the proceedings between the Appellant and Flora.

On 10 April 2012, the CAS Court Office received a copy of the FIFA file.

On 12 April 2012, the Appellant sent a decision dated 24 February 2012 issued by UEFA's Control and Disciplinary Body (the "Bursaspor case"). It requested that the said decision be admitted pursuant to Article R56 of the Code of Sports-related Arbitration (the "CAS Code") because it was not in its possession at the time the appeal was filed, and hence raised exceptional circumstances.

On 12 April 2012, the CAS Court Office granted the Respondent a deadline until 16 April 2012 to state whether it objected to the admission of the Bursaspor case, failure to which the Panel would issue a ruling.

On 16 April 2012, the Respondent informed the CAS Court office that it did not object to the admission of the Bursaspor case. It however drew the Panel's attention to the fact that the said decision was nevertheless not final and binding since an appeal had been filed before the UEFA Appeals Body.

On 19 April 2012, the Appellant requested the CAS Court Office to ask the Respondent whether the appeal against the Control and Disciplinary Body decision dated 24 February 2012 had already

been issued, and in case of the affirmative, to send a copy of the said appeal decision before the hearing.

On 20 April 2012, the CAS Court Office granted the Respondent until 26 April 2012 to state whether the UEFA Appeals Body had rendered its decision in relation to the Bursaspor case.

On 20 April 2012, the Respondent informed the CAS Court Office that the UEFA appeals body had not rendered its decision in relation to the Bursaspor case, and that a hearing was fixed for May 2012.

On 27 April 2012, the hearing was held at the CAS headquarters in Lausanne, Switzerland. The Panel was assisted at the hearing by Mr. William Sternheimer, Counsel to the CAS and Mr. Felix Majani as the *ad hoc* Clerk. During the hearing, the Appellant was represented by the counsels Mr. Juan de Dios Crespo Peréz and Mr. Adam Whyte. The Respondent was represented by the counsels Mr. Ivan Cherpillod and Mr. Jean-Samuel Leuba.

At the conclusion of the hearing, the Parties confirmed that they had no objections in respect to the manner in which the hearing had been conducted, in particular the principles of the right to be heard and to be treated equally in the arbitration proceedings.

The Appellant requests the CAS to issue the following relief:

> *"1. To accept this appeal against the decision of the UEFA Appeals Body dated 29 November 2011.*
>
> *2. To adopt an award annulling the said decision and adopt a new one declaring that the Appellant is eligible to compete in the next UEFA club competition for which it would qualify for.*
>
> *3. To adopt an award annulling the said decision and adopt a new one declaring that the Appellant is not liable to pay any fine to UEFA.*
>
> *4. To fix a sum of 20,000 CHF to be paid by the Respondent to the Appellant to aid the Appellant in the payment of its defence fees and costs.*
>
> *5. To condemn the Respondent to the payment of the whole CAS administration costs and the Arbitrators fees".*

UEFA concludes by requesting the CAS to

> *"(…) dismiss the appeal and to order payment by the Appellant of all costs of the arbitration as well as legal costs suffered by UEFA".*

LAW

CAS Jurisdiction

1. The jurisdiction of the CAS, which is not disputed, derives from Article 62.1 of the UEFA Statutes 2010 and Article R47 of the CAS Code.

2. Moreover, the Parties confirmed the jurisdiction of the CAS by signing the Order of Procedure.

3. It follows that the CAS has jurisdiction to decide this dispute.

Admissibility

4. In accordance with Article 62.3 of the UEFA Statutes 2010, *"[t]he time limit for appeal to the CAS shall be ten days from the receipt of the decision in question"*.

5. The grounds of the Appeal Decision were notified on 12 January 2012 and the Statement of Appeal filed on 20 January 2012. This was within the required 10 days.

6. It follows that the appeal is admissible. Furthermore, no objection has been raised by the Respondent.

Scope of the Panel's review

7. According to Article R57 of the CAS Code, the Panel has full power to review the facts and the law of the case. Furthermore, the Panel may issue a new decision which replaces the decision challenged, or may annul the decision and refer the case back to the previous instance.

Law applicable to the merits

8. The appealed decision was issued by the UEFA, an association domiciled Switzerland. Article 63.3 of the UEFA Statutes 2010 states that *"(…) proceedings before the CAS shall take place in accordance with the Code of Sports-related Arbitration of the CAS"*.

9. Article R58 of the CAS Code provides the following:

   "The Panel shall 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".

10. The subject matter of the appeal relates to whether or not the Appellant violated the UEFA Club Licensing Regulations. It therefore follows that the specific UEFA laws applicable to this matter are the UEFA Club Licensing Regulations and UEFA Disciplinary Regulations edition 2008, which were applicable at the time of the alleged breaches. Furthermore, reference may also be made to Swiss law subsidiarily, given the fact that UEFA is an association domiciled in Switzerland. This is also confirmed by the Parties in their signed Orders of Procedure.

The Merits of the Appeal

11. Based on the Parties' submissions, the issues for determination are the following:

On a procedural basis:

A. Whether the Appeal Decision made a mistake in its interpretation of the events and the law.

B. Whether the UEFA Appeals Body lacked jurisdiction to hear the dispute.

On a substantive basis:

C. Did the Appellant breach the UEFA Club Licensing Regulations?

D. In case of the affirmative, are the sanctions imposed in the Appeal Decision proportional?

A. The alleged mistakes in the interpretation of the events and the law committed by the UEFA Appeals Body

12. The Appellant avers that the UEFA Appeals Body made several errors as hereunder:

a. it erroneously relied on the false CFC conclusion that the Appellant had failed to prove that it received the second invoice on 16 August 2010.

b. it erroneously relied on the false CFC conclusion and the Appeal Decision findings that the Appellant provided misleading information in relation to overdue payables as of 31 March 2010.

c. the Appellant was not given time to defend itself in relation to the contents of the Disciplinary Inspector's report, which stated that the Appellant had concealed the debt of EUR 50,000.

d. it erroneously found that that the Appellant was trying to use Hungarian law to evade the club licensing criteria.

e. the Appeal Decision also failed to address whether the failure to issue the second invoice could relieve the Appellant from its obligation to pay Flora.

f. the Appeal Decision failed to state with certainty, when the second instalment was paid.

g. the Appeal Decision made an error of fact by stating that the Appellant had deemed the deadline for paying the second instalment extended as a result of Flora's failure to request payment of this instalment.

h. it overlooked the HFF's breach of its duties under Article 5 section II of the UEFA Club Licensing Regulations to assess the documents submitted to it and to verify whether the Appellant had met the UEFA licensing requirements.

12. In relation to the above, the Panel refers to the fact that under these proceedings the Appellant had opportunity to present its case in the way to address and cure all the above mentioned irregularities as raised.

13. Therefore, pursuant to Article R57 of the CAS Code, which grants the Panel power to review the facts and the law, and CAS jurisprudence, any prejudice suffered by the Appellant before the UEFA Appeals Body has been cured by virtue of this appeal, in which the Appellant has been able to present its case afresh. (CAS 2008/A/1574, CAS 2009/A/1840 & CAS 2009/A/1851, CAS 2008/A/1545). Therefore, the Panel does not have to examine whether the alleged mistakes and errors in the interpretation of the events and the law have indeed been established.

B. Did the UEFA Appeals Body lack jurisdiction to hear the dispute?

14. It is the Appellant's position that pursuant to the Transfer Agreement, UEFA had no jurisdiction to issue the Appeal Decision. It argues that this jurisdiction lay squarely with FIFA, since clause 3.3 of the Transfer Agreement stipulated that *"[i]f the parties do not achieve a common agreement, the conflicts shall be solved by the competent body of the FIFA (…)"*.

15. It adds that the matter had already been brought before FIFA's competent body and the HFF had agreed to FIFA's jurisdiction. UEFA should therefore not have asserted its jurisdiction.

16. The Respondent avers that FIFA's competence to deal with a transfer dispute must be differentiated with UEFA's competence to deal with a matter related to breach of the UEFA Club Licensing Regulations, meaning UEFA had jurisdiction to hear the matter.

17. Under Article 27.1 of the UEFA Disciplinary regulations, *"[t]he Control and Disciplinary Body handles disciplinary cases arising from breaches of the statutes, regulations, directives and decisions of UEFA. It decides on cases relating to player and club eligibility for UEFA competitions"*.

18. Article 27.2 of the UEFA Disciplinary regulations adds that *"[t]he Appeals Body is competent to hear appeals against decisions of the Control and Disciplinary Body in accordance with Article 49 of the present regulations"*.

19. The subject matter of this appeal, together with the disputes before the UEFA Control and Disciplinary Body and the UEFA Appeals Body relate to whether the Appellant breached the UEFA Club Licensing Regulations.

20. UEFA was therefore competent to assert its jurisdiction on the basis of Article 27 of the UEFA Disciplinary Regulations, and the Appellant cannot argue that jurisdiction only belonged to FIFA in light of clause 3.3 of the Transfer Agreement.

21. The Panel remarks that the aforementioned clause only related to disputes between the Appellant and Flora in relation to the Transfer Agreement and not to any violation of the UEFA Club Licensing Regulations.

22. It therefore follows that the Appellant's arguments on UEFA's lack of competence are dismissed.

C. Did the Appellant breach the UEFA Club Licensing Regulations?

a) Disclosure obligations under the UEFA Club Licensing Regulations

23. The Panel starts by analysing the UEFA Club Licensing Regulations in relation to the duty and the level of care imposed on clubs pursuant to the obligations to disclose the financial information to the national federations.

24. The aim of the duty of disclosure is to ensure that the clubs participating in a UEFA competition:

    a) Have adequate level of management and organization;

    b) Improve their economic and financial capability, by increasing their transparency and credibility, and placing the necessary importance on the protection of creditors; and

    c) Promote financial fair play in UEFA club competitions.

    (Article 2 of the UEFA Club Licensing regulations, the UEFA Club Licensing Regulations).

25. In further ensuring transparency and credibility in financial management, Article 41.2 f of the UEFA Club Licensing Regulations requires an applicant for a UEFA club competition license to ensure that *"[a]ll submitted documents are complete and correct"*.

26. Article 47.3, 47.4 and 47.5 of the UEFA Club Licensing Regulations also provides that as a license applicant, the Appellant was required to do the following:

    "47.3. (…) prepare and submit to the licensor a transfer payables table, unless the information has already been disclosed to the licensor under existing national transfer requirements (e.g. national clearing house system). It shall be prepared even if there have been no transfers/loans during the relevant period.

    47.4. (…) disclose all transfer activities (including loans) undertaken up to 31 December.

    47.5. The transfer payables table must contain a separate entry in respect of each player transfer (including loans) irrespective of whether there is an amount outstanding to be paid at 31 December. The following information must be given as a minimum:

a) Player (identification by name or number);
b) Date of the transfer/loan agreement;
c) The name of the football club that formerly held the registration;
d) Transfer (or loan) fee paid and/or payable (including training compensation);
e) Other direct costs of acquiring the registration paid and/or payable;
f) Amount settled; and
g) The balance payable at 31 December in respect of each player transfer, detailed by due date(s) for each unpaid element of the transfer payables".

27. The disclosure obligations are essential for UEFA to assess the financial situation of the clubs that are participating in its competitions and for this reason, as the Panel can confirm from the above quoted regulations, the disclosure must be correct and accurate.

28. The Panel shall hence use the aforesaid regulations as the basis for determining whether the Appellant breached any of the UEFA Club Licensing Regulations.

29. Due consideration shall also be given to the fact that the UEFA is domiciled in Switzerland, and therefore the UEFA Club Licensing Regulations shall further be interpreted in accordance with Swiss law (Article 63.3 of the UEFA Statutes 2010).

b) Did the Appellant fail to disclose correct information?

30. It is manifest that the Appellant was required to ensure the correct and accurate disclosure to the HFF of all financial information.

31. However, from the information disclosed in the Transfer Payables Form in relation to the Player, the Appellant only indicated that an amount of 13'542,000 Hungarian Forint (EUR 50,000) was overdue in relation to the Transfer Agreement.

32. This was clearly misleading information because as at 10 March 2010, the Appellant had neither paid the first nor second instalments due from the Transfer Agreement, which totalled to EUR 100,000.

33. The excuses provided by the Appellant and explained by the 2 witnesses Z. and T. and the expert witness I. were based on the fact that it did not receive a "proper" invoice, meaning an "original, signed and stamped" invoice.

34. The witnesses and the expert justified the Appellant's attitude and the absence of disclosure of the amount due to Flora on the basis that under Hungarian civil, commercial and criminal laws such debt was not overdue. The witnesses and the expert also invoked Articles 220 and 221 of the European Council Directive (EC Directive) in supporting their arguments.

35. Neither the witnesses nor the Appellant have specified the exact Hungarian accounting, civil, commercial and criminal laws which required Flora (a non-resident entity of Hungary) to condition the payments to such national laws and to the presentation of a "stamped, sealed and signed" invoice. Notwithstanding these justifications and arguments, the Panel outlines that under the UEFA regulations, domestic laws are irrelevant and cannot be considered in assessing issues related to UEFA club licensing.

36. Even if the Hungarian civil, commercial and criminal laws were applicable, the reasons adduced by the Appellant in trying to invoke these laws are not convincing because:

37. The Transfer Fee agreed in clause 1.2 of the Transfer Agreement is certain, liquid and enforceable.

38. The transfer of the Player was duly executed and the Appellant made use of the Player's services.

39. Clause 1.3 of the Transfer Agreement does not specify the requirement claimed by the Appellant in relation to the presentation of a "signed and sealed" invoice. To the contrary, clause 1.3 of the Transfer Agreement says that *"(…) the transfer shall be paid according to the Transferring Club's invoices (…)"* (emphasis added by the Panel). In the Panel's understanding this sentence means that the Appellant had to pay the invoices as sent by Flora.

40. In exchange for receiving an extension from Flora in relation to the deadline for paying the first instalment, the Appellant guaranteed that it would pay 100% of the Transfer Fee by 31 March 2009. In its letter of 10 March 2009 the Appellant does not raise any issue in relation to the invoice presented.

41. The Appellant's payment on 31 March 2010 is related to the partial payment of invoice of EUR 100,000 numbered 90429, since invoice number 90205 in the amount of EUR 50,000 was cancelled by the Credit Note issued in the amount of EUR 50,000 with number 90430. As far as the Panel knows, the invoice numbered 90429 was partially paid notwithstanding the fact that it was not signed, sealed and stamped, and no sanctions have been imposed on the Appellant at national level for this partial payment.

42. The extension requests, as well as the timing in which the Appellant finally paid the Transfer Fee, were an indication of financial difficulties on the part of the Appellant.

43. There was no need for bank details to be provided, because these details had already been mentioned in all invoices sent by Flora.

44. Although EC Directive 2006/112 is related to VAT issues (which is not the case at stake), the Panel highlights the fact that Article 229 of this regulation restricts Member States from requiring signed invoices, by stating that *"[m]ember States shall not require invoices to be signed"*.

45. In view of the foregoing, the Panel finds that the Appellant did not disclose the information required under the UEFA Club Licensing Regulations, in particular Article 47 and the excuses given were irrelevant under the UEFA regulations and Swiss Law. Also the excuses under domestic Hungarian Law and the EC Directive are irrelevant and cannot sustain the Appellant's reasons for concealing the relevant financial information. The debt to Flora was overdue and the Appellant's attitude is not excusable. To the contrary, the Appellant's attitude ought to be opposed because the Appellant tried to mislead UEFA with the information it provided so as to obtain the licence.

D) Are the sanctions imposed in the appeal decision proportional?

47. Having found the Appellant guilty of breaching the UEFA Club Licensing Regulations, the Panel must now determine whether the sanctions imposed in the Appeal Decision are proportional.

48. The Appellant argues that the sanctions imposed in the Appeal Decision are harsh and have not followed past UEFA precedents, such as the UEFA decision in the PAOK case, and the recent decision issued in the Bursaspor case.

49. In assessing the sanctions, reference must be made to Article 56 of the UEFA Club Licensing Regulations, which, in order to ensure the protection of clubs as creditors, states that *"[a]ny breach of these regulations may be penalised by UEFA in accordance with the UEFA Disciplinary Regulations"*.

50. Article 17.1 of the UEFA Disciplinary Regulations states that *"[t]he disciplinary body shall determine the type and extent of the disciplinary measures to be imposed, according to the objective and subjective elements, taking account of both aggravating and mitigating circumstances"*.

51. Article 17.5 of the UEFA Disciplinary Regulations adds that *"[i]f the party charged has committed multiple disciplinary offences, the disciplinary body assesses the sanction according to the most serious offence and increases it accordingly"*.

a) Is the fine proportional?

52. Pursuant to Article 14.2 of the UEFA Disciplinary Regulations, the non-monetary disciplinary measures which may be imposed against UEFA member associations and clubs for violating the UEFA regulations shall be *"[a] fine (…) no less than EUR 100 and no more than EUR 1,000,000"*.

53. It is therefore apparent from the above provision that a deciding body has a wide discretion when it comes to sanctioning, and account must be taken of any aggravating or mitigating circumstances.

54. The UEFA Appeals Body Decision fined the Appellant EUR 50,000, which in the Panel's assessment was fairly and reasonably assessed and also based on the facts highlighted in paragraph 58 hereunder.

b) Is the suspension proportional?

55. Article 14.1 of the UEFA Disciplinary Regulations states as follows:

"1 The following disciplinary measures may be imposed against member associations and clubs in accordance with Article 53 of the UEFA Statutes:

a) warning,

b) reprimand,

c) fine,

d) annulment of the result of a match,

e) order that a match be replayed,

f) deduction of points,

g) awarding of a match by default,

h) playing of a match behind closed doors,

i) stadium closure,

j) playing of a match in a third country,

k) disqualification from competitions in progress and/or exclusion from future competitions,

l) withdrawal of a title or award,

m) withdrawal of a licence".

56. It is clear from this provision that the least non-monetary sanction imposable is a warning, with the severest being a withdrawal of a license.

57. The Panel notes that the UEFA Appeals Body Decision has already reduced the initial suspension issued by the UEFA Disciplinary Decision in relation to the suspension by lowering it to a mere disqualification from the UEFA competition 2011-2012 and 2012-2013, and suspending the Appellant's disqualification from the UEFA competition 2013-2014 for a probationary period. In practical terms, the Appellant has only been suspended for one season because it did not qualify for the 2011-2012 UEFA club competitions.

58. The Panel also considers the following acts and conduct of the Appellant which lacked transparency and diligence in weighing the proportionality of the suspension:

a. the Appellant benefited by playing in the UEFA Europa League 2010-2011 club competition without disclosing the correct and true overdue payables it had. Had the Appellant disclosed the accurate information which would have enabled UEFA to

assess whether to grant the license, the Club might not have received a UEFA license to take part in the 2010-2011 Europa League club competition. It might also not have received EUR 360,000 from UEFA for participating in the 2010-2011 UEFA Europa League club competition.

b. the Appellant knew it had financial problems yet did not disclose this to UEFA. This is apparent from the Appellant's request to Flora for an extension of the deadline for paying the first instalment of the Transfer Fee.

c. the second instalment of the Transfer Fee was paid much later, after the 30 June 2009 deadline had expired, despite the Appellant having received the requested "original, stamped and signed" invoice. Moreover, this instalment was paid in 3 phases and completed on 17 November 2010.

59. The case laws invoked by the Appellant (Bursaspor case and the PAOK case) differ in terms of facts from the present appeal. Unlike in the two aforementioned cases, the Appellant committed two breaches; the first being the fact that it had overdue payables, and the second being its failure to disclose the correct and accurate payables. In addition to this, the Bursaspor case is not final and an appeal has been filed to the UEFA Appeals Body.

60. The Panel also underlines that the sanctions imposed were established within the discretionary powers of UEFA based on its assessment of the facts and circumstances of the case, and the Appellant has not convinced the Panel that such discretion was unreasonably exercised outside UEFA's sanction range or that it was not in line with similar case decisions.

61. In view of the foregoing facts, the Panel is of the view that the Appellant has failed to prove that the sanction imposed in the Appeal Decision is disproportionate, or that the assessment of the UEFA Appeals Body diverted from previous decisions of similar facts and circumstances. The Panel has no justifiable grounds for modifying the sanctions imposed in the Appeal Decision.

c) Is the Appellant entitled to an exception from the UEFA Club Licensing Regulations?

62. The Appellant claims that Hungary is a relatively small and inexperienced football nation, ranked 27th by FIFA and 29th in the UEFA coefficient. It also states that as a club, Györi has only taken part in UEFA competitions on two occasions since 1987. It requests the CAS to consider Hungary's territory, population, geography, and economic background in mitigation pursuant to Annex I (B) 6 (a) of the UEFA Club Licensing Regulations. It also wants an exception based on the *"[n]on-applicability of a certain criterion defined in section IV due to national law or any other reason"*.

63. Pursuant to Article 4 of the UEFA Club Licensing Regulations, *"(…) UEFA Administration may grant an exception to the provisions set out in these regulations within the limits set out in Annex I"*.

64. It is clear from this provision that the decision on whether or not to grant a club any exception from the UEFA Club Licensing Regulations solely lies with the UEFA

Administration on the basis of its discretion, and in order to benefit from any such exception, an applicant must file a clearly written and well founded exception request to the UEFA (cf. Annex I Article B. 2 of the UEFA Club Licensing Regulations).

65. No application has been filed by the Appellant for such an exception.

66. In view of the above, the Appellant's request for mitigation on the basis of Annex I (B) 6 (a) of the UEFA Club Licensing Regulations is dismissed.

Conclusion

67. Considering all the facts, evidence and arguments adduced, the appeal is dismissed.

The Court of Arbitration for Sport rules:

1. The appeal filed by Györi ETO against the UEFA Appeals Body decision dated 29 November 2011 is dismissed.

2. The UEFA Appeals Body decision dated 29 November 2011 is upheld.

3. (…).

4. (…).

5. All other and further claims or prayers for relief are dismissed.