



Arbitration CAS 2017/A/5299 Olympique Lyonnais v. Union des Associations Européennes de Football (UEFA), award of 10 August 2018

Panel: Prof. Ulrich Haas (Germany), President; Mr Hamid Gharavi (France); Mr Manfred Nan (The Netherlands)

Football

Disciplinary sanctions against a club for improper conduct of supporters/spectators

Applicable standard of CAS power of review in disciplinary matters

Provocation as mitigating factor

Best efforts to implement security measures as mitigating factor

No past record of hooliganism as mitigating factor

Proportionality of the sanction

Deferral for a probationary period

- 1. In disputes involving disciplinary sanctions, the CAS powers to review the facts and the law of the case are neither excluded nor limited. Although a CAS panel would not easily ‘tinker’ with a well-reasoned sanction, ie to substitute a sanction of 17 or 19 months’ suspension for one of 18, the fact that it might not lightly interfere with such a decision, does not mean that there is in principle any inhibition on its power to do so.**
- 2. Violence displayed by one side cannot and should not, as a matter of principle, justify or mitigate further violence displayed by the other side.**
- 3. The efforts (i.e. security measures) taken and implemented by a club cannot serve as a ground for excuse or exculpation, but may however be taken into account in the determination of the proportionality of the sanction. However, the threshold should not be set too low, considering that the duty to ensure compliance with the various security obligations is a standard duty of any home team. Consequently, the fact that a club did its best to handle the situation constitutes a mitigating factor only in exceptional circumstances.**
- 4. The fact that a club has a positive previous record pertaining to crowd disturbances and has not been sanctioned in the past for crowd disturbances or any other acts of violent hooliganism qualifies as a mitigating factor.**
- 5. Disciplinary measures serve different purposes. On the one hand, a sanction shall help to undo harm that has been inflicted by the offender. On the other hand and more importantly, a disciplinary sanction shall prevent re-offending by the offender. Consequently, harsher sanctions are warranted in case of serious infringements, structural non-compliance with the various obligations and in case of recidivism. They must however comply with the principle of proportionality which encompasses three**

aspects. According thereto the measure must be appropriate, necessary and demonstrate a reasonable balance between the objective pursued and the means used to achieve it (proportionality in its narrow sense).

6. Article 20 para. 3 of the UEFA Disciplinary Regulations (DR) states that if a further offence is committed during the probationary period, the competent disciplinary body, as a rule, orders that the original disciplinary measure be enforced. A literal interpretation of the provision appears to indicate that any kind of further offence committed during the probationary period will revive the original disciplinary sanction. Such interpretation, however, would be in contrast with the very purpose of the sanction which is – *inter alia* – to undo the harm inflicted and prevent the re-occurrence of certain violations, i.e. to incentivise the club to comply with its obligations and to influence its fans' behaviour. Consequently, in order to make sense, Article 20 para. 3 DR – in particular in light of the principle of strict liability enshrined in Article 8 DR – must be construed narrowly and the threshold must not be set too low. However, it is not for the CAS panel to decide under what conditions the suspension of the sanction could be revoked in the future, as this has to be assessed by the legal bodies allocated with such future legal proceedings since the imposition of the suspended sanction may depend on the specific circumstances of the future case. Therefore, proportionality of the deferred exclusion from UEFA competitions must be ensured by other means, i.e. by reducing the probationary period if necessary.

I. PARTIES

1. Olympique Lyonnais SAS (hereinafter referred to as “OL” or “the Appellant”) is a French professional football club with its registered office in Decines, France. OL is an affiliated member of the *Fédération Française de Football* (FFF).
2. Union des Associations Européennes de Football (hereinafter referred to as “UEFA” or “the Respondent”) is the governing body of football in Europe and based in Nyon, Switzerland. UEFA is an association according to Articles 60 *et seq.* of the Swiss Civil Code (hereinafter referred to as “CC”).

II. FACTS

3. Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced at the hearing on 6 February 2018. Additional facts and allegations found in the parties' written submission, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in its award only to the submissions and evidence it considers necessary to explain its reasoning.

4. On 13 April 2017, the UEFA Europa League 2016/2017 Quarter-final match (hereinafter also the “Match”) between OL and Beşiktaş JK (hereinafter also “BJK”) took place at the Parc Olympique Lyonnais stadium (hereinafter also “Parc OL”), Lyon, France.

1. The ticket sale

5. OL had reserved tickets for the (official) supporters of BJK in sectors n° 428 to 431 (Level 4) of the Parc OL. This was a sector protected by nets. The tickets for these sectors were sold by BJK. The total number of official BJK supporters in these sectors was 2,766.
6. With regard to the ticket sales for all other sectors, OL’s season ticket holders had priority and could buy tickets first. Most of OL’s supporters bought their tickets in the lower parts of the south and the north stands (i.e. behind the goals), which is the usual territory of OL’s ultra-supporter groups. After the deadline for such priority sales elapsed, OL opened the sale of tickets to the public, but on French territory only. (Direct) Purchases from outside France, in particular from Turkey and Germany were blocked. Around 15,000 (unofficial) supporters of BJK were able to obtain tickets for the Match, a great part of them did so with the help of Turkish residents in France.
7. The (unofficial) BJK supporters who obtained their tickets *via* public sale were located in almost all areas of the stadium (with the exception of the lower and middle tiers of the south and north stands behind the goals that had been bought by OL supporters, but see also below no. 9. The total number of spectators at the Match was 55,452.

2. The Organization of the security prior to the Match

8. The security of matches at Parc OL is generally organised by OL’s section for stadium security in collaboration with the French Préfecture du Rhône (police forces responsible for *inter alia* the city of Lyon and its suburbs – hereinafter “the Préfecture”). From mid/late March 2017, when the draw was made, OL was working towards organising the security of the Match.
9. On 22 March 2017, the Préfecture instructed OL to place all unofficial BJK supporters in the upper level of the south stands and in the surrounding sectors of the official BJK supporters, i.e. around sector n° 430, including sectors n° 424 to 429.
10. On 30 March 2017, Mr Ali Nalibi, Director of Football of BJK sent a letter to OL stating:
- “We have received recent media reports saying that thousands of tickets were sold to Turkish fans who live in Europe. We would like you to know that we do not assume any responsibility regarding these fans”.*
11. On 4 April 2017, Mr Kenny Scott, UEFA Head of Safety and Security Operations, sent an email to Ms Annie Saladin, OL Security Unit, with the following content:

“[...] As discussed on the telephone yesterday I have raised the matter of away stewards with Besiktas regarding the match next week in Lyon. I await response on this issue. I must remind you that the presence of any stewards from the visiting does not alter the responsibilities of you as the host club to provide stewards to regulate the away supporters and the sector allocated to them.

The provisions of the UEFA Safety and Security Regulations 2006 are clear on this matter. It is highlighted at Article 32 of these regulations that ‘Adequate security personnel must be available at all approaches to the stadium, at the turnstiles, and throughout the interior of the stadium ...’. The circumstances of this particular match with so many away supporters expected and as you told me, perhaps up to 2,500 ticketless away supporters make it even more important that the away supporters are stewarded appropriately. I thank you for taking note of these comments. [...]”.

12. On 5 April 2017, Ms Annie Saladin replied to Mr Kenny Scott as follows:

“[...] Regarding the away fan stand, I confirm you that I will have 50 stewards to manage the stand from the parking gate to the inside stand (vomitories). We just think that some stewards from Besiktas can be helpful to exchange with their own fans and give them some message. The club confirmed us that 5 policemen should be with the fans. I have no conformation at today from the French Police. [...] In view of the important demand of the Turkish fans, it was decided on Friday, March 24 to stop the ticket sales to Turkish associations, clubs and groups and to reposition some requests already confirmed on the Upper Stand”.

13. Between 7 and 11 April 2017, OL exchanged emails with BJK, UEFA and the travel agency responsible for the transport of the official BJK fans to and from the Match. In this context BJK provided the following information:

“[...] Si je fais total de 850 supporters arrivant en avion + les 1 000 venant de tout l'Europe et éventuellement les 100 ventes par internet ... nous ne sommes qu'à 1 950 supporters ... il en manqué encore 800!!!!”.

[free translation If I make the total of the 850 supporters arriving by plane + the 1,000 coming from all over Europe and the 100 eventually sold over the internet ... we arrive only at 1,950 supporters ... with 800 missing!!!]

3. The events on the day of the Match

14. On the day of the Match, the supporters of both teams started to arrive at the Parc OL at around 18h30. While the OL supporters gathered in a small square located next to the tramway terminus, the BJK supporters gathered at the tramway terminus. At 18h46, BJK supporters began attacking OL supporters by throwing pyrotechnics onto OL supporters over the fence separating the tramway terminus and the square.
15. At 19h00, BJK supporters moved to the Parc OL.

16. At 19h45, fearing a general confrontation between BJK and OL supporters (both groups separated by only a few meters), the Préfecture decided to use tear gas in order to disperse the crowd. The tear gas grenades were thrown by the police forces only a few meters away from the spectators' body search point. The tear gas affected the sight and breathing of the security stewards responsible for the body searches. The stewards had to cover their faces with their clothes to protect themselves from the tear gas. This caused several minutes of chaos during which security measures were hindered, allowing supporters to force their way into the stadium without being searched.
17. In the south stand of the stadium, the lower level were occupied by OL supporters seated in sectors n° 016 to 020 and the upper level (on both sides of sectors n° 428 to 431) were occupied by BJK supporters. The following instances were – *inter alia* – recorded by the UEFA delegate in the “Pre-Match Report”:

“At 20.25 hrs there was a loud pyrotechnic device noise from the South stand. Although I was not able to directly identify which sector the noise came from as there was no smoke the fact that large numbers of OL supporters in the lower tier in sectors 018 / 019 / 020 turned to look towards the upper tier and gesticulate and shout at the unofficial Besiktas supporters above them in the upper level tier, sector 427, suggests that this is where a pyrotechnic device was most likely thrown from.

Between 20.40 & 20.49 hrs at least 5 further pyrotechnic devices, which emitted a loud noise, and some other objects, were thrown from sector 427 in the upper tier onto the OL supporters in the lower tier - in sectors 018 - 020.

At 20.49 / 20.50 hrs OL supporters in the lower tier of the South stand began to self evacuate onto the pitch by jumping over the railings and what OL refer to as the 'Wembley' style barriers for their own safety and to escape the pyrotechnics being thrown down onto them by the unofficial Besiktas supporters in sector 427 above them. Hundreds of OL supporters took this action - many ran towards their fellow OL supporters in the lower tier of the North stand (Photos 05 - 08 refer). Thankfully the OL supporters in the North stand did not themselves jump their barriers to join the other OL supporters on the pitch. [...].”
18. Parallel to the invasion of the pitch by OL supporters, another group of OL supporters moved from their sectors behind the goal (sectors n° 018 to 019) to the sectors occupied by the Turkish supporters. These OL supporters attempted to find a stairway to the upper level *via* a lounge just above the staircase of the said Turkish sectors (sectors n° 424 to 426). However, no such access exists inside the Parc OL. The OL supporters then took on the Turkish supporters seated in the sectors n° 124 to 125 and a fight broke out between OL and BJK supporters.
19. In addition to the above, supporters of OL blocked staircases in the south stand (sectors 16, 17, 18, 19 and 20) and in the north stand (sectors 1, 2, 3, 4, 5, 101, 102, 103, 104, 105 and 106) during the Match.

20. At 21h40, as the teams lined up in the tunnel, OL supporters in the north stand raised a giant tifo/banner. As the banner was raised, dark smoke emerged from under it before being covered by the banner.
21. At 21h50, red and blue smoke devices were ignited in the north stand by OL supporters.
22. At 21h51, the Match started with a delay of approximately 46 minutes after the initially scheduled kick-off because of the crowd disturbances.
23. Each time OL scored a goal in the match that finally ended in 2-1, supporters of OL crossed the fence of the north stand and celebrated between the fence and the LED boarding. One supporter of OL from the north stand ran onto the pitch, but was immediately stopped by stewards and taken into police custody.
24. At 22h36, grey smoke devices were ignited in the north stand by OL supporters.
25. At 22h46 and 22h47, supporters of OL celebrated the victory on the pitch. The match officials and BJK's players had already returned to the dressing rooms.
26. At 22h56, a blue smoke device was ignited in the north stand by OL.
27. At 23h31, one firework was thrown on to the pitch by OL supporters, landed in the back area.

4. Disciplinary Proceedings initiated by UEFA

a) The Proceedings before the CEDB

28. On 14 April 2017, the Control Ethics and Disciplinary Body of the UEFA (hereinafter the "CEDB") sent a notice to OL announcing the "*ouverture d'une procédure disciplinaire conformément aux dispositions de l'article 48 RD* [free translation: the opening of a disciplinary procedure in accordance with the requirements in art. 48 RD]" in relation to the Match and invited OL to take "*position par écrit sur ces faits* [free translation: position in writing concerning the facts]" until 18 April 2017.
29. On 18 April 2017, OL submitted its comments.
30. On the same day, the CEDB informed OL about the further disciplinary charges against OL in light of the evidence filed by BJK and invited OL to comment on the same until 19 April 2017.
31. On 19 April 2017, OL submitted its additional comments.
32. On the same day, the CEDB issued the operative part of its decision regarding the Match, which reads as follows:

- “1. To exclude Olympique Lyonnaise from participating in the next UEFA club competition for which it will otherwise qualify. This exclusion is deferred for a probationary period of two (2) years.
2. To fine Olympique Lyonnaise € 100'000.
3. The above fine must be paid into the bank account indicated below within 90 days of communication of this decision”.

33. On 11 May 2017, the CEDB notified the grounds of its decision. In its decision the CEDB established the following violation:

- Article 16 (2) (h) Disciplinary Regulations (hereinafter “DR”) (“any other lack of order or discipline observed inside or around the stadium”):

“In the present case, the Control, Ethics and Disciplinary Body noted that before the match had even started, i.e. approximately between 15 and 20 minutes before the planned kick-off, severe fights broke out on the stands between home and away-team supporters. In this regard, the Control, Ethics and Disciplinary Body took note of the video evidence which was provided by both clubs, noting it could clearly be established that both sides played their part in the actions which lead to the escalation of violence on the stands, whereas not only one side was to be held solely responsible.

The Control, Ethics and Disciplinary Body agreed with the arguments of the club that the behaviour of the away-team supporters and hooligans is intolerable, while however emphasizing that such actions by the Beşiktaş supporters will be dealt with by the UEFA disciplinary bodies in separate proceedings, while the present cases only focuses on the potential violations of the UEFA disciplinary regulations by the supporters of Lyon.

Subsequently, the Control, Ethics and Disciplinary Body wanted to stress that the decisive factor or circumstance in the present case was not, figuratively spoken, who “threw the first stone” or who provoked whom, taking into account that such ascertainment cannot be a justification or excuse (emphasis added) for any supporter group to act in such a way as it occurred during the match under scrutiny. Therefore, it was not important to the panel whether the Beşiktaş supporters potentially caused the spiral of violence by throwing fireworks into the lower stands or whether the attacks by the Lyon hooligans came first. It can only be emphasized that no form of violence can be tolerated and has hence no place in a football stadium.

In any case, following a thorough and careful review of all the video footage provided during the course of these proceedings, the Control, Ethics and Disciplinary Body was convinced that the attack of the Turkish supporters by the Lyon hooligan group, all dressed in black, which can be seen on the aforementioned videos, was certainly not a spontaneous reaction to fireworks being thrown by the Beşiktaş hooligan group. It can be clearly seen that said Lyon hooligan group had planned their attack already beforehand, as they appeared in the location where many Turkish supporters were situated in a very organized manner, obviously with the clear aim to attack Turkish supporters.

The Control, Ethics and Disciplinary Body at this point could only express its disgust for the violence applied by the club’s supporters. From the video images and the photos on file, it can be seen how Turkish spectators got attacked at random by the club’s hooligans. Said innocent spectators raised their hands, trying

to defend themselves against the beating which was not only performed through kicks and punches, but also with crutches being used as weapons which has to be considered as particularly dangerous and disgraceful. Women and children were to be found in the relevant sector as chaos broke out with spectators and innocent bystanders trying to flee the scene in fear of possible attacks and injuries.

These incidents must be considered as particularly severe acts of hooliganism - a particularly serious offence. As well as posing a risk to the safety and security of supporters, such behaviour is all the more unacceptable because it tarnishes the image of football, of UEFA and the UEFA Europa League. Taking into account that the said incidents also affected the security and safety of women and children makes the situation even more intolerable.

Applying the principle of strict liability as described in Articles 8 and 16 (2) DR, the club shall be held liable for the conduct of its supporters, even if it is not at fault itself. Indeed, it has long been established in case law that strict liability applies regardless of fault (in this regard, see page 12 of the Court of Arbitration for Sport case CAS 2002/A/423 PSV Eindhoven)."

- Article 16 (2) (c) DR ("the lighting of fireworks or any other objects"):

"Setting off fireworks is a serious offence because not only can it disrupt the orderly running of the match but also, and more importantly, it can endanger the physical integrity of those lighting the fireworks, of other spectators, officials and even the players on the pitch, especially when such objects are being thrown. For this reason, the use of pyrotechnic devices in stadiums is strictly forbidden.

In the present case, it remained undisputed that several pyrotechnics were ignited by the club's supporters, one even thrown in the direction of the pitch.

Applying the principle of strict liability as described in Articles 8 and 16 (2) DR, the club shall be held liable for the conduct of its supporters, even if it is not at fault itself. Indeed, it has long been established in case law that strict liability applies regardless of fault (in this regard, see page 12 of the Court of Arbitration for Sport case CAS 2002/A/423 PSV Eindhoven).

The duration of any fireworks and the fact that the setting off and throwing of such fireworks were only isolated incidents or did not cause any harm is irrelevant when considering such a breach of Article 16 (2) (c) DR".

- Article 16 (2) (a) DR ("the invasion or attempted invasion of the field of play"):

"Because of the potential security risk caused by pitch invasions - as nobody is aware of the real intentions of the intruders at the time of the incident - as well as the possible disturbances that may be associated with such behaviour, pitch invasions are strictly forbidden.

In the present case, according to the official reports for the match, one supporter invaded the pitch after the club had scored a goal, while others managed to climb over the LED screen without making it onto the field of play.

Such incidents may appear harmless, however, they represent a serious departure from security protocol and cannot be ignored. It is important to remember that it is not necessary for anyone to be injured or for a security issue to be caused before a sanction can be imposed in such cases.

[...]”

- Article 37 of the Safety and Security Regulations (hereinafter “SSR”):

“The purpose of the SSR is to maintain the safety and security of everyone present at the match (Article 2 SSR). In order to achieve this goal there are several provisions concerning spectator control at the stadium.

In the case at hand, the away-supporters were not separated from the home-team supporters, given that such Beşiktaş supporters had obtained match tickets through different channels and were spread out all over the stadium, with smaller groups of supporters in the middle of home-team supporters as well as supporters and hooligan groups located in sectors above the home-team supporters, therefore being able to throw objects down onto them.

The Control, Ethics and Disciplinary Body deems that the measures implemented for the match were extremely poor, taking into account that between 10’000 and 15’000 Turkish spectators managed to gain access to the stadium and find themselves all over the stadium, thereby creating an enormous and almost incalculable security issue with fights breaking out, objects being thrown on spectators causing injuries and creating disorder”.

- Article 38 SSR:

“In the present case, it was reported that home-team supporters were standing and blocking staircases in south stand (sectors 16, 17, 18, 19, 20) and in the north stand (sectors 1, 2, 3, 4, 5, 101, 102, 103, 104, 105, 106).

The Control, Ethics and Disciplinary Body took note of the fact that the club admitted the violation of the relevant Article 38 SSR and did therefore not provide any arguments or evidence which would raise doubts about the accuracy of the relevant reports”.

- Article 15 (4) DR:

“In the present case, five (5) of the club’s players were cautioned by the referee during the match. This is not contested by the club”.

34. When determining the appropriate sanction for the above infraction, the CEDB stated in its decision as follows:

“Regarding the crowd disturbances, the Control, Ethics and Disciplinary Body identified and took into account the following:

- the seriousness of the offences and the extreme violence committed against other spectators, in particular also women and children, noting that hooliganism completely contradicts UEFA’s values and principles and is one of the most serious problems confronting sport today. It creates a serious issue for the organisers of sports competitions, as it runs contrary to all possible expectations of a fair, smoothly run, peaceful and joyful sport event which intends to unite different cultures around the world by means of playing a common sport, as is the case with football;*
- the poor image given of UEFA competitions, UEFA itself and football in an overall.*

Regarding the setting off of fireworks, the insufficient organization and the blocking of stairways, the pitch invasion and the improper conduct of the team, the Control, Ethics and Disciplinary Body took into account the following circumstances:

- the multiplicity of the offences committed;*
- the club’s previous record, noting that the club has already been punished in respect of all of the abovementioned violations of the UEFA Disciplinary Regulations; and*
- the seriousness of the offences committed.*

In view of the above, the Control, Ethics and Disciplinary was of the opinion that a very harsh sanction needs to be imposed on the club. The extreme violence which broke out in the stands, affecting innocent bystanders, spectators, women and children, putting their health in danger, the images of spectators fleeing the stands onto the pitch to avoid being injured, is intolerable, outrageous and tarnishes the image of UEFA and its most prestigious competitions.

Bearing in mind this despicable behaviour by its supporters and the lack of organization which led up to these events, the Control, Ethics and Disciplinary Body on the one hand formed the belief that Lyon should not be allowed to participate in the UEFA competitions and should be excluded.

On the other hand, the Control, Ethics and Disciplinary Body also took into account the positive attitude shown by the club as well as acknowledging the positive previous record of the club pertaining to crowd disturbances, the Control, Ethics and Disciplinary Body therefore decided to exclude Olympique Lyonnais from participating in the next UEFA club competition for which it will otherwise qualify, while however deferring this exclusion for a probationary period of two (2) years to give the club a final and strong warning, as well as an incentive to work the obvious organizational problems as well as the problems with its hooligan supporters. [...]”.

b) *The proceedings before the UEFA Appeals Body*

35. On 15 May 2017, OL informed the UEFA Appeals Body of its intention to file an appeal against the CEDB decision.

36. On 22 May 2017, OL submitted its appeal brief with grounds to the UEFA Appeals Body.
37. On 1 June 2017, Mr Miguel Liétard Fernández-Palacios, the UEFA Ethics and Disciplinary Inspector (hereinafter also “EDI”) was appointed in the case.
38. On 22 June 2017, the EDI submitted his report (reply) and requested to reject OL’s appeal and to confirm the decision.
39. On 10 July 2017, OL filed its rejoinder to the EDI reply.
40. On 13 July 2017, the UEFA Appeals Body issued the operative part of its decision (hereinafter “the Appealed Decision”), which reads as follows:
 1. *The appeal lodged by Olympique Lyonnais is dismissed. Consequently, the UEFA Control, Ethics and Disciplinary Body’s decision of 19 April 2017 is confirmed.*
 2. *The costs of the proceedings, totalling € 5’000 (minus the appeal fee), are to be paid by the Appellant.*
 3. *The French Football Federation is jointly and severally liable for the payment of the fine and the costs of the proceedings (Article 66.2 DR).*
 4. *This decision is final (subject to Article 65.6 DR) (...).*
41. On 17 July 2017, the UEFA Appeals Body notified the operative part of the Appealed Decision to OL.
42. On 16 August 2017, the UEFA Appeals Body notified the grounds of the Appealed Decision.
43. The grounds of the Appealed Decision state – *inter alia* – as follows.

“As a starting point in this matter, the Appeals Body notes that the Club admits all of the breaches of the DR and SSR identified by the CEDB in the Decision.

Further, it is noted that there is a general agreement between the Appellant and the EDI regarding the chronology of the various events involving the Club’s supporters.

Accordingly, with regard to the incidents inside the stadium, it is established that both supporters of the Club and Visiting Club engaged in violent acts and that supporters of the Visiting Club threw fireworks from their position in the upper stands (something which caused the Club’s supporters in that area to flee onto the pitch) before the violent altercations caused by the Club’s supporters started.

On this basis, the Appeals Body concludes that the CEDB was correct to establish the various breaches of the SSR and DR identified in the Decision”.
44. The Appealed Decision continues to state as follows:

“Whilst the Appeals Body wholeheartedly condemns the behaviour of the supporters of the Visiting Club at the Match, it has to be stressed that such acts cannot justify the behaviour of the Club’s supporters in the stadium, nor can they justify a reduction in the sanctions imposed by the CEDB in the Decision. Acts of violence of this severity cannot be explained away by mere provocation.

Further, as explained in the EDI Report, the idea that the attacks made by the Club’s supporters were purely the result of provocation is doubtful. It appears that at least some of the attackers were acting in a pre-planned manner, with the deliberate aim of causing harm to supporters of the Visiting Club. Indeed, the behaviour of some of the Club’s supporters in going on the offensive (rather than fleeing onto the pitch, as many of their number did in order to keep themselves safe from an attack by the Visiting Club’s supporters above them) would also suggest an ulterior motive.

It is clear that having so many supporters of the Visiting Club in the stadium did not help matters but, in the interests of football and the wider concept of good behaviour, the fact that there is a large away support at a match should never be used as an excuse for violent behaviour by the home supporters. This would be tantamount to condoning hooliganism.

Finally, the Appeals Body must also underline that the Club, under Article 37 SSR, had the responsibility to ensure that spectators couldn’t move from one sector to another in the stadium – something which it admits it failed to do at the Match. The Club itself must therefore share responsibility for the consequences of such security failures. It cannot simply push the burden of responsibility onto the Visiting Club for acts that its own negligence contributed to”.

45. In addition, the UEFA Appeals Body finds that:

- *“a lack of assistance from the Visiting Club in preparing the Match cannot excuse the behaviour of the Club’s supporters;*
- *as mentioned above, the violent behaviour of the supporters of the Club cannot be directly and exclusively linked to the behaviour of the supporters of the Visiting Club since attacks were launched against supporters of the Visiting Club who had shown no aggression;*
- *as a general principle, violence cannot justify or mitigate further violence;*
- *in the context of the supporters of the Club who were attacked from above, this principle holds true even if they considered their safety to be at risk – since, rather than going on the offensive, such supporters could have found a safe place to stand until the issue was resolved (as many indeed did by moving onto the pitch or to exits, with the exception of the hooligan element who instead chose to go on the offensive against supporters of the Visiting Club in an adjacent sector who had not even been involved in the attack from above); and*
- *it is purely speculative to suggest that the violent behaviour of the supporters of the Visiting Club allowed or facilitated the smuggling of weapons and pyrotechnics into the stadium, and no evidence was provided by the Club to support this claim”.*

46. The UEFA Appeals Body further finds that no reduction of the sanction is warranted in light of the principle of equal treatment:

“In this regard, as a general rule, the Appeals Body notes that all cases are different and it is difficult to compare different situations.

However, notwithstanding this difficulty, in this particular case, the Appeals Body does not consider the Decision to be inconsistent with previous cases. In this regard, the Appeals Body refers to the various precedents cited in the EDI Report (which includes cases heard at the Court of Arbitration for Sport).

The Appeals Body sees nothing in the Decision to suggest that the sanctions imposed are erroneous. As the EDI suggests, “[j]ust as some precedents may have been more favourable to the relevant clubs, others were even more severe, and all disciplinary proceedings shall be dealt on a case-by-case basis while considering all of the facts and circumstances of a given case”.

47. The UEFA Appeals Body finds, in addition, that no reduction of the sanction is warranted in light of OL’s past record:

“The Club does, however, have previous records for the other offences covered in the Decision (namely for improper conduct of the team, pitch invasions, throwing objects, setting off fireworks, failing to limit spectator movement and blocking stairways). The fact that the Club has been sanctioned on several occasions in the last two years for the misconduct of its supporters and insufficient organisation must be considered to be an aggravating circumstance in the present case”.

48. To conclude, therefore, the UEFA Appeals Body notes that the CEDB neither abused nor exceeded its broad powers of discretion when imposing the sanctions and that the measures imposed by the CEDB comply with the principles of legality and proportionality. The UEFA Appeals Body noted that the particular importance was rightly attached to the following factors by the CEDB:

- *“the multiplicity of offences;*
- *the seriousness of the offences, in particular the crowd disturbances and violent behaviour of the Club’s supporters which threatened the health and safety of all those present at the Match (both inside and outside the stadium), and also severely tarnished the image of the competition;*
- *the Club’s previous record for most of the relevant offences, something which points to an endemic problem of misconduct amongst the Club’s supporters and habitual deficiencies in match organisation at the Club; and*
- *the fact that the Club neglected to make proper security preparations for the Match (for example, proper and effective segregation and body searching), even though it had been made aware of the large number of visiting Club supporters who would be attending and could therefore reasonably be expected to have foreseen issues of the type that occurred”.*

III. PROCEEDINGS BEFORE THE CAS

49. The proceedings before the Court of Arbitration for Sport (“CAS”) can be summarized in their main parts as follows:
50. On 28 August 2017, the Appellant filed its statement of appeal against the Appealed Decision with the CAS, in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (2017 edition) (the “CAS Code”). The Appellant appointed Mr Hamid Gharavi as arbitrator. Furthermore, the Appellant requested that the proceedings shall be conducted in French.
51. On 30 August 2017, the CAS Court Office acknowledged the receipt of the statement of appeal. The Appellant was further invited to file its appeal brief with the CAS within 10 days following the expiry of the time limit for the appeal, failing which the appeal shall be deemed withdrawn. The CAS Court Office further acknowledged the Appellant’s nomination of Mr Hamid Gharavi as an arbitrator and requested the Respondent to nominate an arbitrator from the list of CAS arbitrators within 10 days following the receipt of the letter. The Respondent was also granted a deadline of 3 days to possibly object on the language of the proceedings, failing which the latter shall be conducted in French.
52. By letter dated 31 August 2017, the Respondent nominated Mr Manfred Nan as arbitrator. It further requested that the proceedings be conducted in the English language.
53. With letter dated 1 September 2017, the CAS Court Office acknowledged receipt of the Respondent’s letter and invited the Appellant to comment on the Respondent’s request by 6 September 2017.
54. With letter of 4 September 2017, the Appellant insisted that the language of the proceedings shall be French but agreed that the Respondent could file its submissions in English.
55. On 5 September 2017, following the parties’ agreement, the CAS Court Office invited the Appellant to file its appeal brief until 15 September 2017 and the Respondent to file its answer until 20 October 2017.
56. With letter of 7 September 2017, the Respondent agreed with a bilingual written procedure provided that the language of the hearing is English.
57. On 8 September 2017, the CAS Court Office invited the Appellant to confirm until 13 September 2017 that the language of the proceedings is English but that the parties are entitled to submit their documents in French without any translation.
58. In the letter of 13 September 2017, the Appellant insisted on the proceedings to be conducted in French. Alternatively, it submitted that the proceedings shall be carried out in French language and that each party is entitled to choose its language of preference.

59. On the same date, the CAS Court Office informed the parties that, in view of the absence of an agreement on the language of the proceedings, an Order on the language shall be rendered by the President of the CAS Appeals Arbitration Division, or her Deputy.
60. With letter of 14 September 2017, the CAS Court Office notified to the parties a copy of the Order on the language of the proceedings issued by the President of the CAS Appeals Arbitration Division. The latter decided that the language of the procedure is English and that the Appellant must only file a translation of its statement of appeal if expressly ordered so by the Panel.
61. With letter of the same date, the Appellant requested, after prior consultation with the Respondent, an extension of the time limit to file its appeal brief.
62. On 15 September 2017, the CAS Court Office granted the requested extension until 20 September 2017.
63. On 20 September 2017, the Appellant filed its appeal brief in accordance with R51 of the CAS Code.
64. On 22 September 2017, the CAS Court Office invited the Respondent to file its answer until 20 October 2017.
65. On 27 September 2017, in accordance with Article R54 of the CAS Code and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the Panel was constituted as follows:

President: Mr Ulrich Haas, Professor in Zurich, Switzerland
Arbitrators: Mr Hamid G. Gharavi, Attorney-at-law in Paris, France
Mr Manfred Nan, Attorney-at-law in Arnhem, The Netherlands.
66. With letter of 29 September 2017, the Respondent informed the CAS Court Office that it had reached an agreement with the Appellant to file its answer until 27 October 2017 and requested the CAS Court Office to grant the requested extension of time.
67. On the same day, the CAS Court Office confirmed the extension of the time limit.
68. On 3 October 2017, the Appellant submitted YouTube videos to the CAS Court Office relating to these proceedings.
69. On 9 October 2017, the CAS Court Office informed the parties that Ms Amrei Keller, Attorney-at-law in Zurich, Switzerland had been appointed as *ad-hoc* Clerk.
70. With letter of 27 October 2017, the Respondent requested another extension to file its answer until 30 October 2017. The Appellant had previously agreed to such extension.

71. By letter of the same day, the CAS Court Office confirmed the extension of the deadline.
72. On 30 October 2017, the Respondent filed its answer in accordance with Article R55 of the CAS Code.
73. On 31 October 2017, CAS Court Office invited the parties to state whether their preference was for a hearing to be held in the procedure.
74. On 1 November 2017, the Respondent expressed its preference for a hearing.
75. On 8 November 2017, the CAS Court Office noted that the Appellant had not indicated, whether it preferred a hearing to be held or that the award be rendered on the basis of the written submission. The CAS Court Office informed the parties that this issue shall be decided by the Panel.
76. With letter of the same day, the Appellant informed the CAS Court Office that it did not object to a hearing.
77. With letter of 15 November 2017, the CAS Court Office informed the parties that the hearing will be held in Lausanne on 6 February 2018 at 9h30 (CET).
78. With letter of 17 November 2017, the CAS Court Office provided the parties with the Order of Procedure and invited the parties to sign and return it until 15 December 2017.
79. The Order of Procedure was duly signed and returned by the Respondent (on 22 November 2017) and by the Appellant (on 14 December 2017).
80. On 1 February 2018, the Appellant submitted a letter with exhibits (A-31 to A-42) and mentioned also a legal opinion, which was not attached to the letter.
81. On 2 February 2018, the Appellant submitted the legal opinion in French (on the interpretation of the French Code de la Consommation – “FCC”).
82. On 5 February 2018, the Respondent requested to reject the new documents filed by the Appellant.
83. A hearing took place in Lausanne, Switzerland on 6 February 2018. At the outset of the hearing, the parties confirmed not to have any objection as to the constitution and composition of the Panel.
84. The Appellant was represented by its Attorneys-at-law Mr Antonio Rigozzi and Mr Samuel Half. Furthermore, the following persons attended the hearing on behalf of the Appellant: A., Director of Human Resources and Legal Affairs and B., translator.

85. On behalf of the Respondent the following persons attended the hearing: Mr Emilio García, UEFA Managing Director of Integrity, Mr Martin Bauer, UEFA Disciplinary Lawyer, Mr Carlos Schneider, UEFA Counsel and Mr Célien Moreau, Disciplinary Assistant.
86. The following witness gave evidence before the Panel:
- C. (OL Stadium Manager).
87. At the hearing the Respondent stated that it had no objection to the (late) filing of the Appellant's exhibits, but for the legal opinion drafted in the French language. The Panel – after listening to the arguments of both parties – decided to admit the legal opinion on file, but ordered the Appellant to provide the Panel and the Respondent with an English translation thereof within a deadline of two weeks. In addition, the Panel advised the Respondent that the latter would be provided with a deadline of (an additional) two weeks to comment on the Appellant's legal opinion.
88. The parties throughout the hearing did not raise any additional procedural objections and expressly confirmed at the end of the hearing that their right to be heard and to be treated equally had been respected. As they had been given ample opportunity to present their cases and submit their arguments and answers.
89. With letter of 20 February 2018, the Appellant provided the English translation of its legal opinion (originally filed on 2 February 2018).
90. On 21 February 2018, the Respondent submitted its comments to Appellant's legal opinion.

IV. OVERVIEW OF THE PARTIES' POSITIONS

91. This section of the award does not contain an exhaustive list of the parties' contentions, its aim being to provide a summary of the substance of the parties' main arguments. In considering and deciding upon the parties' claims in this award, the Panel has accounted for and carefully considered all of the submissions made and evidence adduced by the parties, including allegations and arguments not mentioned in this section of the award or in the discussion of the claims below.

1. The Appellant

92. On 20 September 2017 in its appeal brief, the Appellant requested that the CAS:
1. *“Set aside the Decision under Appeal;*
 2. *Declare that no sanction should be taken against Olympique Lyonnaise in connection with the events of the 13 April 2017 Match or, alternatively, that the sanction imposed by UEFA in the Decision under Appeal is amended and replaced by a considerably reduced penalty; and*

3. *Condemn UEFA to pay all costs of the arbitration, if any, and to pay OL a significant contribution towards its legal costs”.*

93. The Appellant, in essence accepts that it breached the various provisions cited by the CEDB and the UEFA Appeals Body. Furthermore, OL “*does not intend to minimize the seriousness of the matter*”. However, OL questions the proportionality of the sanction. In particular, OL is of the view that the Respondent should have given more weight to the following facts:

- BJK’s lack of assistance in preparing the Match. Because of the lack of collaboration from the Turkish authorities and BJK, OL was not able to properly identify the risks related to Turkish supporters. The Appellant did not and could not anticipate that more than 15,000 (unofficial) BJK supporters would find their way inside the stadium.
- OL sought to limit Turkish fans’ access to the tickets sale, but could only limit such access in compliance with French law. According to French legislation on “refusal of sale”, OL had the obligation to allow access to the sale of tickets to any potential buyer located in France. OL had to accept the purchase of tickets for the Match from the entirety of the French territory. Many Turkish supporters from outside France circumvented the ban on the selling of tickets abroad by purchasing their tickets through Turkish residents in France.
- OL does not have an issue with hooliganism unlike BJK. The Appellant’s most fervent supporters (known as “Kobs”) do not pose any problems during home or away matches. This is evidenced by the fact that OL has never been sanctioned for hooliganism in the past. In fact, OL maintains a cordial relationship with its Kobs (or supporters). During the two previous seasons of UEFA competitions (UEFA Champions League and UEL, i.e. 2015-2016 and 2016-2017), OL has been sanctioned on eight occasions by UEFA, but never on account of hooliganism or for lack of discipline of its supporters (“crowd disturbances”). OL only received minor sanctions. BJK, on the contrary, has been sanctioned by the UEFA on 18 occasions during the same time period. On 8 accounts, BJK was sanctioned for crowd disturbances by their supporters. Thus, BJK has a history of violent supporters. This is particularly true for the so-called supporter group of the Çarşı (the “Çarşıs”) who are well known for their terrible violence and destruction. Neither the UEFA Disciplinary Inspector nor the UEFA Appeals Body suggested that there was a track record of hooligan behaviour with OL. Instead, the Appealed Decision admitted that OL had no history of crowd disturbances or violent hooliganism.
- OL considered the Match to be a sensitive fixture and acted accordingly. However, neither the Préfecture nor OL could anticipate that bombs would be thrown by BJK supporters onto OL supporters located in the lower stands. The number of pyrotechnic objects lit and thrown by BJK supporters was higher than reported by Mr Jean Paul Mives, the UEFA Delegate (BEL) in his “Pre-Match-Report” on 13 April 2017. BJK supporters attempted to harm OL supporters by throwing highly dangerous pyrotechnics objects towards the latter. It was this behaviour of BJK supporters that provoked and sparked the reaction of OL supporters. In addition, the fight, which broke out on the south stand, does not appear as a significant incident in comparison

to the overall circumstances of the Match for which BJK supporters were responsible before and during the Match. BJK had been displaying constant disorder by its hooligan fans and BJK fans were demonstrably the instigators for the incidents and escalation of the violence.

- BJK was sanctioned the same way as OL. This is not consistent, because it was BJK who was responsible – at least for the main parts – for the incidents that occurred. Furthermore, there were no aggravating factors on the part of OL which could justify UEFA’s sanction consisting of a combination of a fine and an exclusion from participating in the next UEFA club competition . The fact that the latter was deferred for a probatory period of two years does not make the sanction proportionate, because OL remains under the threat of a very draconian sanction. OL thereby is placed in a situation where any further offence carries with it the potential of UEFA lifting the suspension and excluding OL from European competitions. This amounts to a loss for OL in an amount in excess of EUR 65 million. This is not in line with OL’s level of fault or negligence. The Appealed Decision is discriminatory towards OL, because it treats OL differently from other clubs.
- OL’s security did its best to handle the situation.

2. The Respondent

94. On 30 October 2017, the Respondent filed its answer to the appeal brief and requested the Panel to render an award:

1. *“Rejecting the reliefs sought by OL.*
2. *With regard to Respondent’s costs, bearing in mind that UEFA is represented in these proceedings by in-house lawyers and the fact that UEFA has more financial resources than OL, the Respondent considers that no contribution towards the legal fees incurred by UEFA in connection with these proceedings must be paid by Appellant regardless of the outcome”.*

95. The Respondent’s submission can be summarized in essence as follows:

- The CAS Panel has a limited mandate when reviewing the sanction based on proportionality. The Panel is limited in reviewing whether or not the sanction is grossly and evidently disproportionate. The latter, however, is not the case.
- The sanction reflects the multitude of the infractions committed by OL as well as the severity of the incidents. The UEFA disciplinary bodies adequately took into account all mitigating factors, in particular the history of OL, i.e. its previous record, the specificities of the case and the mitigating and aggravating circumstances. The result of the balancing of the various factors lead to the imposition of a sanction which must be considered proportionate, if not too lenient.
- The events at the Match were foreseeable for OL. Despite of this, OL failed to implement the necessary safety and security infrastructure. OL was not only aware that the Match was sensitive. In addition, it had been warned that thousands of

(unofficial) Turkish supporters had managed to obtain tickets for the Match. The Appellant blatantly ignored the warning from BJK and the obvious evolving imminent high risk situation and continued organizing the Match in a normal fashion, thereby making inadvertences with regard to security measures deployed around and in the stadium prior to kick-off with violent hooligan groups invading the stadium without proper control, fighting innocent bystanders and spectators, throwing fireworks and artisanal bombs from upper onto lower sectors, endangering the safety and physical integrity of spectators and tarnishing the image of UEFA and its prestigious competition, all on live television, intensively covered by international media. The organizational shortcomings by the Appellant and in particular the failure to secure the limitation of movement of spectators, ultimately made it impossible to secure the segregation between the different spectator groups.

- Insofar, as the Appellant refers to the limitations imposed by French law in the context of the sale of the tickets (Article L. 121-11), such referral is incomplete, since the Appellant omits to fully quote the applicable provision. According to the (full) text it appears that the sale of the tickets can be refused under certain conditions. Safety and security reasons at a sports event do constitute a legitimate reason to restrict the sale of the tickets. This position is also backed by examples from the French jurisprudence. Consequently, the unofficial BJK supporters did not profit from the French legislation. Instead, the supporters took advantage from the Appellant's unwillingness to apply the legal framework properly and to find solutions or clarifications with French authorities.
- The Appellant failed to prepare the Match in an adequate manner. It was the Appellant's responsibility to implement all appropriate measures in order to guarantee the safety and security at the Match. The fact that BJK supporters were able to bring dangerous objects into the stadium is not a mitigating circumstance, taking into account that it was the responsibility of the Appellant to prevent such events from happening. The fact that these supporters were able to throw and drop fireworks from the upper ranks onto the OL supporters was made possible and facilitated by the Appellant's faulty decision to allocate the BJK supporters in sectors above the OL supporters. It was – furthermore – the Appellant's duty to prevent the blocking of the stairways. The blocking of stairways poses a serious threat to safety and security in the stadium, particularly in the event of panic or medical emergencies.
- The Appellant's supporters were not mere victims who were surprised by a sudden outburst of violence by BJK supporters. Furthermore, the group implicated in the fight on the south stand was no random group of OL supporters who was merely seeking revenge for previous provocations. Instead, the group was well-organized and considerable in size. It appears that the members of the group of OL hooligans were ready to provoke, confront and fight Turkish supporters on their own accounts. This behaviour was aggressive and posed a direct threat to safety and security for other spectators in the stadium, the refereeing team and the players on the pitch. The Appellant's supporters' behaviour was not a spontaneous reaction to previous provocations or actions from the Turkish hooligans. On the contrary, the OL hooligans acted in a very organized manner, were all dressed the same and obviously

following a common goal, i.e. of finding and fighting Çarşı hooligans. It was only when said confrontation could not be achieved due to the specifications of the stadium, that the OL hooligans found a different outlet for their aggression, namely the sector on the intermediate level, which was ultimately attacked with extreme violence and relentlessness.

- OL has a history of serious breaches of the applicable rules with regard to safety and security in the stadium as well as in relation to the organization of UEFA matches. In the six previous matches (before the Match), the Appellant failed to guarantee proper segregation of the different supporter groups and allowed for a free flow of spectators inside the stadium. The Appellant is in fact a repeated offender and its ultra-supporters having a history of violent behaviour. OL's hooligans or ultra-supporter groups like the "Kobs" and "Bad Gones" are infamous and well-known over Europe for causing serious trouble at home and away matches. Several issues of hooliganism have been recorded and sanctioned in the past (*e.g.* international friendly match France *vs.* England on 13 June 2016, UCL match FC Sevilla *vs.* OL on 27 September 2016, UEL match OL *vs.* AS Roma on 9 March 2017). In addition, the Respondent notes that since the sanction was imposed on the Appellant, three further disciplinary proceedings have been opened against OL, *inter alia* for crowd disturbances at an away match at AFC Ajax, field invasions by supporters, throwing of objects and setting off fireworks at a home match against AFC Ajax and the blocking of stairways at a home-match against Atalanta BC.
- Violent actions by Turkish supporters can neither excuse nor explain the organizational failures of and the negligence by the Appellant, nor does a violation of the UEFA Disciplinary Regulations by a third party warrant the acts of hooliganism displayed by the Appellant's supporters. The acts of hooliganism displayed by the BJK supporters were dealt with in separate disciplinary proceedings and are certainly no determining factor when finding the appropriate sanction for the Appellant's misconduct.
- The sanction, which was imposed on OL, is necessary to achieve the objective goal upon which the relevant regulations are based. Such goal is to guarantee and achieve safety and security at the UEFA competition matches. Previous sanctions on the Appellant for its previous failures with regard to the organization of matches and the implementation of adequate safety and security measures have not lead to any improvement of the situation.
- The positive attitude of OL was taken into account in the Appealed Decision. The probationary period is appropriate and balanced. The Appellant has no immediate disadvantage from the deferred exclusion. OL has it in his own hands to ensure that incidents of a similar nature do not reoccur. The immediate pecuniary loss deriving from the fine of EUR 100,000 does not outweigh UEFA's interest in securing safety at its competition matches. In addition, there are far more serious sanctions available to the UEFA that have not been imposed. The direct losses from a partial or full stadium closure – *e.g.* – is much more severe and hampering, given that clubs regularly generate massive amounts of revenues from the sale of tickets of its home matches,

merchandise, sponsoring, sales of food and drinks at the stadium etc. Furthermore, the interest of UEFA to guarantee safety and security at its matches outweighs OL's financial interests.

- The principle of equal treatment has not been breached. This holds true when looking at the consequences imposed on OL and BJK. Both clubs have not been sanctioned for the same kind of infringements of the UEFA Disciplinary Regulations. OL was sanctioned for the acts of hooligans by its supporters in the stadium, for setting off fireworks and for its massive failures with regard to the organization the safety and security at the Match. However, also when comparing the sanction issued against OL with other cases there is no violation of the principle of equal treatment. When comparing different cases one must keep in mind that every case turns on its individual facts and that, therefore, the various disciplinary cases are difficult if not impossible to compare.

V. JURISDICTION

96. The jurisdiction of the CAS, which is not disputed by the parties, derives from Article R47 of the CAS Code and Article 62 para. 1 of the UEFA Statutes (March 2016 edition).
97. According to Article R47 of the CAS 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”*.
98. Pursuant to Article 62 para. 1 of the UEFA Statutes, *“[a]ny 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”*.
99. The Panel finds that it has jurisdiction to decide the present dispute.

VI. ADMISSIBILITY

1. Timeliness of the appeal

100. The deadline provided in Article R49 of the CAS Code (twenty-one days from the receipt of the decision appealed against) is only relevant in the absence of a time limit set in the statutes or the regulations of the relevant federation. The UEFA Statutes provide in Article 62 para. 3 that *“[t]he time limit for appeal to the CAS shall be ten days from the receipt of the decision in question”*. Therefore, the appeal against the Appealed Decision must be filed with the CAS within 10 days from its receipt.
101. According to Article R32 of the CAS Code the time limit starts to run on the day following the day on which notification of the decision is received. In principle, notification of the decision requires that the Appellant is provided with the full decision (including the grounds).

The Appellant was provided with the grounds of the decision on 16 August 2017. Therefore, the time limit to file the appeal against the Appealed Decision expired on 26 August 2017, i.e. Saturday. However, Article 32 of the CAS Code provides that “[i]f the last day of the time limit is an official holiday or non-business day in the location from where the document is to be sent, the time limit shall expire at the end of the first subsequent business day”. Consequently, the time limit expired on 28 August 2017 at midnight.

102. It follows from the above that the appeal filed by the Appellant on Monday, 28 August 2017 was filed in due time and is, therefore, admissible.

2. Other Procedural Issues

103. On 1 and 2 February 2018, the Appellant submitted new evidence in these proceedings (letter with exhibits A-31 to A-42 and a legal opinion redacted in French). The Respondent at the hearing objected – based on Article R56 of the CAS Code – to the legal opinion related to the FCC. It requested the latter to be excluded from the file, because it was filed late, i.e. only in the evening of 26 January 2018 and because it was redacted in French (instead of English). The Appellant explained that the contents of the legal opinion only backed its legal position that it had already developed in its appeal brief and, thus, did not constitute a new argument. The Appellant further stated that it had planned to include the contents of the legal opinion in its pleadings and that it provided a written copy of it to the Respondent prior to the hearing just out of courtesy.
104. Article R56 of the CAS Code states that “[u]nless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer”.
105. The purpose of Article R56 para. 1 of the CAS Code is to limit the parties’ written submissions in appeals arbitration to a single exchange in order to ensure that the resolution of the dispute is not unduly delayed (see also MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, Art. R56 no. 2 et seq.).
106. Regarding the Appellant’s exhibits (A-31 to A-42) the parties agreed to take them on file. Only with respect to the legal opinion filed by the Appellant, the parties disagree as to its admissibility. The Panel notes that the Appellant already developed its arguments based on the FCC in its appeal brief. Thus, the Appellant, in any way, would have been free to refer hereto – and to respond to the objections / counter-arguments raised by the Respondent – in its pleadings at the hearing without violating Article R56 para. 1 of the CAS Code or the Respondent’s right to be heard. Thus, by admitting the legal opinion on file, the Respondent’s procedural rights are not violated. In addition, admittance on file will not delay the proceedings. Furthermore, the Panel finds it useful to obtain the Appellant’s arguments with regard to the FCC in written form. However, considering that arguments filed in writing may (or may perceived to) carry more weight and mindful of the principle of equal treatment of the parties, the Panel accepts the legal opinion on file only, provided that it be translated into

the language of the proceedings (English) and that also the Respondent be given an opportunity to file its observations thereto in writing.

VII. APPLICABLE LAW

1. The relevant conflict-of-law provisions

107. Article 63 para. 3 of the UEFA Statutes stipulates that “[...] proceedings before the CAS shall take place in accordance with the Code of Sports-related Arbitration of the CAS”.

108. Article R58 of the CAS Code provides as follows:

“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

109. It is undisputed between the parties that the “applicable regulations” within the above meaning are the rules and regulations of UEFA. According to Article 5 DR, “[t]he disciplinary bodies base their decisions: a. primarily on UEFA’s Statutes, regulations, directives and decisions, and the Laws of the Game; and b. subsidiarily on Swiss law and any other law that the competent disciplinary body deems applicable”.

110. It follows from the above that this Panel will apply first and foremost the UEFA rules and regulations in force at the time of the occurrence of the events (including in particular the DR, edition 2016 and the SSR, edition 2006). The Panel will refer subsidiarily to Swiss law where appropriate.

2. The relevant UEFA provisions

111. The following UEFA rules and regulations are relevant to this case:

Article 6 DR:

‘The following disciplinary measures may be imposed on member associations and clubs:

- a. warning;*
- b. reprimand;*
- c. fine;*
- d. ban from selling tickets to supporters for away matches;*
- e. annulment of the result of a match;*
- f. order that a match be replayed;*
- g. deduction of points (for the current and/ or a future competition);*
- h. order that a match be forfeited;*
- i. playing of a match behind closed doors;*

- j. full or partial stadium closure;*
- k. playing of a match in a third country;*
- l. withholding of revenues from a UEFA competition;*
- m. prohibition on registering new players in UEFA competitions;*
- n. restriction on the number of players that a club may register for participation in UEFA competitions;*
- o. disqualification from competitions in progress and/or exclusion from future competitions;*
- p. withdrawal of a title or award;*
- q. withdrawal of a licence;*
- r. community football service.*

[...]

³Fines must not be less than €100 or more than €1,000,000. [...]

⁴The above-mentioned disciplinary measures may be combined.

⁵Annex A contains a list of standard disciplinary measures which may be taken into consideration by the relevant disciplinary body when rendering its decision”.

Article 8 DR:

“A member association or club that is bound by a rule of conduct laid down in UEFA’s Statutes or regulations may be subject to disciplinary measures and directives if such a rule is violated as a result of the conduct of one of its members, players, officials or supporters and any other person exercising a function on behalf of the member association or club concerned, even if the member association or the club concerned can prove the absence of any fault or negligence”.

Article 15 para. 4 DR:

“If a national or club team conducts itself improperly (for example, if individual disciplinary sanctions are imposed by the referee on five or more players – three or more in the case of futsal – during a match), disciplinary measures may also be taken against the member association or club concerned”.

Article 16 DR:

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

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

- a. the invasion or attempted invasion of the field of play;*
- b. the throwing of objects;*
- c. the lighting of fireworks or any other objects;*
- d. the use of laser pointers or similar electronic devices;*

- e. the use of gestures, words, objects or any other means to transmit a provocative message that is not fit for a sports event, particularly provocative messages that are of a political, ideological, religious or offensive nature;*
- f. acts of damage;*
- g. causing a disturbance during national anthems;*
- h. any other lack of order or discipline observed inside or around the stadium”.*

Article 17 para. 1 DR:

“The competent disciplinary body determines the type and extent of the disciplinary measures to be imposed in accordance with the objective and subjective elements of the offence, taking account of both aggravating and mitigating circumstances”.

Article 19 DR:

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

- a. one year of the previous offence if that offence was punished with a suspension of up to two matches;*
- b. ten years of the previous offence if that offence was related to match-fixing or corruption;*
- c. two years of the previous offence if that offence was related to order and security at UEFA competition matches;*
- d. three years of the previous offence in all other cases.*

²Recidivism counts as an aggravating circumstance”.

Article 20 DR:

“All disciplinary measures may be suspended, with the exception of:

- a. warnings;*
- b. reprimands;*
- c. bans on all football-related activities;*
- d. disciplinary measures related to match-fixing, bribery and corruption.*

²The probationary period must be a minimum of one year and a maximum of five. This period may be extended in exceptional circumstances.

³If a further offence is committed during the probationary period, the competent disciplinary body, as a rule, orders that the original disciplinary measure be enforced. This may be added to the disciplinary measure imposed for the new offence”.

Article 38 DR:

“Facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided”.

Article 37 SSR:

“The match organiser must take measures to ensure that spectators cannot move from one sector to another.

²If it is necessary to have more than one group of spectators in a particular sector, a division must be maintained between them by means of an insurmountable barrier or fence controlled by security personnel, or by the creation of a «no-go area» kept free of spectators and occupied only by security personnel”.

Article 38 SSR:

“The match organiser must take measures to ensure that all public passageways, corridors, stairs, doors, gates and emergency exit routes are kept free of any obstructions, which could impede the free flow of spectators”.

VIII. MERITS

112. The core of the dispute between the parties is about the proportionality of the Appealed Decision, that provides in its operative part as follows:

“1. To exclude Olympique Lyonnaise from participating in the next UEFA club competition for which it will otherwise qualify. This exclusion is deferred for a probationary period of two (2) years.

2. To fine Olympique Lyonnaise € 100’000.

3. The above fine must be paid into the bank account indicated below within 90 days of communication of this decision”.

113. OL submits that the sanction imposed on it *“is manifestly grossly disproportionate”* and that *“it is clear that the degree of fault does not require the draconian sanction”*. The Respondent, in contrast, is of the view that the sanction issued against OL is rather lenient and in any event proportionate.

1. What is the applicable standard of review?

114. According to Article R57 of the CAS Code *“the Panel has full power to review the facts and the law”*. It follows from this provision – according to MAVROMATI/REEB (The Code of Arbitration for Sport, Art. R57 no. 12) – that the *“Panel is ... not limited in merely reviewing the legality of the decision challenged, but can issue a new decision on the basis of the applicable rules”*. This mandate cannot be restricted through the internal rules and regulations of the (International) Federations (MAVROMATI/REEB, The Code of Arbitration for Sport, Art. R57 no. 35).

115. There are, however, limits to a panel’s powers of review depending on the nature of the decision forming the matter in dispute. Thus, e.g., a panel can review a field of play decision only insofar as the decision is arbitrary, in violation of the principle of good faith or in violation of general principles of law (MAVROMATI/REEB, The Code of Arbitration for Sport, Art. R57

no. 57). The underlying idea for such restriction is that – with respect to field of play decisions – the organs of the respective federation are, in principle, in a better position to adjudicate the matter than a CAS panel examining the issues *ex post*. Consequently, there are good reasons of administration of justice to limit the scope of review in such circumstances.

116. Whether there are equally good reasons to limit the scope of review also in other instances, e.g. in disputes involving disciplinary sanctions (going beyond the field of play) appears questionable. CAS panels have frequently stated that “[t]he measure of the sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rule can be reviewed only when the sanction is evidently and grossly disproportionate to the offence” (cf. CAS 2013/A/3139 para. 114; CAS 2012/A/2762 para. 122; CAS 2011/A/2645 para. 44 with numerous references therein). However, such general statements should be read (and applied) with care.

- First, the above restriction to the scope of review originates in Swiss law of associations and was developed in the context of a review of disciplinary measures by state courts (cf. BK-ZGB/RIEMER, 1990, Art. 75 no. 25). The reason for imposing restrictions on state courts when reviewing decisions of associations follows from the Swiss Constitution (Article 23), i.e. the autonomy of associations, which protects sports federations from excessive state interference. No such state interference is at stake in the present context, where a private institution (CAS) was mandated by private parties to resolve a dispute between them.
- Furthermore, according to Swiss law no limited review applies from the very outset to questions of law. Whether and to what extent a federation is bound by the principle of proportionality or the principle of equal treatment when exercising its disciplinary powers is, however, a question of law (cf. CAS 2013/A/3139, para. 86) and not an issue within the free discretion of a federation.
- The Panel further observes that UEFA provides for a two-instance internal proceeding (CEDB, UEFA Appeals Body). According thereto the UEFA Appeals Body can revise the first instance decision. According to the jurisprudence of the Appeals Body “[i]ts role ... essentially consists of examining whether the ... [CEDB], when taking its decision, respected the principles of legality, equal treatment and proportionality, whether it took into account the particular circumstances of the case and the seriousness of the offence, and finally, whether it exceeded or abused its discretionary powers” (cf. UEFA Appeals Body decision of 14 December 2012 in the matter SK Rapid Wien). There are no reasons of good administration of justice why CAS’s mandate would be more restrictive than the UEFA Appeals Body’s powers of review.
- Finally, it appears rather arbitrary to try to draw a persuasive line between decisions that are “simply” or “grossly” disproportionate. Also, the constant jurisprudence of the CAS according to which procedural flaws committed by the judicial organs of a federation “fade to the periphery” in appeals proceedings before the CAS (CAS 98/211) would have to be revised, if CAS were prevented from exercising its full mandate in disciplinary proceedings, i.e. to review the facts and the law of the case (CAS 2012/A/2912, para. 87).

117. To conclude, the Panel finds that its powers to review the facts and the law of the case are neither excluded nor limited. However, the Panel is mindful of the jurisprudence according to which a CAS panel “*would not easily ‘tinker’ with a well-reasoned sanction, ie to substitute a sanction of 17 or 19 months’ suspension for one of 18. It would naturally [...] pay respect to a fully reasoned and well-evidenced decision of such a Tribunal in pursuit of a legitimate and explicit policy. However, the fact that it might not lightly interfere with such a Tribunal’s decision, would not mean that there is in principle any inhibition on its power to do so*” (cf. CAS 2010/A/2283 para. 14.36; CAS 2011/A/2518 para. 15; CAS 2011/A/2645 para. 44).

2. The burden of proof

118. The question of the burden of proof is a question of the merits of the case. Thus, the applicable law to this question derives from Article R58 of the CAS Code. Since the issue of the burden of proof is not addressed in the rules and regulations of UEFA, the Panel takes recourse to the subsidiarily applicable Swiss law, which provides in Article 8 CC as follows:

“Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact”.

119. As a result, the Panel reaffirms the principle established by CAS jurisprudence that “*in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substitute its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some facts and persuade the deciding body, it must actively substantiate its allegations with convincing evidence*” (cf. CAS 2013/A/3297 para. 8.33; CAS 2003/A/506 para. 54; CAS 2009/A/1975 para. 71 ff.).

120. The Panel, for the reasons mentioned above, finds that the Appellant is free to object to the sanction imposed on it. However, it is the Appellant that bears the burden of proving that there are facts based on which the sanction must be qualified as disproportionate.

3. Did UEFA take the pertinent facts into account?

121. Article 17 para. 1 DR requires that “[t]he competent disciplinary body determines the type and extent of the disciplinary measures to be imposed in accordance with the objective and subjective elements of the offence, taking account of both aggravating and mitigating circumstances”. Consequently, the issuance of a “correct” disciplinary measure requires that UEFA established and took into account (all of) the pertinent facts.

122. The Appellant does not submit that the Respondent failed to assess the objective elements of the offenses in question correctly. Indeed, the Appellant admits that on the day of the Match there was improper conduct of its supporters, crowd disturbances, the setting off and throwing of fireworks, failures with regard to the segregation of supporters, field invasions, blocking of stairways and five or more cautions for the members of its team during the match.

Thus, it is undisputed that the Appellant violated Articles 16 para. 2 (a), (c), (h) DR, Article 37 and 38 SSR and Article 15 para. 4 DR. However, the Appellant submits that the Respondent failed to recognize certain mitigating factors (“*[d]ecision under appeal did not meaningfully take into consideration the relevant mitigation circumstances when deciding the sanction to be imposed [...]*”) and that for this very reason the proportionality test must fail. The Appellant, in particular, refers to the following mitigating factors:

(i) Lack of assistance by BJK

123. OL submits that the lack of assistance from BJK should be taken into account as a mitigating factor. The Appellant is of the view that without the assistance of BJK it lacked information about the number of Turkish supporters to be expected at the Match, their means of transport to and arrival at the Match and, thus could not effectively organise the segregation and channelling of the supporters from the arrival point at the Parc OL into the stadium. The Respondent does not agree with this. In fact, in the Appealed Decision the UEFA Appeals Body notes that “*a lack of assistance from the Visiting Club in preparing the Match cannot excuse the behaviour of the Club’s supporters*”.
124. The Panel concurs with the view held by the Respondent. The lack of assistance from BJK – in the view of the Panel – did not contribute to the problems on the day of the Match in any substantial manner. C. in his testimony confirmed that OL did not know the exact number of (unofficial) BJK supporters to be expected at the Match. However, C. declared that OL knew beforehand that between 15,000 to 17,000 BJK supporters would come to OL Parc on the day of the Match. Based on this information available – despite any lack of assistance from BJK – OL was sufficiently in a position to assess the dangers connected with the Match properly and to provide and implement the necessary and adequate security measures for the Match. The fact that BJK did properly assist and inform with respect to the official BJK supporters – in the view of the Panel – did not render the risks connected to the Match un- or considerably less predictable. Consequently, the Panel finds that UEFA’s approach not to qualify the lack of assistance by BJK as a mitigating factor in the case at hand is acceptable.

(ii) French legislation

125. The Appellant submits that BJK fans took advantage of the French legislation and that this fact must be taken into account as a mitigating circumstance. The Respondent objects to Appellant’s submission.
126. Article L.121-11 FCC provides that “*it is prohibited to refuse to sell a product or provide a service to a consumer, without legitimate grounds*”. The Appellant notes that there are severe penalties in case of non-compliance with the above-cited provision. Furthermore, the Appellant submits that “*French case law and doctrine as well as the National Institute for Consumer Affairs have identified four categories of legitimate grounds that may justify a refusal to sell: a product or service being unavailable; the abnormal nature of a request; bad faith of the buyer; legal directives*”. The Appellant acknowledges that these four categories of legitimate grounds do not constitute an exhaustive list and that, therefore, there may be other exceptional cases of just cause. However, the Appellant also

states that examples where a court has accepted “*legitimate grounds to justify a refusal to sell beyond the aforementioned examples are very rare and there is no precedent that would compare to the events of 13 April 2017*”. The Respondent challenges this interpretation of the FCC on various grounds and submits – *inter alia* – that the “uncontrolled” selling of the tickets could have been prevented under the bad faith exception. Furthermore, the Respondent submits that other French clubs are and have been faced in the past with similar problems and have found solutions to better control the selling of the tickets despite the FCC. In addition, the Respondent submits that in the end OL did suspend the selling of the tickets to Turkish fans for safety reasons.

127. The Panel acknowledges that the FCC poses challenges for a French club. However, the Panel in line with the Respondent is not prepared to qualify the legal challenges arising from the FCC as a mitigating factor. First, the Panel is not persuaded that the security of the spectators would not constitute a ground justifying a refusal to sell tickets at all or to a certain group of people. In addition, the FCC only applies to “consumers”, i.e. natural persons. It appears that the Turkish fans living outside France acquired tickets via Turkish residents in France and through “Turkish associations” domiciled in France. It appears to the Panel that OL could have refused the selling of the tickets to these associations seeking tickets for their members, because the FCC does not apply to legal persons. Furthermore, it does not appear impossible from the outset to limit the overall number of tickets to be sold on the market for security reasons, thus, leaving specific sectors of the stadium empty. Finally, even if there were no (valid) grounds justifying limitations on the selling of the tickets this in itself is not a ground to exonerate OL. Instead, the Panel believes that in such case OL would be under the obligation to beef up all other security measures accordingly to adequately compensate for the higher risk created by an uncontrolled selling of the tickets. To conclude, the Panel finds that UEFA’s approach not to qualify the restrictions imposed by the FCC as a mitigating factor in the case at hand appears acceptable.

(iii) *Extreme violence of the BJK fans*

128. It is uncontested that BJK fans displayed violence from the moment they arrived in OL Parc. The Panel refers in particular to the various UEFA reports dealing with the incidents before and during the Match. The Appellant submits that the extreme violence displayed by the BJK fans must be taken into account as a mitigating circumstance. In particular, the Appellant states that the violence of its own supporters was sparked and provoked by the BJK fans and consequently, is a direct consequence thereof. The Respondent accepts that the invasion of the pitch by OLF fans was a direct result of the violence displayed by the BJK fans. However, the Respondent objects to the Appellant’s assumption that the fighting in the stands by OL supporters was a direct consequence of BJK fans’ behaviour. The Appealed Decision states insofar as follows:

“as mentioned above, the violent behaviour of the supporters of the Club cannot be directly and exclusively linked to the behaviour of the supporters of the Visiting Club since attacks were launched against supporters of the Visiting Club who had shown no aggression;

- *as a general principle, violence cannot justify or mitigate further violence;*

- *in the context of the supporters of the Club who were attacked from above, this principle holds true even if they considered their safety to be at risk – since, rather than going on the offensive, such supporters could have found a safe place to stand until the issue was resolved (as many indeed did by moving onto the pitch or to exits, with the exception of the hooligan element who instead chose to go on the offensive against supporters of the Visiting Club in an adjacent sector who had not even been involved in the attack from above)”.*

129. The Panel observes that the jurisprudence of the judicial instances of UEFA is – as a matter of principle – reluctant to consider provocation as a mitigating factor. The CEDB in a decision dated 19 May 2016 (Liverpool FC) stated that when deciding upon the appropriate sanction it “*has considered the fact that the Liverpool FC supporters may have been provoked in a highly charged and emotional atmosphere – although, the CEDB stops short of suggesting that provocation on any grounds can be used to defend hooliganism*”. The same reluctance is also displayed in the jurisprudence of the CAS (CAS 2015/A/3875, para. 121). The Panel concurs with this view. Violence displayed by one side cannot and should not, as a matter of principle, justify or mitigate further violence displayed by the other side. The behaviour of BJK fans, therefore, cannot justify the aggressions displayed by (a group of) OL fans nor should it be qualified as a mitigating circumstance. Thus, it is – generally speaking – not decisive which party is at the origin of the spiral of violence. In addition, it appears difficult in the present case to qualify the fights of OL fans in the stands as a direct consequence of the behaviour of BJK’s supporters. The Panel notes that the aggression by OL supporters was not directed against persons who had thrown pyrotechnical devices on to them. Instead, the OL fans turned against spectators that – obviously – had not been involved in the previous incidents and that had not provoked them. This follows from the video footages and photos. The victims of such randomly and indiscriminately displayed violence of the OL fans included women, children and other innocent bystanders, who were present in these sectors and tried to flee. The Panel also observed that the group of violent OL supporters were all dressed alike (as if wearing a “uniform”) and appeared to be acting in a very organized (pre-planned) manner. This, however, contradicts the Appellant’s submission that the group of OL supporters only reacted to a provocation. To conclude, therefore, the Panel finds that UEFA’s approach not to qualify the violent behaviour of BJK fans as a mitigating factor in the case at hand appears justifiable.

(iv) *OL did its best to handle the situation*

130. OL submits that it did its best to handle the whole situation and that this should be taken into account as a mitigating factor. Whether such circumstance is, in fact, a mitigating factor is debatable. The panel in CAS 2013/A/3139 (para. 55, 126) found that the efforts (i.e. security measures) taken and implemented by a club cannot serve as a ground for excuse or exculpation, but “*may however be taken into account in the determination of the proportionality of the sanction*”. The panel in CAS 2015/A/3875 (para. 120) accepted this jurisprudence as a starting point. However, it observed that the fact that a club planned, implemented and executed security measures does not automatically warrant mitigation. Instead, the threshold – according to CAS 2015/A/3875 – should not be set too low, considering that the duty to

ensure compliance with the various security obligations was a standard duty of any home team. This Panel agrees with these precedents. Consequently, the fact that a club did its best to handle the situation constitutes a mitigating factor only in exceptional circumstances.

131. The Panel finds that the events around the Match were exceptional and that the organisation of such a high-risk match is a complicated matter that requires extensive planning in the run-up of the match and complex implementation and execution of security measures at the match. From the moment of the draw, i.e. already at the very beginning of the planning phase it was known to OL that the Match was a high-risk game. There have been previous incidents with Turkish fans in other French stadiums (at international matches), e.g. in Paris and Marseille. It follows from the testimony of C. that OL was aware of the risks connected to the Match. In light of this OL started to implement a special policy for the selling of tickets via internet, by – e.g. – blocking foreign IP-addresses and limiting the number of tickets that could be bought by an individual person. However, the measures taken were inadequate to effectively control the selling of the tickets to (unofficial) BJK fans. This resulted in a highly dangerous and explosive situation of more than 15.000 BJK fans arriving in OL Park. This situation was known to OL beforehand. OL, thus, was aware that the situation on the day of the Match was extremely volatile and dangerous and that – considering the political context and the high number of Turkish fans – outbursts of violence could ignite at any point in time. It is true that OL took special precautions for the day of the Match. It employed more stewards than ever before, coordinated with the largest police ever deployed for a match and provided for thorough body searches at the ramps at the entry to the inner area of the Parc OL. These security efforts, however, proved inadequate once the dangers arising from the sheer number of Turkish fans arriving at the Parc OL materialized and the police had to step in by – *inter alia* – throwing tear gas to disperse the crowds. Because of the resulting chaos not all fans could be body-searched and, thus, pyrotechnical devices were smuggled into the stadium. Once the risk relocated to the inside of the stadium, some of the previously implemented security measure proved not to reduce, but rather to enhance the (already) dangerous situation. This is true – e.g. – with respect to the decision to seat the “official” BJK fans in the upper stands of the stadium from where they were able to throw pyrotechnical devices on the OL fans in the lower stance. It is true that OL immediately took actions against the perpetrators in co-operation with the relevant authorities. However, the harm had already been done. In addition, the insufficient segregation of BJK and OL fans and free access from the lower tiers of the south stands to some of the middle tiers further significantly enhanced the (already very) dangerous situation. In view of all the above it is fair to say that OL surely tried to manage the risks emanating from an extraordinary match. However, it also contributed considerably to the risky and dangerous situation by its own actions and failures. Thus, it appears rather difficult to conclude – in light of the multitude of breaches committed and the fact that the risks that materialized were foreseeable – that OL truly has done its best to handle the situation and that this should constitute a mitigating factor.

(v) *OL’s track record and reputation*

132. The Appellant submits that it has no record for (violent) hooliganism and that this should be taken into account. The term “hooliganism” is not a defined term. A lot of different

behaviours qualify as hooliganism, such as racist chants, the throwing of fireworks or fights between supporters. The same is true for the term “crowd disturbances”, which equally covers a wide range of different actions that may differ in nature. What the Appellant submits – in essence – is that its fans are not known for attacking or fighting other supporters (violent hooliganism). The CEDB acknowledged this fact in its decision (dated 19 April 2017) by referring to *“the positive previous record of the club pertaining to crowd disturbances”*. The Appealed Decision also states that the *“club ... has not been sanctioned in the past for crowd disturbances or any other acts of violent hooliganism ... [and that this fact] was duly considered by the CEDB”*. The Respondent in these proceedings now retracts from the view held by its judicial organs and submits that OL’s past record should not serve as a mitigating factor, because – contrary to what the judicial organs held – OL has a past of violent hooliganism among its supporters.

133. The Panel observes that OL had been sanctioned in the last couple of years for various breaches:

9 March 2017	stairways blocked, insufficient organization, throwing of objects, field invasion by supporters (fine EUR 35,000.00, last sanction)
7 December 2016	throwing of objects (fine EUR 10,000.00)
18 October 2016	improper conduct of the team, late kick-off, throwing of objects (fine EUR 20,000.00)
14 September 2016	stairways blocked (fine EUR 12,000.00)
4 November 2015	seats without backrest, field invasion by supporters, setting of fireworks (fine EUR fine EUR 11,000.00)
29 September 2015	setting off fireworks (fine EUR 5,000.00)
29 September 2015	late kick-off (warning).

134. The Panel looked into the above cases and into other incidents alleged by the Respondent in its Answer and at the hearing. The Panel however, could not establish any other incident of violent hooliganism of OL in the recent past, and as such, OL appears not to have a structural problem with violent hooliganism among its fans. Consequently, the Panel finds that the CEDB and the UEFA Appeals Body were right in qualifying OL’s (non-)record with regard to (violent) hooliganism / crowd disturbances as a mitigating factor.

4. Is the Appealed Decision proportionate?

135. Even if the Respondent established the mitigating factors correctly, the question remains whether the sanction issued is proportionate. According to Article 17 para. 1 DR *“[t]he competent disciplinary body determines the type and extent of the disciplinary measures to be imposed in accordance with the objective and subjective elements of the offence, taking account of both aggravating and mitigating circumstances”*. The Appellant submits that the Respondent failed to apply the provision correctly and holds *“that the sanction imposed ... must be proportionate to OL’s actual fault and level of guilt as it transpires from the entirety of the events”* and that the sanction provided for in the Appealed Decision *“is manifestly grossly disproportionate”* and that *“it is clear that the degree of fault does not require the draconian sanction”*.

136. When looking at the detailed submissions of the Appellant it appears that it does not take issue so much with the fine imposed on it. In fact, the amount of the fine follows the principles and the directives in the schedule contained in the Annex to the DR and duly takes into account the recidivist nature of (some of the) Appellant's infractions such as the blocking of stairways, the use of pyrotechnical devices and the throwing of fireworks. With what the Appellant takes issue, however, is the exclusion from participating in the next UEFA club competition for which it will otherwise qualify deferred for a probationary period of two years.

137. The principle of proportionality encompasses three aspects. According thereto the measure must be appropriate, necessary and demonstrate a reasonable balance between the objective pursued and the means used to achieve it (proportionality in its narrow sense).

a) *Is the disciplinary sanction appropriate and necessary?*

138. Disciplinary measures serve different purposes. On the one hand, a sanction shall help to undo harm that has been inflicted by the offender. On the other hand and more importantly, a disciplinary sanction shall prevent re-offending by the offender. Consequently, harsher sanctions are warranted in case of serious infringements, structural non-compliance with the various obligations and in case of recidivism (cf. also CAS 2015/A/3875, para. 125 seq.).

139. There can be no doubt that the incidents at the Match were appalling. The extreme violence, which broke out in the stands, affected innocent bystanders, spectators, women and children. The harm inflicted on innocent fans, but also to UEFA was considerable, since the incident was broadcasted to millions of viewers via television and thereby tarnished UEFA competitions and the sport of football. Such incidents are totally intolerable and deplorable and warrant a harsh sanction in order to prevent such events from reoccurring. The Panel finds that the incidents at the Match are of such serious nature that they cannot be adequately punished (solely) with a fine or with a match behind closed doors (in addition to a fine). The latter would not only sanction OL, but also the visiting club (CAS 2007/A/1217, para. 42). In addition, such sanctions, in these circumstances, would be insufficient to fulfil the objective of eradicating such reckless fan behaviour and to reach the people actually responsible for the offenses committed. Thus, a harsh sanction and a strong message is needed in view of the seriousness of the incidents, OL's failures to adequately implement safety and security rules and in order to reach the goal to deter OL's fans from displaying such unacceptable behaviour in the future (cf. CAS 2013/A/3139, para. 25). To conclude, the Panel finds that the decision to exclude OL from participating in the next UEFA club competition for which it will otherwise qualify deferred for a probationary period of two years (together with a fine of EUR 100,000) is, in principle, both appropriate and necessary to achieve its purpose in light of the circumstances of this case.

b) *Is the sanction reasonably balanced?*

140. UEFA applied to OL "the harshest sanction possible, which is the exclusion of the competition" (CAS 2015/A/3875, para. 127), but suspended such sanction for a probationary period of (2) years. The judicial organs of UEFA, thus, correctly took into account that the circumstances of the

Match were exceptional and that OL is not a recidivist when it comes to violent hooliganism, but a first-time offender. Also this Panel is of the view that an unconditional or immediate exclusion from UEFA competitions under the given circumstances would have been too harsh of a sanction, incompatible with the principle of proportionality and in violation of Article 17 para. 1 DR. The exclusion from UEFA competitions, thus, is only acceptable to the Panel, if its consequences are considerably softened.

141. The question in the case at hand, however, is to what extent the “harshest sanction possible” has been softened by the Respondent by suspending it for a probationary period of 2 years. Article 20 para. 3 DR that deals with deferrals for a probationary period does not specify under what conditions the original disciplinary measure will be triggered in the future. The provision simply states as follows:

“If a further offence is committed during the probationary period, the competent disciplinary body, as a rule, orders that the original disciplinary measure be enforced. This may be added to the disciplinary measure imposed for the new offence”.

142. A literal interpretation of the provision appears to indicate that any kind of further offence committed during the probationary period will revive the original disciplinary sanction. Such interpretation, however, would be in contrast with the very purpose of the sanction. The latter is not to put a person under UEFA’s spell of arbitrariness. Instead, the purpose of a disciplinary sanction is – *inter alia* – to undo the harm inflicted and prevent the re-occurrence of certain violations, i.e. to incentivise the club to comply with its obligations and to influence its fans’ behaviour. Consequently, in order to make sense, Article 20 para. 3 DR – in particular in light of the principle of strict liability enshrined in Article 8 DR – must be construed narrowly. If – by contrast – the probationary sanction would be triggered too easily, this would clearly overshoot the target. This is particularly true in the case at hand, when looking at the financial consequences for OL resulting from an exclusion from UEFA competitions. OL would allegedly lose more than EUR [...] in revenues. Such draconian consequences cannot be left at the free discretion of UEFA. Such situation would be unbearable for a public traded company, its team, creditors and shareholders. It is hardly perceivable that an auditor would grant an unqualified audit opinion under these circumstances to the club concerned.
143. The requirement that the threshold in Article 20 para. 3 DR should not be set too low in the case at hand also follows from a comparison with other cases. The Respondent submits that comparing punishments in different cases is a fruitless exercise. The Panel admits that a comparison of the various cases is difficult because of the differences in circumstances and the need to balance them individually in order to derive the proportionate sanction. Nevertheless, the Panel finds that – when looking at the jurisprudence of CAS and the judicial organs of UEFA as a whole – the exclusion from UEFA competition appear to be kind of an *ultima ratio* and that such consequence was only imposed in the past on a club that displayed severe and constant recidivism with respect to violent hooliganism. In the case CAS 2007/A/1217, e.g., the CAS panel upheld UEFA’s exclusion of Feyenoord Rotterdam from UEFA competition and noted that it was “*aware that such exclusion involves important economic loss in relation to broadcasting fees and ticket [sales]*” (para. 39). However, the (important) difference with the case at hand was that Feyenoord Rotterdam had an (infamous) history of violent

hooliganism at that time (para. 38), i.e. a structural problem so big that the panel concluded that “[a]ny other sanction ... appears as not able to fulfil the objective of eradicating hooliganism” in that case. The Panel is also aware of other cases of violent hooliganism where the “team” was not excluded from UEFA competitions even though the party “in the previous five years ... has been sanctioned for offences of a similar nature six times” (CAS 2015/A/3875, para 125. The panel in this case, however, noted that under the given circumstances “it would be entirely ... proportionate to apply much harsher sanctions, such as ... the disqualification from the current UEFA European Championship”, para. 127). Also when looking at other cases where a club’s ban to participate in UEFA competitions has been suspended for a probationary period (e.g. Appeals Body decision of 29 October 2012 in the case of Paok FC), it appears that the club concerned had a long and serious history of violent hooliganism.

144. Whether the view held here that the threshold in Article 20 para. 3 DR must not be set too low coincides with the Respondent’s understanding appears questionable. In its answer the Respondent stated that “only incidents of a similar nature” will release the enforcement of the original sanction. In another para of its answer the Respondent stated:

“[...] obviously OL would not face immediate exclusion for every following incident, irrespective of its nature, [...]. Since the sanction was imposed on the Appellant, three disciplinary proceedings have been opened against OL, inter alia for crowd disturbances at an away match at AFC Ajax, field invasions by supporters, throwing of objects and setting off of fireworks at a home-match against AFC Ajax and the blocking of stairways in a home-match against Atalanta BC. For none of these offences, the club was excluded from the competition, given that it is not only common sense but also established jurisprudence of UEFA that only incidents of a similar nature and equal ferocity would trigger the lifting of the probationary period”.

145. When being questioned by the Panel on this point the Respondent’s understanding, however, was less clear. On the one hand the Respondent explained that in order to trigger the original sanction within the meaning of Article 20 para. 3 DR the further offence “must be something at the same level”. On the other hand the Respondent stated that it was not willing to bind itself how to exercise its free discretion enshrined in Article 20 para. 3 DR should a further breach of the applicable rules occur. In fact, the Respondent resisted any agreement between the parties on that matter at the hearing.
146. This Panel is only willing to accept the deferred exclusion from UEFA competitions as proportionate provided that the threshold in Article 20 para 3 DR is not set too low. Absent any legal certainty in that respect, the Panel wonders how to ensure that its proportionality considerations are being observed. The Panel could specify in its decision under what future circumstances it considers it to be proportionate that the execution of the exclusion from the UEFA competitions will be triggered. In principle, such conclusion would be covered by the requests filed by the parties. The Panel, however, is barred from pursuing this path by CAS jurisprudence. In the case CAS 2013/A/3139 the CAS panel – in respect to a probationary exclusion of a club from UEFA competitions – decided that it was not for this panel to decide under what conditions the suspension of the sanction could be revoked in the future. Instead, the panel found that “[t]his would have to be assessed by the legal bodies allocated with such future legal proceedings, as the imposition of the suspended sanction may depend on the specific circumstances of the future

case” (para. 130). In light of this jurisprudence (and in consideration of the lack of legal certainty with respect to Article 20 para. 3 DR) the majority of the Panel feels that it must ensure proportionality by other means, i.e. by reducing the probationary period and thereby limiting the period of uncertainty. Consequently, the majority of the Panel decides to reduce the original probationary period of two years starting on the date of the notification of the decision of the CEDB on 11 May 2017 until 11 May 2019 to 15 months (11 August 2018) (whenever the award is issued).

147. All other and further reaching requests are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The statement of appeal filed on 28 August 2017 by Olympique Lyonnais against the decision adopted on 13 July 2017 by the UEFA Appeals Body is partially granted.
2. The decision of the UEFA Appeals Body ordering Olympique Lyonnais to pay a fine of EUR 100,000 (one hundred thousand Euro) is upheld.
3. The decision of the UEFA Appeals Body excluding Olympique Lyonnais from participating in the next UEFA club competition for which it will otherwise qualify suspended for a probationary period of two years from the date of the notification of the decision with grounds passed by the Control, Ethics and Disciplinary Body, is amended. The probationary period is reduced to 15 months.
4. (...).
5. (...).
6. All other or further requests or motions submitted by the parties are dismissed.