



Arbitration CAS 2019/A/6547 FC Dinamo Tbilisi v. Union of the European Football Associations (UEFA), award of 18 May 2021

Panel: Mr Fabio Iudica (Italy), President; Prof. Ulrich Haas (Germany); The Hon. Michael Beloff QC (United Kingdom)

Football

Disciplinary dispute

Absence of intention-related element in the concept of “insult” contained in Article 14 UEFA DR

Approach to the application of Article 14 UEFA DR

Determination whether a certain conduct shall be interpreted as being racist

- 1. The test whether a person has breached Article 14 of the UEFA Disciplinary Regulations (DR) is an objective one. On the clear language of such Article, it is not a precondition of such breach that the insult as therein defined was intentional. Lack of intention may be relevant to sanction, but not in relation to whether or not the applicable rules were breached. Indeed, to hold otherwise would undermine the concept of insult, which focusses on a notional victim rather than perpetrator.**
- 2. The exercise for any adjudicative body confronted with a charge brought under Article 14 UEFA DR is to identify, as best it can with the assistance of any relevant materials including dictionaries or matters of which judicial notice can be taken, *e.g.* historical facts, the objective meaning of the words or symbols relied on. Any alternative approach which relies upon the subjective appreciation of actual onlookers or audience would be destructive of the principle of legal certainty, unjustifiably complicate the function of adjudicative bodies and contravene the principle of equal treatment. Adjudicative bodies stand in the shoes of “*the reasonable onlooker*” who must for this purpose be taken to be well informed and acquainted with legal and historical knowledge and with the totality of the circumstances.**
- 3. In order to determine whether a certain conduct shall be interpreted as being racist, or not, all the circumstances must be considered; who is saying what to (or about) whom, when, what, how and against what background.**

I. INTRODUCTION

- 1. This appeal is brought by FC Dinamo Tbilisi against the decision rendered by the Appeals Body of the Union of the European Football Associations (“UEFA”) on 9 September 2019 (the “Appealed Decision”), confirming the Decision issued by the UEFA Control, Ethics and**

Disciplinary Body (the “CEDB”) on 8 August 2019, regarding the application of disciplinary measures in relation to the findings of infringement of Article 14 of the UEFA Disciplinary Regulations (the “DR”).

II. PARTIES

2. FC Dinamo Tbilisi (“Dinamo” or the “Appellant”) is a professional football club, based in Tbilisi, Georgia, competing in the First League (Erovnuli Liga) of the Georgian Football Championship. It is a member of the Georgian Football Federation (the “GFF”) which in turn is associated with UEFA.
3. UEFA (or the “Respondent”) is a union of associations, incorporated under Swiss law, having its headquarters in Nyon, Switzerland. It is the governing body of European Football. It exercises regulatory, supervisory and disciplinary functions over national federations, clubs, officials and players in Europe.

The Appellant and the Respondent are hereinafter jointly referred to as the “Parties”.

III. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts and allegations based on the Parties’ oral and written submissions on the file and relevant documentation produced in this appeal. Additional facts and allegations may be set out, where relevant, in connection with the further legal discussion. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this award only to the submissions and evidence it considers necessary to explain its reasoning.
5. On 1 August 2019, the Appellant played a home match in the Boris Paichadze Dinamo Arena (the “Stadium”) against the Azerbaijani club Gabala SC, in the second qualifying round of the 2019/2020 UEFA Europa League (the “Match”).
6. During the Match, Dinamo supporters displayed a banner in the stands depicting the number 88 in large characters, surrounded by a laurel wreath and the words “Old School” at the bottom. The digit “88” also contained the numbers 1 and 9 written in lowercase (the “Banner”).
7. On 2 August 2019, the UEFA Match Delegate, Mr [X] submitted his report of the Match reporting the following considerations with respect to the behaviour of the home team supporters (the “Match Delegate Report”):

“I noticed one banner featuring a neo-Nazi code ‘88’ displayed by Dinamo Tbilisi supporters in section 17. The same confirmation I received by E-mail from the FARE observer. However, the stadium authorities and home team contact person Tea Shamatova assure me the banner is not neo-Nazi and means the old supporters of their club are since 1988. So the numbers on banner and text “old school” describes that the fan club was founded in 1988 and they are old members of the Dinamo Tbilisi fan club”.

The relevant report was also supported by a photo “of one banner featuring a neo-Nazi code ‘88’”.

8. Moreover, after the Match, the Fare Network (“FARE”) Observer in attendance, also submitted a report to UEFA regarding the incident, supported by photographic documentation, in which he made the following statements (“the FARE Report”):
 - *“21:15 Approximately in 15th minute into the game, Dinamo Tbilisi supporters in Section 17 displayed a medium sized banner reading ‘1988 Old School’ featuring a laurel wreath, with the ‘88’ in large font and ‘19’ in small font size. The banner remained on display until the final whistle.*
 - *While 1988 can be a year significant to a certain group, the way that the ‘88’ is visually highlighted and previous history of the banner indicate at discriminatory connotation of the banner sending a coded message.*
 - *‘88’ is one of the most widely used neo-Nazi number codes worldwide and stands for the “Heil Hitler” according to the 8th letter of the Latin alphabet. It is often printed on football fan shirts or used as part of the name of neo-Nazi supporter groups as a way of sending a coded message to promote hate. The code is often used as a combination with 14/88 where 14 stands for “14 words by American neo-Nazi David Lane (“We must secure the existence of our people and the future for white children”).*
 - *Photographs of the banner are attached (a)”.*

In summary, the FARE Observer concluded as follows: *“Within the Boris Paichadze Dinamo Arena, Fare observer witnessed the display of a medium size banner featuring neo-Nazi code ‘88’ prominently highlighted by Dinamo Tbilisi home supporters”.*

9. On 5 August 2019, UEFA informed Dinamo that disciplinary proceedings had been instigated before the UEFA CEDB in accordance with Article 55 DR, with respect to an infringement of Article 14 DR for racist behaviour.
10. Dinamo did not provide any statements to the UEFA CEDB for the purposes of the disciplinary proceedings.
11. On 8 August 2019, the *ad-hoc* Chairman of the UEFA CEDB rendered a decision in the disciplinary proceedings against Dinamo, ruling as follows (the “CEDB Decision”):
 - *“To order FC Dinamo Tbilisi to play its next (1) UEFA competition match as host club behind closed doors and to fine FC Dinamo Tbilisi € 50,000 for the racist behaviour of its supporters.*
 - (...).
 - *To order Dinamo Tbilisi to implement the following directive in the next UEFA competition match which the club shall play as the host club: to display a banner with the wording “#EqualGame” with the UEFA logo on it. The banner shall cover sections 1, 2 and 18 of the South Stand”.*

12. In the grounds of its decision, the CEDB recalled that the fight against racism is a high priority for UEFA and that UEFA has a strict approach towards racism and discrimination on the pitch and in the stands. With regard to the Banner, the CEDB pointed out that *“even if one would assume that the supporter group called “1988 Old School” was founded in 1988, the banner under scrutiny bears clear resemblance with the typical neo-Nazi banners which are commonly used to glorify Adolf Hitler by using the number-code 88 for the 8th letter of the alphabet, representing the slogan “Heil Hitler”. Likewise, the numbers 8 have a clear resemblance to rune-letters which are typically used on Nazi-style banners. In addition to the above, as clearly displayed by the FARE report, the exact same banner is in constant use by neo-Nazi groups by means of which they advocate their racist identity”*.
13. On 9 August 2019, Dinamo submitted a request for a stay of the execution of the CEDB Decision in accordance with Article 62(2) DR at the same time as filing with its declaration of appeal.
14. On 12 August 2019, Dinamo submitted new statements in relation to its request for a stay of execution of the CEDB Decision, emphasising both the irreparable harm to it if the stay was not granted and the likelihood of success of its appeal.
15. On the same day, Mr [XX] was appointed as UEFA Ethics and Disciplinary Inspector (“EDI”).
16. On 13 August 2019, within the due deadline, the EDI filed his submission opposing the request for a stay of the execution of the appealed decision.
17. On the same day, the Chairman of the Appeals Body rejected the request for a stay of the execution of the CEDB Decision.
18. Also on 13 August 2019, Dinamo filed its grounds of the appeal against the CEDB Decision, mainly reiterating its arguments in support of the request for a stay of execution. As a threshold point, Dinamo claimed that the *ad-hoc* chairman of the CEDB did not have jurisdiction to decide the present case as a judge sitting alone and that the present matter was not an urgent case. With regard to the content of the Banner, Dinamo maintained that it was open to more than one interpretation and that *“in case of doubt, the Appeals Body should give the benefit of the doubt to the accused”*. In fact, Dinamo argued that *“1988 Old School”* is the name of the group of the team supporters and that it did not intend to promote any form of Nazi propaganda; it stressed that all the signs and numbers in the Banner only referred to the fact that the relevant fan club was founded in 1988 and was devoid of any racist meaning. In addition, Dinamo argued that (i) the FARE Observer could not be qualified as an *“objective observer”*, (ii) the Match Delegate was uncertain as to the character of the Banner and had to seek advice from the FARE Observer; (iii) the same Banner had already been displayed in previous matches of the 2016/2017 UEFA Europa League without having been the subject of any report or sanction, from which it could be inferred that a large number of viewers of those matches had probably not considered its symbols as racist; (iv) accordingly such a different interpretation of the same Banner could not be entertained.

19. Dinamo further argued that, even if (*quod non*) the Banner had a racist content, the sanction was excessive and should be reduced, especially if any racism was unintentional. In conclusion, Dinamo requested the Appeals Body to repeal the CEDB Decision or, to order the partial stadium closure and to annul the fine of EUR 50,000, or to suspend the CEDB Decision for a probationary period and to annul the fine or to refer the case back to the CEDB for a new decision on the merits to be rendered by a three-member panel.
20. In the letter accompanying its grounds of appeal, Dinamo requested the Appeals Body to adopt the expedited procedure and to render the operative part of its decision by 14 August 2019.
21. On 14 August 2019, UEFA informed the Appellant that the Chairman of the Appeals Body had rejected the request to proceed in an expedited manner and that the UEFA Statutes do not provide any right of a party to request an expedited procedure.
22. On 15 August 2019, Dinamo served part of the disciplinary sanction imposed by the CEDB Decision by playing the home match against Feyenoord behind closed doors.
23. On 28 August 2019, the EDI filed a reply to the appeal lodged by Dinamo, which was declared inadmissible because it was not submitted within the relevant deadline (*i.e.* 27 August 2019).
24. On 9 September 2019, the UEFA Appeals Body rendered a decision in the appeal proceedings lodged by Dinamo against the CEDB Decision, whereby it was decided as follows:
 1. *“The appeal lodged by FC Dinamo Tbilisi is rejected. Consequently, the UEFA Control, Ethics and Disciplinary Body’s decision of 8 August 2019 is confirmed.*
 2. *The costs of the proceedings, totalling €1,000 (minus the appeal fee), are to be paid by the Appellant.*
 3. *The Georgian Football Federation is jointly and severally liable for the payment of the fine and the costs of the proceedings”.*
25. On 22 October 2019, the grounds of the Appealed Decision were served by facsimile to the Parties.

IV. GROUNDS OF THE APPEALED DECISION

26. The grounds of the Appealed Decision can be summarized as follows:
27. Firstly, the Appeals Body considered that it was competent to deal with the present case based on Article 30(4) DR.
28. With regard to the legal framework, the following provisions were considered to be relevant to the present matter:

- Article 8 DR, according to which “a (...) 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 (...) club concerned, even if the (...) club concerned can prove the absence of any fault or negligence”;
 - Article 14 DR, which, in the relevant part, establishes that:
 - “1. [a]ny person under the scope of Article 3 who insults the human dignity of a person or group of persons on whatever grounds, including skin colour, race, religion or ethnic origin, incurs a suspension lasting at least ten matches or a specified period of time, or any other appropriate sanction.
 2. If one or more of a club’s supporters engage in the behaviour described in paragraph 1, the (...) club responsible is punished with a minimum of a partial stadium closure.
 3. The following disciplinary measures apply in the event of recidivism:
 - a) a second offence is punished with one match played behind closed doors and a fine of € 50,000”.
 - Article 29 DR which, in the relevant part, reads as follows:
 - a) in urgent or protest cases”.
29. Article 45 DR, establishing that “[f]acts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided”.
30. For the purpose of deciding the present case, the Appeals Body based its considerations on the Appellant’s grounds of appeal and on the arguments submitted by the EDI in relation to the request for a stay of execution of the CEDB Decision, since his reply to the appeal was not deemed admissible as belated.
31. Although the Appellant had already served part of the sanction imposed by the CEDB at the time of the Appeal (to play the subsequent UEFA competition home-match behind closed doors), the Appeals Body considered that Dinamo still had a legal interest in an appeal, due to the potential impact of the CEDB Decision on its reputation.
32. With regard to the issue of the *ad hoc* Chairman’s jurisdiction at first instance, the Appeals Body agreed with the CEDB that the present matter had to be treated as a matter of urgency, due to the circumstances of the case (since any recidivism in the infringement of Article 14 DR could have resulted in a match to be played behind closed doors and, in that context it was to be noted

that there were only 2 weeks between the Match and the next home-match to be played by the Appellant); therefore, that the *ad-hoc* Chairman was competent to deal with the present matter. Further, it is the prerogative of the adjudicator to determine whether or not a case is considered urgent and “*those cases with a direct impact on the ongoing competition need to be addressed urgently*”. Additionally, Article 29(3) DR only set out a list of non-exhaustive examples of what may constitute an urgent case. Finally, in any case, the full power to review the facts and the law according to Article 65(2) DR, would empower the Appeals Body to “cure” any possible procedural defects of the previous instance.

33. With regard to the merits, as to whether the content of the Banner involved a violation of Article 14 DR, the Appeals Body reasoned as follows:

- a) The FARE Report is not an official document in the sense of Article 45 DR and, therefore, the Appeals Body is free to give its own interpretation as to the Banner’s meaning; Moreover, it was noted that the UEFA Match Delegate not only referred to the FARE Report but also personally reported having “*noticed one banner featuring a neo-Nazi code ‘88’ displayed by Dinamo Tbilisi supporters in section 17*”, showing that in his perception as an objective onlooker, and consistently with the FARE Report the banner was clearly of a racist nature;
- b) The Appeals Body recalled that, according to CAS jurisprudence (CAS 2013/A/3324), the “*perception of the reasonable onlooker*” constitutes the yardstick to identify a violation under Article 14 DR, and it shall be considered in an objective sense and within the relevant context: “[in] *the law, context is everything (...) so to determine whether words, chants, gestures or other behaviour constitute racial insults all the circumstances must be considered; who is saying what to (or about) whom, when, what, how and against what background*”;
- c) Based on the foregoing, the Appeals Body considered itself sufficiently satisfied that the Banner is in fact of racist nature. In this regard, the “*entire semantics*” of the Banner contradicts the interpretation given by the Appellant: there is a strong emphasis on the number code ‘88’, while the further digits 1 and 9 are only in miniscule nature; the fonts used on the Banner have a strong resemblance to runic letters which are commonly used on Nazi-styled banners. Such symbolism is further corroborated by the reference picture provided by the FARE Observer, “*on which almost the identical banner can be seen in the hands of two neo-Nazis, one of which is performing a Nazi-salute next to what appears to be a World War II memorial*”; although the Banner appears in different context, the fact that it is apparently used by a neo-Nazi and is displayed in the context of fascist demonstrations shows that the perception of the FARE Observer is reasonable;
- d) In addition, “*the number code ‘88’ is a well-known racist symbol and the reference to the first letters H of the name of Adolf Hitler and the Nazi slogan ‘Heil Hitler’ are not only known to trained FARE observers*”;
- e) Moreover, Dinamo had already been sanctioned for similar incidents, *inter alia*, the display of the same symbolism (number code ‘88’ and ‘14/88’) within 2018/2019 UEFA Europa

League competition, during a match between Dinamo and FC DAC 1904 Dunajská Streda, so giving rise to a repeat offence within the ambit of Article 14(3)(a) DR. This circumstance is indicative of the fact that Dinamo appears to have a strong far-right presence in the Stadium and it must be aware that the number code '88' as used by its supporters, has a discriminatory racist background;

- f) Furthermore, the fact alleged by Dinamo that the same Banner was already displayed in previous matches without having been reported before, is not an argument in favour of the Appellant. It is also irrelevant since it is possible that the Banner was not detected in previous occasions and, in any case, such circumstance does not bind the UEFA disciplinary bodies to interpret the Banner in favour of the Appellant;
 - g) With regard to the Appellant's explanation about the content of the Banner, which makes only reference to the year of foundation of the supporters' group, without any association with a racist context, such argument was unsupported and was therefore rejected;
 - h) Finally, the Appeals Body did not agree to give the Appellant the benefit of doubt as to the multiple possible interpretation of the Banner, since it was considered that *"the mere possibility of a favourable interpretation to a potentially racist banner does not relieve a club or association of its duty to ensure that no racist symbols can enter the stadium"*.
34. As a consequence, the Appeals Body concluded that the Banner was racist in nature, its display constituted an infringement of article 14 DR and that the Appellant was strictly liable for such offence and had to be sanctioned accordingly.
35. As to the issue of proportionality of the sanction imposed by the CEDB Decision, the Appeals Body recalled the CEDB's power of discretion in relation to the objective and subjective elements of the offence, taking into account both mitigating and aggravating circumstances and stressed that there may be an abuse or excess of such power of discretion only in case of manifest errors in law or in fact.
36. In continuation, the Appeals Body observed that the Appellant had already been sanctioned for a previous offence of such nature in the last three years, which triggers the application of the standard sanction of one match behind closed doors and a fine of EUR 50,000 pursuant to Article 14(3)(a) DR.
37. The Appeals Body also rejected the Appellant's argument based on the theory of *"unintentional racism"* and considered that the reasoning of the CAS Panel in the case referred to by the Appellant (CAS 2015/A/4256) was not applicable to the present case. Moreover, the Appellant did not provide any evidence in support of the alleged *"unintentional"* conduct.
38. As a result, the Appeals Body decided that the order of the CEDB for the Appellant to play its next home-match in UEFA competitions behind closed doors and to fine the Appellant EUR 50,000 for racist conduct of its supporters, contemplated as a standard sanction in Article

14(3)(a) DR was appropriate in the present case and consistent with UEFA's strict approach towards racist and discriminatory behaviour.

V. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

39. On 31 October 2019, the Appellant filed its Statement of Appeal with the Court of Arbitration for Sport (the "CAS") against the Respondent with respect to the Appealed Decision, in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration, 2019 edition (the "CAS Code"). The Appellant nominated Prof. Ulrich Haas, Professor in Zurich, Switzerland, as an arbitrator in the present proceedings and chose English as the language of the arbitration. In addition, the Appellant requested an extension until 25 November 2019 to file its Appeal Brief.
40. On 6 November 2019, the CAS Court Office informed the Parties that, in the absence of any objections by the Respondent, the Appellant's request for an extension to file its Appeal Brief had been granted.
41. On 18 November 2019, the Respondent informed the CAS Court Office that Hon. Michael Beloff QC, Barrister in London, had been nominated as an arbitrator in these proceedings.
42. In accordance with Article R51 of the CAS Code, the Appellant filed its Appeal Brief on 25 November 2019.
43. On 9 December 2019, the Respondent requested an extension until 13 January 2020 of the time limit to file its Answer.
44. On 11 December 2019, the CAS Court office informed the Parties that the Respondent's request for an extension of the time limit to file the Answer had been partially granted, with the new time limit set until 10 January 2020.
45. On 12 December 2019, the CAS Court Office informed the Parties that the Panel appointed to decide the present dispute had been constituted as follows:

President: Mr Fabio Iudica, Attorney-at-Law in Milan, Italy;

Arbitrators: Prof. Ulrich Haas, Professor in Zurich, Switzerland;

Hon. Michael Beloff QC, Barrister in London, United Kingdom.
46. On 10 January 2020, the Respondent filed its Answer in accordance with Article R55 of the CAS Code.
47. On 15 January 2020, the CAS Court Office invited the Parties to state whether they preferred a hearing to be held in the present matter or for the Panel to render a decision based solely on the Parties written submissions.

48. On the same day, the Appellant informed the CAS Court Office that it preferred that a hearing be held in the present matter.
49. By communication to the CAS Court Office on 21 January 2020, the Appellant requested the Panel to disregard Exhibits R-5, R-7, R-8 and R-21 attached to the Respondent's Answer, in accordance with Article 62.6 of the UEFA Statutes and Article R57(3) of the CAS Code. The Appellant alleged that the Respondent had introduced new evidence, which was not considered by the UEFA deciding bodies and was not mentioned in the Appealed Decision, although the relevant documents were already available to the Respondent or could reasonably have been discovered before the Appeal Decision was rendered.
50. Also, on 21 January 2020, the CAS Court Office invited the Respondent to submit its comments to the objections raised by the Appellant with regard to the relevant Exhibits.
51. On 22 January 2020, the Respondent informed the CAS Court Office that it did not oppose to the holding of a hearing in the present case.
52. On 23 January 2020, the CAS Court Office informed the Parties that the Panel had decided to hold a hearing in the present case.
53. On 28 January 2020, the Respondent filed its comments on the Appellants' request to exclude Respondent's Exhibits R-5, R-7, R-8 and R-21. In this regard, the Respondent first submitted that Article 62.6 is not applicable to UEFA and moreover, that the conditions for the application of Article R57 of the CAS Code are not met in the present case, since there was no abusive or inappropriate conduct in accordance with CAS jurisprudence. In fact, the Respondent argued that the filing of the relevant Exhibits was justified in light of the Appellants' new evidentiary request (cross-examination of the UEFA Match Delegate and the FARE Observer) and in order to disprove its newly submitted evidence. With regard to the evidence submitted by the Appellant with its Appeal Brief, the Respondent argued that many of the relevant documents were filed for the first time before the CAS although they were already available at the time of the UEFA proceedings.
54. On 29 January 2020, the CAS Court Office informed the Parties that, after considering their respective positions, the Panel had decided to dismiss the Appellant's motion with regard to the Respondent's Exhibits R-5, R-7, R-8 and R-21 which were therefore admitted to the file.
55. On 31 January 2020, the Parties were informed that a hearing would be held in the present case at the Office of the CAS Anti-Doping Division in Lausanne Switzerland, on 10 March 2020.
56. On 6 February 2020, the CAS Court Office forwarded the Order of Procedure to the Parties, which was returned in duly signed copy by the Appellant on 10 February 2020 and by the Respondent on 13 February 2020.

57. On 13 February 2020, the Appellant requested that the Respondent be ordered to produce a copy of the full case files in connection with the proceedings against FK Crvena Zvezda, Rangers FC and PFC Levski Sofia as well as the full case files in connection with the proceedings against Rangers FC and Bulgaria, as per the Appellant's request in the Appeal Brief.
58. On the same day, the Respondent requested that at the hearing, the FARE Observer could give testimony as a protected witness.
59. On 14 February 2020, the Appellant objected to the Respondent's request as to the FARE Observer testimony, arguing that there were no potential threats to the witness' personal safety.
60. On the same day, the Respondent requested that the Panel dismiss the Appellant's request for evidentiary production since the relevant document were irrelevant for the present case.
61. Also, on 14 February 2020, the CAS Court Office informed the Respondent that it was authorized, at its option, to provide any document that would corroborate the threats to the FARE Observer's personal safety, should his identity not be kept anonymous at the hearing.
62. On 19 February 2020, the Respondent submitted documentation which, although not involving the Appellant directly, provided examples of harassment and threats towards UEFA Observers and the FARE Network in general, concerning other clubs after they were sanctioned following a report from FARE. Therefore, the Respondent insisted that not protecting the identity of the relevant FARE Observer would not only put him at potential risk during future matches of the Club that he might attend but would also compromise UEFA's cooperation with FARE and thus the fight against racism in European Football.
63. On 27 February 2020, the CAS Court Office informed the Parties that the Appellant's request to produce the full case file in connection with the proceedings initiated against FK Crvena Zvezda, Rangers FC, PFC Levski Sofia, S.S. Lazio, Bulgaria and FK Austria Wien had been denied since the Panel considered the Appellant's request to be "*overly too broad and appears to be a fishing expedition, which is not authorized under the IBA Guidelines on Taking Evidence in international Arbitration*". Besides, the Panel found that the Appellant had failed to demonstrate the relevance of disclosing the requested case files in connection with the present matter. In addition, with regard to the issue concerning the testimony of the FARE Observer as a protected witness, considering that "*the mission of a FARE Observer can only be guaranteed if the latter's personal data (including – but not limited to his/ her identity) are kept confidential from third parties*", the Respondent's request was granted "*to the extent that his/ her evidence be given in a manner which do not disclose his/ her identity*".
64. On 3 March 2020, the CAS Court Office informed the Parties that, in the light of the Covid-19 outbreak, the Panel had decided to postpone the hearing to an unspecified date to be determined.
65. On 26 March 2020, the Parties were informed that in consideration of the Panel's decision to hear the FARE Observer as anonymous witness, the Panel deemed it appropriate to hold a

hearing “in-person” and therefore, that a hearing in the present case would be held at the end of the Covid-19 emergency.

66. On 13 August 2020, after consultations with the Appellant and the Respondent, the CAS Court Office informed the Parties that the hearing in the present case would be held on 7 October 2020 at the Office of the CAS Anti-Doping Division, in Lausanne, Switzerland.
67. On 7 October 2020, a hearing took place at the Office of the CAS Anti-Doping Division in Lausanne, Switzerland.
68. The President of the Panel and Mr Fabien Cagneux Counsel to the CAS, the Respondent and its Counsel were all present at the hearing in Lausanne, while Hon. Michael Beloff QC and Prof Ulrich Haas attended remotely *via* videoconference. The Appellant and its counsel also attended *via* videoconference.
69. The identification of the FARE Observer took place in Lausanne, before the opening of the hearing, in presence of the President of the Panel and Mr Fabien Cagneux.
70. At the outset of the hearing, the Parties confirmed that they had no objection in relation to the composition of the Arbitral Tribunal and that the Panel has jurisdiction over the present dispute. In their opening statements, the Parties reiterated the arguments already put forward in their respective written submissions.
71. During the hearing, the following witnesses were heard by the Panel and examined by the Parties:
72. Mrs Tea Shamatova, Dinamo’s Deputy General Manager, called by the Appellant: the witness confirmed her written statement dated 25 November 2019, which was attached to the Appellant’s Appeal Brief under Exhibit AW1. She further clarified that she knew that the Banner was previously displayed at the Stadium, but that it had never been reported before and that she was not aware of the meaning and racist context of the number ‘88’, alone, but only in association with the digits ‘14’, in the code ‘14/88’. With regard to the proceedings before the CEDB, she acknowledged that, although she could not prepare the Appellant’s defence herself, due to the tight deadline granted by UEFA, because she was travelling, she nevertheless did not instruct the club’s in-house lawyer for this purpose, and also confirmed that the club did not file any request for an extension of the relevant deadline but could not provide any reason thereof. Likewise, she could not provide any reasons for the club’s decision not to appeal the CEDB Decision.
73. Mr [X], the UEFA Match Delegate, called by the Respondent: the witness clarified that the day before the Match, he had received some directions from UEFA with also few pictures of Dinamo’s supporter banners displayed at the Stadium, among which, the Banner; that at that time, he didn’t focus on the number code ‘88’ although he was aware of its meaning, but, instead, he noticed the code ‘14/88’ which was captured in another photo; during the second half of the Match, when he walked to Section 17 of the Stadium with Mrs Shamatova, he took

some general pictures of the stands and banners, among which, the Banner, without noticing anything in particular at that time; in fact, he declared he was focused more on the behaviour of the crowd. In this respect, Mr [X] also testified that, as he was aware that a FARE Observer was also attending the Match, he relied on the fact that he could review the photos later on, when he would contact the FARE Observer for further reference. He also clarified that, after having received the email from the FARE Observer, he realized that the Banner featured, in large font, the number '88', which he already knew was a controversial number for discriminatory reasons, and therefore, he decided to report the incident, on the basis of the FARE Observer's email, and attached one of his pictures showing the Banner. According to Mr [X]'s testimony, his knowledge of the racist nature of number '88' probably derived from his professional training, due to specific seminars he had attended. Moreover, Mr [X] affirmed that probably, without the FARE Observer's confirmation, he would not have reported the Banner. With regard to his Report, he explained that, since the general behaviour of the spectators during the Match, apart from the Banner, was correct, and since the Banner was specifically reported under the dedicated section (Crowd behaviour – home team – controversial banner, fans standing blocking the stairways), he did not report further discriminatory behaviours under other sections, and also indicated that the conduct of the teams met the standard.

74. The FARE Observer (as anonymous witness) called by the Respondent: the witness confirmed the content of his Report and of the email which he sent to the Match Delegate after the Match.
75. Before the hearing was concluded, the Parties expressly stated that they did not have any objection to the procedure adopted by the Panel and that their rights to be heard and to be treated equally had been duly respected.

VI. SUBMISSIONS OF THE PARTIES

76. The following outline is a summary of the Parties' arguments and submissions which the Panel considers relevant to decide the present dispute and does not comprise each and every contention advanced by the Parties. The Panel has nonetheless carefully considered all the submissions made by the Parties, even if no explicit reference has been made in this summary. The Parties' written and oral submissions, documentary evidence and the content of the Appealed Decision were all taken into consideration.

A. The Appellant's submissions and requests for relief

77. The Appellant's submissions in its Statement of Appeal and in its Appeal Brief may be summarized as follows.

1. Procedural defects and violation of the Appellant's procedural rights in the previous stages of the proceedings before the UEFA bodies

78. As an initial and formal point, the Appellant alleges procedural defects in the proceedings before the CEDB and, as a consequence, in the subsequent proceedings before the Appeals Body, said to invalidate the Appealed Decision.
79. The Appellant, accordingly, maintained that it was deprived of the right to be heard and of the guarantees of due process of law.
80. First, as to the proceedings before the CEDB, the Appellant argued that it was prevented from exercising its right to defence due to the tight timeframe imposed by the CEDB (the opening of the proceedings was notified on 5 August 2019 at 15:41 CET, and Dinamo was granted a deadline until 7 August 2019 at 11:00 CET to file its statements). In this respect, the Appellant asserted that on 5 August 2019 the club's official who was allegedly responsible for preparing the Appellant's defence, Mrs Tea Shamatova, was attending the UEFA Europe League play-off round draw and was therefore travelling.
81. Second, at the outset of the CEDB proceedings, the Appellant was neither informed of the composition of the CEDB, nor of the fact that the matter would be submitted to an *ad-hoc* Chairman instead of a three-member panel. This violated its right to "*an independent and impartial tribunal, which includes the option to reject an arbitrator if there is any legitimate doubt about his/her independence*".
82. In addition, the *ad-hoc* Chairman had no jurisdiction to decide the present dispute as a judge sitting alone, since the matter at stake did not fall within the category of urgent cases in the context of Article 29(2)(a) as is also confirmed by UEFA established practice. In addition, the CEDB Decision does not provide any reasoning to support the case being qualified as an "*urgent case*". The reasons given by the Appealed Decision to justify the alleged "*urgency*" of the case are unsound, in particular given the fact that in a previous case against Dinamo for similar infringements (case 31507- UEL - 2018/19), the CEDB adjudicated as a three-member panel. In light of the relevant provisions in the DR, neither the nature of the offence, nor the possible recidivism of the offence, nor the specific timeline of the events (*i.e.*, the two-week period between the day of the Match and the next home-match to be played by Dinamo) can justify the appointment of the *ad-hoc* Chairman to decide the case based on an alleged urgency. In fact, according to Article 25(2) DR, recidivism counts as an aggravating circumstance, and not as a ground for treating a case as 'urgent', nor does racist conduct justify such treatment in the present case, since racism is treated as "*all other cases*" according to Article 25(1)(d) DR; nor does the priority given by UEFA to the fight against racism itself justify such treatment. Moreover, "[f]rom UEFA case law (published on UEFA.com) and various provisions of the DR, Dinamo deduces that urgent cases are those relating to admission to or exclusion from UEFA competitions, doping, fraud, bribery, corruption and match fixing offences. Cases of alleged racist behaviour do not fit the common understanding of urgent cases formed based on the 2018 and 2019 UEFA jurisprudence in similar situations and are not submitted usually to a CEDB judge sitting alone". In this respect, the Appellant stressed the fact that UEFA did not consider the proceedings against FK Crvena Zvezda, Rangers FC, PFC Levski Sofia and Legia Warsaw based on similar conduct of their supporters to be urgent matters to

be submitted to the Chairman of the CEDB. All the foregoing demonstrates unequal treatment to the detriment of the Appellant, misuse of a legal provision, abuse of dominant position and judicial power by UEFA.

83. The fact that “*there were only two weeks between the day of when the Match was played and the next home-match to be played by the Appellant*”, far from being a justification for the urgency, shows rather that UEFA has deprived the Appellant of its right to be heard and to appeal to the Appeals Body and CAS before the following UEFA home-match to be played by Dinamo.
84. As a consequence of the above, the CEDB Decision is null and void, having been issued by an incompetent body. In this respect, the Appellant mentioned some CAS jurisprudence (CAS 2007/A/1365; CAS 2015/A/4319) according to which, “*a decision rendered by an organ that did not hold power and competence to adopt it is null and void*”.
85. Therefore, contrary to what is stated in the Appealed Decision in this respect, the Appeals Body did not have any authority to cure the irregularities of the previous proceedings, by substituting for the CEDB Decision a new decision, as would do the CAS in similar situations pursuant to Article R57 of the CAS Code, since, under the limited scope of Article 65(2) DR, the Appeals Body is not authorized to issue a new decision, but only to uphold, amend, overturn the CEDB decision or remit the case back to the first instance body where there has been a fundamental mistrial.
86. However, since the CEDB Decision is a nullity (having been rendered by an incompetent body), the procedural defects of the proceedings before the CEDB could not be cured by the Appeals Body. Therefore, the Appealed Decision is also null and void and should be set aside by the Panel.
87. The Appellant also stressed that it is not the first time that it had to face an unfair trial within the context of a UEFA proceedings, and drew attention to case 31507 – UEL - 2018/19 (mentioned above) where again, the imposition of tight deadlines prevented a full exercise of its procedural rights, resulting in a gross violation of the due process of law. As a consequence, UEFA should not rely on the decision rendered in that case against Dinamo to identify recidivism and the Panel should disregard it.
88. With regard to the proceedings before the Appeals Body, the Appellant also contended that UEFA wrongly rejected Dinamo’s request to expedite and render a decision within 14 August 2019 (*i.e.* before the following match to be played by Dinamo in the second round of 2019/2020 UEFA Europa League Championship), which is also in contradiction with UEFA’s choice to submit the case to an *ad-hoc* Chairman of the CEDB acting as a judge sitting alone, based on the assumption that it was an urgent matter.

2. *The nature and the content of the Banner within the context of the Match and from the point of view of a “reasonable onlooker”*

89. On the merits, with regard to the Banner, the Appellant contested the allegations of racist content and disputed that the Banner constituted a violation of Article 14 DR.
90. In this respect, making reference to several cases of alleged racist behaviour, which were finally held to be unfounded, Dinamo maintained that the Appeals Body failed to apply the test of the “*reasonable onlooker*” and did not assess the Banner within the context of the Match, finally leading UEFA to the wrong conclusion.
91. In fact, the Appeals Body wrongly focused on the number ‘88’ failing to consider it in the context of the flag overall, and completely ignored other symbols, without providing any justification for that selective choice.
92. Had the Appeals Body considered the Banner in the context of the Match and in its entirety, it would have come to the conclusion that the Banner merely expressed the fact that the relevant fan club was (albeit unofficially) founded in the year 1988, which is confirmed by the use of the numbers 88, in combination with the name of the club, *i.e.* “*Old School*” and a laurel wreath. Therefore, the Appellant maintains that the flag simply illustrates the support for Dinamo by the “*Old School 1988 fan club*”. As such, in the context of the Match, the Banner cannot be understood as discriminatory.
93. In this respect, by referring to the decision in CAS 2013/A/3324 & 3369, the Appellant emphasised that the “*perception of the reasonable onlooker*” should not be independent of the context: “*all the circumstances must be considered: who is saying what to (or about) whom, when, what, how and against what background*”.
94. In addition, the Appellant submitted that, as a general rule, the assessment of whether a gesture or conduct is offensive in the sense of Article 14 DR, is to be made objectively when there is no doubt in the interpretation of the act concerned; on the contrary, when there may be different interpretations and the meaning of the relevant act is open to doubts, as in the present case, the objective test necessarily involves due consideration of a subjective element.
95. In this respect, the Appellant referred, *inter alia*, to the decision of the Regulatory Commission of the Football Association on 12 April 2019 in the case of Wayne Hennessey and to the Appeals Body decision of 29 August 2013 in the case against Juventus (where both allegations of discriminatory behaviour were eventually dismissed), to point out that, in case of doubt in the interpretation of an alleged discriminatory or abusive conduct, the subjective element of the agent should not be disregarded.
96. The Appellant stressed that, in any case, the principle of the “*reasonable onlooker*” implies that only the perception of a large number of reasonable observers may be significant in order to decide whether a certain behaviour is insulting in the sense of Article 14 DR.

97. Conversely, the Appealed Decision is merely based on the biased opinion of the FARE Observer and on the contradictory Match Delegate Report (who was influenced by the opinion of the FARE Observer) and on the additional picture attached by the FARE Observer to his report, which is completely outside the context of the Match.
98. In this respect, the Appellant contended that the large majority of the audience, correctly interpreted the Banner as the flag representing the support of Dinamo's "Old School fan club 1988" with no other external meaning: *"no 'large numbers of reasonable spectators or viewers' have interpreted the contents of the banner in the way the FARE observer and UEFA did. There is no single tangible evidence on file that anyone who saw the Match live or on television, apart from the FARE observer, deemed the banner discriminative during the Match"*. On the contrary, by disregarding the context of the Match, the Appeals Body attributed a racist content to the Banner through a misplaced connection with the picture attached by the FARE Observer which is completely out of context. On this point, the Appellant also specified that *"Whether, subjectively the Dinamo fans intended the digit 88 (irrespectively of other elements) on the flag to be insulting or offensive is irrelevant to interpreting the actual meaning of what they had done under the applicable 'reasonable onlooker' test"*. The fact that neo-Nazi groups use banners with the code number '88' is irrelevant in the present case, as it is open to more than one interpretation, as the Juventus case demonstrates.
99. Likewise, the Appeals Body also misused the information in its possession deriving from Dinamo's past disciplinary record in order to attribute a false racist content to the Banner, so completely disregarding the application of the *"reasonable onlooker"* test.
100. In addition, the Appellant argued that the Match Delegate Report was self-contradictory and did not reflect the initial (and objective) perception of the Delegate about the Banner, which had not been considered discriminatory or racist after his inspection of the stands of Section 17 of the Stadium during the second half of the Match. Therefore, the Appellant argued that the UEFA Match Delegate's *"original, objective perception was that the Banner was not discriminatory"*. In fact, only at the end of the Match, did the opinion of the Match Delegate change when he was influenced by the FARE Observer, who cannot be considered a *"reasonable onlooker"* since he is professionally trained to recognize potentially racist symbols and is therefore biased. Such argument is confirmed by the fact that the Match Delegate Report contains some statements at variance with the witnessing of *"one banner featuring a neo-Nazi code '88' displayed by Dinamo Tbilisi supporters in section 17"*. According to the Appellant, such statement conflicts with the subsequent indication that the crowd behaviour *"meets the standards"* and later on, that there was *"no discriminatory behaviour"*. In light of the above, according to the Appellant's argument, the Appellant denied that the Match Delegate Report is reliable. *"Against this background, Dinamo deduces that the UEFA delegate reported what the FARE observer has told him after the Match, but not what he has perceived based on his original objective assessment, when walking through to section 17 during the second half of the Match, as confirmed by his conversation with Ms. Shamatava"*.
101. The presumption of accuracy of the Match Delegate Report according to Article 45 DR is therefore compromised and, in any case, the ambiguities should be interpreted against UEFA according to the principle *"interpretatio contra stipulatorem"*; for its part, the FARE Observer Report does not enjoy any presumption of accuracy and therefore has no probative value. In

fact, there is no supporting evidence corroborating the opinion of the FARE Observer and of the Match Delegate after the Match as to the nature of the Banner in the context of the Match: *“in particular, there is no report of discriminative chants, gestures, or other behaviour on the part of Dinamo fans (in section 17) before, during, or after the Match, or any other evidence that could imply that the flag was understood as neo-Nazi by <a large number of reasonable spectators or viewers>”*.

102. As a consequence, according to the Appellant, UEFA did not discharge its burden of proof with regard to the racist content of the Banner, bearing in mind that in the present disciplinary case, which is closer to criminal than to civil procedure, *“the two parties do not bear equal burden of proof: while the accusing party (UEFA in casu) must prove the alleged facts with certainty, it is sufficient for the accused (Dinamo in casu) to establish reasons for doubt”*.
103. Moreover, the same Banner has been already displayed in past UEFA Europa League matches without having been sanctioned or reported (although the flag was perfectly visible); which speaks in favour of its non-discriminatory nature, and UEFA cannot properly change its position with such a new different interpretation from one day to another and should give the benefit of the doubt to Dinamo, due to the principle of good faith.

3. The sanction imposed does not respect the principle of proportionality.

104. In any event, even admitting (*quod non*) that Dinamo should be sanctioned for the conduct of its supporters in relation to the Banner, the Appellant argued that the sanction imposed by the Appealed Decision does not meet the requirement of proportionality according to the provision of Article 23 DR and CAS jurisprudence.
105. In this respect, the Appellant maintained that the scope of review of the CAS Panel in the present case should not be limited to the threshold of the arbitrariness of the sanction as is generally established *vis-à-vis* “field of play decisions” which itself respects the autonomy of associations.
106. This is all the more true since, according to the CAS jurisprudence, whether and to what extent a federation is bound by the principle of proportionality is a question of law and not an issue within the free discretion of a federation (CAS 2013/A/3139), *a fortiori* when dealing with procedural flaws committed by a federation, as is the present case.
107. Consequently, the Appellant contended that the Panel has the full power of review and can modify the sanctions imposed by the Appealed Decision even if they are not grossly disproportionate.
108. In this respect, the Panel should correctly assess the degree of seriousness of the infringement in accordance with the flexibility granted by Article 14 DR and must consider whether the alleged offence was intentional or unintentional, as is shown in the Feyenoord and Juventus cases. In the present case, the Panel should therefore consider that the intention of Dinamo’s supporters was to promote their fan club and not to display an insulting banner.

109. Moreover, Dinamo mentioned other cases of recidivism in racist behaviour (against SS Lazio, Rangers FC, Bulgaria, FK Austria Wien) where the Appeals Body did not apply the measures envisaged in Article 14(3)(a) as was done in the present case, but instead the sanction under Article 14(2) DR (*i.e.* a partial stadium closure).
110. In conclusion, the Appellant argued that the Panel should decide to defer the sanction imposed for a probationary period or replace the sanction with a partial stadium closure of Section 17 of Dinamo's Stadium, considering, in any case, that Dinamo already played the home match behind closed doors against Feyenoord on 15 August 2019 and therefore, need not serve that part of the sanction in the future.
111. Furthermore, the Panel should revoke or, at least, reduce the fine of EUR 50,000 at its discretion.
112. In its Appeal Brief, the Appellant submitted the following requests for relief:

“Primarily

1. *Set aside and annul the entire decision passed by the UEFA Appeals Body on 9 September 2019 in case 32806 - UEL – 2019/20.*
2. *Establish that the Ad-hoc Chairman of the UEFA Control, Ethics and Disciplinary Body did not have jurisdiction to decide on this case as a judge sitting alone and hence, the Appeals Body did not have the power to replace the non-existent decision rendered by the Ad-hoc Chairman of the UEFA Control, Ethics and Disciplinary Body.*

Alternatively, only if the request under item no.2 above is not granted

3. *Establish that Dinamo Tbilisi should not be sanctioned for the behaviour of its supporters during the UEFA competition match played against Gabala SC in Tbilisi on 1 August 2019.*

More alternatively, only if the request under items no. 1 to 3 above are not granted

4. *Partially set aside the decision passed by the UEFA Appeals Body on 9 September 2019 in case 32806 - UEL – 2019/20 and reform it in the sense that:*
 - a. *The part of the decision of the UEFA Control, Ethics and Disciplinary Body dated 8 August 2019, ordering FC Dinamo Tbilisi to play its next one UEFA competition match as host club behind closed doors, is set aside and replaced with a new decision, ordering the measure to be suspended for a probationary period to be determined at the discretion of the Panel; or, only if that is rejected, ordering the partial closure of the Dinamo Tbilisi Stadium (in particular, Section 17) during one UEFA competition home match.*

In either case, given that FC Dinamo Tbilisi already played at home behind closed doors against Feyenoord on 15 August 2019, it does not need to serve the sanction in the future;

- b. *The part of the decision of the UEFA Control, Ethics and Disciplinary Body dated 8 August 2019, ordering FC Dinamo Tbilisi to pay a fine of EUR 50,000, is set aside and annulled entirely; or only if that is rejected, the fine is reduced at the discretion of the Panel.*

In any case

5. *Order UEFA to reimburse FC Dinamo Tbilisi for the appeal fee of EUR 1,000 paid to UEFA in relation to the appeal to the UEFA Appeals Body and to exempt FC Dinamo Tbilisi from paying the costs of the proceedings at the UEFA Appeals Body.*
6. *Order UEFA to bear all costs incurred with the present procedure at CAS.*
7. *Order UEFA to pay FC Dinamo Tbilisi a contribution towards its legal and other costs in an amount to be determined at the discretion of the Panel”.*

B. The respondent’s submissions and requests for relief

113. The position of the Respondent is set forth in its Answer and can be summarized as follows.
114. Preliminarily, with reference to the Appellant’s allegations that its procedural rights were violated by UEFA during the proceedings before the CEDB and the Appeals Body, and that the guarantees of the due process of law was not respected, the Respondent submitted the following arguments.
115. First and foremost, according to CAS jurisprudence based on Article R57 of the CAS Code, the appeal arbitration before the CAS, where the case is heard *de novo*, is able to remedy any possible infringements of the right to be heard or to be fairly treated committed by sports organizations during the internal disciplinary proceedings; as a consequence, even admitting that any violation occurred, *quod non*, this would be cured in the present arbitration proceedings and the Appellant’s allegation is therefore irrelevant.
116. Moreover, contrary to the Appellant’s allegations, the Appeals Body itself had the authority to cure any possible irregularities of the proceedings before the CEDB, according to Article 65 DR, which mirrors Article R57 of the CAS Code, providing that the Appeals Body has the full power to review the first instance case, in fact and in law.
117. Without prejudice to the above, it is to be noted that **a)** the deadline for the Appellant to file its statement of defence reflected the urgency of the matter; **b)** the Appellant did not file any statement, but also failed to request a postponement of its deadline; **c)** Dinamo is responsible for any deficiencies of its own organization and cannot blame UEFA for them; **d)** the Appellant also failed to take the opportunity to raise any objections to the independence and impartiality of the member of the CEDB appointed to decide the case, although it had the chance to so (indeed, the Appellant does not even mention any reason to doubt the independence of the *ad-hoc* Chairman to whom the case was referred); **e)** moreover, the right to an independent and

impartial tribunal within the meaning of Article 6(1) of the European court of Human Rights (ECHR) does not apply to UEFA's internal disciplinary bodies, since they are not "*arbitral tribunals*"; **f**) the allegation that the EDI's replies were manipulated is completely specious and, in any case, the second reply was declared inadmissible since it was belated and not because of its alleged "*alteration*"; **g**) with regard to the case 31507 - UEL - 2018/19, where Dinamo was sanctioned to a partial stadium closure for racist behaviour, the Appellant's request that such precedent be disregarded for purpose of recidivism due to the alleged "*gross violation of due process*" is inconsistent; in fact, since Dinamo has failed to request the grounds of the relevant decision and to file an appeal against it, it must be inferred that it has finally accepted the charges against it, as also affirmed by the Appealed Decision.

118. With specific regard to the alleged lack of jurisdiction of the *ad-hoc* Chairman of the CEDB as a judge sitting alone, the Respondent argued that the Appealed Decision was not rendered by the wrong body, according to Article 29(2) DR. In fact, whether the *ad-hoc* Chairman was entitled to adjudicate over the present case merely concerns the composition of the CEDB (which was the competent body according to Article 29 DR with respect to the urgency of the case) and does not imply any lack of jurisdiction on the part of the CEDB.
119. In this regard, the Respondent maintained that, as correctly held in the Appealed Decision, the case was considered urgent because of the following circumstances: **a**) the tight timeframe between the Match and the Appellant's next home match in the second qualifying round of the 2019/2020 UEFA Europa League and **b**) the seriousness and the nature of the offence.
120. According to the Respondent, the combination of these two elements was determinant "*because, at this stage, Dinamo potentially (and in fact did) only had one more match to play, i.e. on 15 August 2019 against Feyenoord. Indeed, if Dinamo lost its match(es) against Feyenoord in the third qualifying round (which it did), the Club would be eliminated from the 2019/2020 UEFA Europa league (which happened)*". Therefore, only urgent proceedings within the meaning of Article 29(2)(a) DR allowed the CEDB to initiate the proceedings and to issue and implement the relevant sanction "*with a minimum impact on the organization of the subsequent competition matches within that time frame*".
121. This reason alone justified the entrustment of the case to the *ad-hoc* Chairman of the CEDB. Moreover, UEFA disciplinary bodies have a broad discretion in determining whether a case should be dealt on an urgent basis. Furthermore, Article 29(3) DR does not support the Appellant's argument either, since it merely gives non exhaustive examples of (particular) urgent cases. The Respondent also referred to the case FK Partizan, which was also adjudicated by an *ad-hoc* Chairman of the CEDB based on the same grounds of urgency as apply to the present case.
122. As to the cases against FK Crvena Zvezda, Ranger FC, PFC Levski Sofia and Legia Warsaw mentioned by the Appellant, they were not adjudicated by an *ad-hoc* Chairman for specific reasons falling outside the scope of the present case ("*For the purpose of the present proceedings, it suffices to say that these cases were not decided by an ad-hoc chairman as a judge sitting alone for the following reasons: the clubs were either eliminated at the end of the match in question, an EDI had to be appointed for investigation or the incidents did not constitute a case of recidivism*").

123. As to the substance, in relation to the nature and content of the Banner, the Respondent maintained that **a)** the flag featured number ‘88’ which is a code number used by far-right extremists which stands for ‘*Heil Hitler*’ according to the 8th letter of the alphabet; **b)** the Match Delegate identified a potential issue with the Banner and took a picture of it and after receiving confirmation by the FARE Observer, correctly reported that the Banner featured a neo-Nazi code; therefore, what is relevant is the reported “*fact*”, regardless of what might have been the initial opinion or perception of the Match Delegate; **c)** although FARE observers’ reports do not benefit from the same presumption of accuracy as official UEFA reports, this does not mean that the FARE Report has no probative value as alleged by the Appellant; such an allegation, in fact, is inconsistent with Article 44 DR; **d)** moreover, the code number ‘88’ as well as other Nazi symbolism or slogan is not only known to trained FARE observers, but also, contrary to the Appellant’s allegations, a large number of spectators would view this code number as racist; **e)** the evaluation of the “*context of the Match*” claimed by the Appellant better applies to non-intrinsically racist behaviour, as it was in Feyenoord case which was inappropriately mentioned by the Appellant: “*when it is accepted, as in the present matter, that the symbol is indeed racist, the test cannot be the same. In such cases, the issue is more whether there are actual circumstances showing that, in the particular case, it is not (like in the case against Juventus). UEFA submits that a high standard should be applied in these cases to avoid that fans can insert racist symbols, in particular numbers, on banner or flags, by cleverly associating them with some kind of circumstances in which that sign has an independent meaning and thus easily circumvent the reasonable onlooker test. This is particular so when the racist symbol is meant to convey a hidden message in first place*”, like the use of the code number ‘88’ which is less recognizable than an explicit Nazi slogan and is therefore meant to cheat the test; **f)** the Appellant’s explanation in order to deny the racist nature of the Banner is not convincing and does not meet the burden of proof upon it; **g)** the fact that the same Banner has been previously displayed without being detected does not speak in favour of its non-discriminatory nature; **h)** the other elements adduced by the Appellant in order to support its theory are not sufficient to demonstrate that the Banner is meant only to celebrate the year of foundation of the group of its supporters; **i)** the font used in the Banner and the resemblance to runic letters which are widely used by neo-Nazi, the fact that the digits 1 and 9 are barely noticeable, the presence of the laurel wreath which is also often used in other Nazi symbols, are all elements showing that the Banner is racist in nature; **j)** in addition, a Nazi salute performed by a supporter in Section 17 was detected, which corroborates the hidden discriminatory message in the Banner (frame and video was produced by the Respondent under Exhibit R-8); **k)** the third picture attached to the FARE Observer Report confirms an association between the Banner and Nazi symbolism, **l)** the Appellant had already been sanctioned on 27 July 2018 for a similar behaviour occurred during the match of 19 July 2018 where the number codes ‘88’ and ‘14/88’ were displayed in some graffiti inside the Stadium, as it is also reported in the Appealed Decision. This shows that Dinamo’s supporters knew very well that the number code ‘88’ has a racist background, which suggests that the Appellant should not be given the benefit of the doubt.
124. As a consequence, the racist nature of the Banner has not been disproven.
125. With further regard to the proportionality of the sanction, which is disputed by the Appellant, the Respondent maintained that the application of Article 14(3)(a) in the present case is

straightforward as this is a clear case of recidivism. Notwithstanding the Appellant's arguments, in fact, there is no doubt that Dinamo was already sanctioned in case 31507 - UEL - 2018/19 and that the relevant decision has become final and binding, given that the Appellant did not file any appeal against it and did not even request to be notified with the relevant grounds.

126. Another element to be considered is that the Banner was displayed in order to give it high visibility, in immediate vicinity of the goal, and it is captured in the video of the entire match in the background of all match actions, therefore, *"the message conveyed by the flag is not confined to the spectators and persons attending the match, but to anyone that would watch said video, which is publicly available on YouTube"*.
127. Moreover, the Panel should consider the absence of repentance by the Appellant and its *"insistence on a clearly spurious explanation which constitutes an aggravating circumstance"*.
128. On the contrary, there are no mitigating circumstances that can be considered in the present case and the reference made by the Appellant to other cases (against S.S. Lazio, Rangers FC, Bulgaria and FK Austria Wien) is unavailing as the elements which were considered by the CEDB or the Appeals Body in the relevant cases for the application of a less severe sanction, are not present in the case at stake.
129. As a consequence, the Appellant has failed to provide any evidence of mitigating factors which would justify the imposition of a lower sanction and therefore, the sanction imposed by the Appealed Decision must be confirmed by the CAS Panel.
130. In its Answer, the Respondent submitted the following requests for relief:

"Dismissing Dinamo Tbilisi's Appeal.

Confirming the Decision under Appeal.

Ordering Dinamo Tbilisi to pay the costs of the arbitration, if any.

Ordering Dinamo Tbilisi to pay a significant contribution towards the legal fees and other expenses incurred by UEFA in connection with these proceedings".

VII. JURISDICTION

131. Article R47 of the CAS Code provides as follows:

"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".

132. In its Statement of Appeal, the Appellant relies on Articles 62 of UEFA Statutes, as conferring jurisdiction to the CAS.
133. Article 62(1) of UEFA Statutes provides that “*Any decision taken by a UEFA organ may be disputed exclusively before the CAS in its capacity as appeals arbitration body, to the exclusion of any ordinary court or any other court of arbitration*”, while Article 62(4) provides that “*An appeal before the CAS may only be brought after the UEFA’s internal procedures and remedies have been exhausted*”.
134. The jurisdiction of the CAS was not contested by the Respondent.
135. The signature of the Order of Procedure confirmed that the jurisdiction of the CAS in the present case was not disputed. Moreover, at the hearing, the Parties confirmed they had no objection to the jurisdiction of CAS.
136. Accordingly, the Panel is satisfied that CAS has jurisdiction to hear the present case.

VIII. ADMISSIBILITY OF THE APPEAL

137. Article R49 of the CAS Code provides the following:

“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against”.

138. According to Article 62(3) of the UEFA Statutes “[t]he time limit for appeal to the CAS shall be ten days from the receipt of the decision in question”.
139. The Panel notes that the UEFA Appeals Body rendered the Appealed Decision on 9 September 2019 and that the grounds of the Appealed Decision were notified to the Parties on 22 October 2019. Considering that the Appellant filed its Statement of Appeal on 31 October 2019, *i.e.* within the deadline of 10 days set in the UEFA Statutes, the Panel is satisfied that the present appeal was filed timeously.
140. The admissibility of the appeal is not undisputed by the Respondent.
141. Accordingly, the Panel is satisfied that the appeal is admissible.

IX. APPLICABLE LAW

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

“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”.

143. As to the applicable law, the Appellant refers to Article 5 of the UEFA DR, which establishes that *“the 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”.*
144. In consideration of the above and pursuant to Article R58 of the CAS Code, the Panel holds that the present dispute shall be decided principally according to UEFA rules and regulations, in particular, the UEFA DR Edition 2019, with Swiss law applying subsidiarily.

X. LEGAL ANALYSIS

A. Preliminary issue

1. *The appellant’s allegations on the procedural defects of the previous UEFA proceedings*

145. First, the Panel observes that, as a preliminary point, the Appellant invites the Panel to set aside the Appealed Decision, on the basis that Dinamo was deprived of the guarantees of the due process of laws during the proceedings before UEFA disciplinary bodies both at first instance and on appeal.
146. As against that, the Respondent objects that the previous proceedings were conducted in full compliance with the rules of the due process, and that, even admitting that any violation occurred, *quod non*, this would be cured in the present arbitration proceedings and the Appellant’s allegation is therefore irrelevant.

2. *The findings of the Panel*

The Panel recalls that it has full power to review the facts and the law according to Article R57 of the CAS Code, as a result of which any procedural flaws which occurred during the proceedings of the previous instance can be cured through a *de novo* hearing of the dispute (see CAS 2008/A/1574 para 42: *“any allegation of denial of justice or any defect of procedural error even in violation of the principle of due process which may have occurred at first instance, whether during the sporting body or by the Ordinary Division CAS panel, will be cured by the arbitration proceedings before the appeal panel and the appeal panel is therefore not required to consider such allegations”* and MAVROMATI/REEB, Commentary pp. 507-8 para II A 12).

147. As a consequence, the Appellant’s allegations and requests for relief in this regard must be rejected.
148. Without prejudice and in addition to the foregoing, the Panel observes that, in any event, according to Article 65(2) DR, the Appeals Body, which is the competent body to hear appeal

against decisions rendered by the CEDB pursuant to Article 30 DR, also enjoys a full power to review the facts and the law. Therefore, if certain procedural defects had occurred, as contended by the Appellant, the proceedings before the Appeals Body would have exercised its curative effect over the CEDB Decision.

149. Besides, the Panel also considers that the provision of Article 29(2)(a), which entitles the Chairman of the CEDB or an appointed *ad-boc* Chairman to render a decision as a judge sitting alone, relates to the composition of the competent body, as maintained by the Respondent, so that the Appellant's argument that the *ad-boc* Chairman of the CEDB had no jurisdiction to decide on the case is misconceived. The Panel considers that the provision justifies an exception to the general rule of the three-member panel based, *inter alia*, on the urgency of the case, which it is for the adjudicatory body to assess in the exercise of its discretionary or evaluative powers. Moreover, the Panel considers that the grounds provided by UEFA to justify the assignment of the case to the *ad-boc* Chairman were reasonable and therefore, any allegation of abuse by UEFA in this respect is rejected. In fact, the CEDB considered that the case needed to be addressed urgently in order to ensure the effectiveness of the sanction given its direct impact on the ongoing competition.
150. Finally, the Panel is not persuaded by the Appellant's argument in relation to the further alleged violations of its procedural rights, based on the following considerations: the fact that the Appellant did not file any statement of defence before the CEDB is only attributable to the Appellant, which must be exclusively responsible of any shortcomings in its organization, besides the fact that it results from the file that it did not submit any request for a postponement of its deadline; with regard to the appeals proceedings, the Appellant's request for a stay of the CEDB Decision was rejected after due consideration by the Appeals Body of the entire submissions of the Appellant and the EDI. It is not without concern that the Panel notes that the Appellant's request for an expedited procedure was rejected by UEFA. The latter had initially decided that the case was "*urgent*". Only once its interests were protected, UEFA concluded that there was no need to rush, because from this moment onwards only the interests of the Appellant were at stake. Such procedural behaviour is difficult to reconcile with the principles of procedural fairness. To conclude, therefore, the Panel finds that the fact that the appeal was ultimately not decided before within 14 August 2019 (*i.e.* before the following match to be played by Dinamo in the second round of 2019/2020 UEFA Europa League Championship) is problematic but is in the Panel's view immaterial in view of the outcome of this case before this Tribunal.
151. The relevant allegations by the Appellant that the due process of law was violated during the proceedings before UEFA disciplinary bodies are therefore rejected.

B. Merits

1. *The liability of Dinamo*

152. Turning its attention to the substance of the matter, the Panel recalls that the present case relates to an infringement of Article 14 DR by Dinamo's supporters during the Match in relation to

the display of the Banner, which was reported by the UEFA Match Delegate, with the following statement: *“I noticed one banner featuring a neo-Nazi code ‘88’ displayed by Dinamo Tbilisi supporters in section 17. The same confirmation I received by E-mail from the FARE Observer. However, the stadium authorities and home team contact person, Ms Tea Shamatova assure me the banner is not neo-Nazi and means the old supporters of their club are since 1988 and they are old member of Dinamo Tbilisi fan club. The photo of the banner to follow”.*

153. In addition, the FARE Report on the Match contains the following comments:

- “- 21:15 Approximately in 15th minute into the game, Dinamo Tbilisi supporters in Section 17 displayed a medium sized banner reading ‘1988 Old School’ featuring a laurel wreath, with the ‘88’ in large font and ‘19’ in small font size. The banner remained on display until the final whistle.*
- while 1988 can be a year significant to a certain group, the way that ‘88’ is visually highlighted and previous history of the banner indicate at discriminatory connotation of the banner sending a coded message;*
- ‘88’ is one of the most widely used neo-Nazi number codes worldwide and stands for the ‘Heil Hitler’ according to the 8th letter of the Latin alphabet. It is often printed on football fan shirts or used as part of the name of neo-Nazi supporter groups as a way of sending a coded message to promote hate. The code is often used as a combination with 14/88 where 14 stands for 14 words by American neo-Nazi David Lane (“We must secure the existence of our people and a future for white children”).*
- Photographs of the banner are attached (a)”.*

154. According to the Appellant, there is no evidence of the racist nature of the Banner. It argues that the number code ‘88’ has nothing to do with the Nazi slogan but merely represents the reference to the year of foundation of the oldest group of supporters (‘Old School 1988’) and therefore, it has no racist or otherwise discriminatory content within the scope of Article 14 DR.

155. As against that, the Respondent insists that there is only one interpretation of the Banner, in the sense of its discriminatory content, due to the code number ‘88’, featured in huge characters combined with other Nazi symbolism. Furthermore, the explanation given by the Appellant to the contrary is unsupported and is not able to disprove the discriminatory character of the Banner deriving from the association of the code number ‘88’ with the Nazi salute.

156. The Panel sets out for convenience the two key paragraphs of the DR which bear on the issue of whether the Appellant is in breach of the DR:

- Article 8 DR, provides that “a (...) 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 (...) club concerned, even if the (...) club concerned can prove the absence of any fault or negligence”;*

- Article 14 DR provides that:

*“1. [a]ny person under the scope of Article 3 who **insults the human dignity of a person or group of persons on whatever grounds, including skin colour, race, religion or ethnic origin**, incurs a suspension lasting at least ten matches or a specified period of time, or any other appropriate sanction”* (emphasis added by the Panel).

157. It is not an issue that the DR apply to the Appellant under Article 3(b) DR nor that the Appellant may be vicariously liable under Article 8 DR for the conduct of its supporters, even in the absence of fault or negligence.
158. In the Panel’s view the test whether a person has breached Article 14 DR is an objective one. On the clear language of such Article, it is not a precondition of such breach that the insult as therein defined was intentional. Lack of intention may be relevant to sanction, but not in relation to whether or not the Appellant breached the applicable rules. Indeed, to hold otherwise would undermine the concept of insult, which focusses on a notional victim rather than perpetrator.
159. In the Panel’s further view, the exercise for any adjudicative body confronted with a charge brought under Article 14 DR is to identify, as best it can with the assistance of any relevant materials including dictionaries or matters of which judicial notice can be taken, *e.g.* historical facts, the objective meaning of the words or symbols relied on. Any alternative approach which relies upon the subjective appreciation of actual onlookers or audience would be destructive of the principle of legal certainty, unjustifiably complicate the function of the adjudicative body and contravene the principle of equal treatment. By way of (entirely) hypothetical example, a slogan written in Arabic which unambiguously insulted Christians would be, other criteria being satisfied, a breach of Article 14 DR even if read or seen only by persons unfamiliar with Arabic. The adjudicative body stands in the shoes of that hallowed but also hypothetical figure “*the reasonable onlooker*” who must for this purpose be taken to be well informed and acquainted with legal and historical knowledge and with the totality of the circumstances.
160. The Panel respectfully declines to apply a test of the perception of “*a large number of viewers*” or an “*average viewer*”, which may in some circumstances be coincident with its own preferred test of the perception of the hypothetical reasonable and well-informed onlooker but in other circumstances, as in the hypothetical example the Panel provides above, may not. If a message whether in word, slogan, sign, drawing, painting or other art form is objectively and intrinsically racist a Club vicariously responsible for it cannot escape the consequences just because few of those who heard or saw it (as the case may be) did not, for whatever reason, understand its true meaning. A message, applying the Panel’s preferred test, either is racist or is not. A charge of a breach of Article 14 DR must be proved to the comfortable satisfaction of the adjudicatory body, which the Panel finds it is appropriate standard and, if at the end of the day any ambiguity cannot be resolved that may simply mean that the charge is not proven.
161. Except for the qualification above regarding the “*large number of viewers*”, the Panel considers its approach to be consistent not only with the weight of previous CAS jurisprudence, discussed

further below, but with other sports disciplinary bodies which have also had to grapple with the issue of whether words, symbols or gestures are racist, see *e.g.* the case of the athlete Spinola (IAAF Ethics Commission) or of the footballers Nicolas Anelka, Luis Suarez or Edinson Cavani (UK FA Disciplinary Tribunal). The decision in the Anelka case has particular resonance since it involved the use of the “*quenelle*” gesture in a domestic match and which had an antisemitic connotations even though, as the tribunal held, those would be unlikely to have been known to the English football fans; moreover, he was found guilty even though the tribunal said that he had not intended the gesture to be antisemitic (Decision of the Football Association Regulatory Commission, 25-26 February 2014).

162. Turning to the facts, the Panel notes that Article 45 DR, provides that “[f]acts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided”. Such reports have accordingly a rebuttable presumption of accuracy as to facts. The Appellant’s assault on the FARE Report bears more on the correctness of the FARE interpretation of primary facts rather than of the primary facts themselves.
163. Against that background, the Panel first notes that it is undisputed in the present case that (i) the Banner, photos of which were attached to the Match Delegate Report and to the FARE Report, was displayed and detected at the Stadium during the Match; (ii) the Banner prominently featured the digit ‘88’, which is in huge font, while the digits 1 and 9 are in minuscule font and that the other elements are visually overall insignificant; (iii) number ‘88’ is a neo-Nazi code, namely, using the wording of the FARE Observer, one of the “*most widely used neo-Nazi number codes worldwide and stands for the ‘Heil Hitler’ according to the 8th letter of the Latin alphabet*”; (iv) as a matter of record, the number ‘88’ is found to be used by groups of neo-Nazi supporter fan clubs, as a way to convey a coded message to promote racial hate and discrimination.
164. For those reasons the Panel finds that the code number ‘88’ has historical and factual grounds for being considered objectively as evocative of allegiance to Nazi ideology and therefore, intrinsically of a discriminatory nature, on racial or ethnic grounds, especially when viewed in the context of the Banner’s both language and layout. In fact, the Panel concludes that, given that it is so generally recognized as associated with racist context, its insulting meaning within the definition of Article 14 DR has been *prima facie* established unless there is compelling proof to the contrary, under specific and exceptional circumstances which themselves have to be assessed with care. In the Panels view, the present case differs from other cases of alleged racist behaviour, where the conduct under scrutiny may indeed have more than one interpretation, depending on the specific situation involved. In such cases, the test of whether or not there has been an offence qualifying for sanctions under Article 14 DR, shall also be the “*perception of the reasonable onlooker*”, to whom in such circumstances, “*context*” would therefore be crucial. In such cases, in order to determine whether a certain conduct shall be interpreted as being racist, or not, “*all the circumstances must be considered; who is saying what to (or about) whom, when, what, how and against what background*” (CAS 2013/A/3324 & 3369). This is how it was interpreted for example, in CAS 2015/A/4256 (Feyenoord case) and in Wayne Hennessey case (Decision of the Football Association Regulatory Committee of 12 April 2019). In the latter case a gesture-raised right arm, hand over mouth-which could have been interpreted as a Nazi salute was explained by the footballer as being a signal to a photographer to hurry up with the taking of the footballers’

picture accompanied by a request to the same effect, whose volume the footballer sought to magnify with use of his hand. The Committee resolved the perceived ambiguity in the footballer's favour.

165. The Panel would readily accept, as the Respondent itself emphasises, that codes in general are meant to convey a hidden message, and are, in a context such as the present, conceived to escape sanctions since they are less recognizable than explicitly racist messages. The Panel would itself affirm that hidden and disguised discriminatory messages are more dangerous precisely because they are more difficult to detect; accordingly, they must be strongly opposed in order to prevent undisturbed growth of message of hatred and violence in football. But application of the Panels' preferred test will not allow coded messages to escape punishment, since the well-informed reasonable onlooker and the adjudicative body, whether a CAS panel or a first instance tribunal, standing in its shoes must be taken to be equipped with all the necessary information to decode any code. The "*reasonable onlooker*" is not an average person of a particular constituency, but a reasonable person assessing – *ex post* – the facts before him or her in light of all available and obtainable information.
166. In this framework, the Panel finds that, whether the Match Delegate may have realized the discriminatory content of the Banner at a later stage, after having received the e-mail from the FARE Observer, or whether the Match Delegate's opinion may have been reinforced or influenced by the FARE Observer's comments, or whether – another point raised by the Appellant – the same Banner had been previously displayed at the Stadium, without being reported, is irrelevant to the purpose of establishing the infringement of Article 14 DR in the present case. Likewise, even conceding that the majority of the spectators at the Stadium would not recognize (or would not immediately recognize) the Banner as featuring a racist message, as alleged by the Appellant, such absence of recognition would not be able to convert the Banner's symbolism into something objectively non-discriminatory.
167. What is more relevant in the Panel's opinion is that the Banner, with all its salient features as described above, and with its already well-established connotation, has been displayed at the Stadium and has been reported by the Match Delegate, attaching photographic documentation. Moreover, such material evidence is also corroborated by the FARE Report which according to Article 44 DR is a valid and admissible form of evidence and may contribute to the Panel's persuasion that the charge is made out to its comfortable satisfaction, being the standard of proof applicable to the present proceedings pursuant to Article 24 DR and consistent with CAS jurisprudence in the context of disciplinary proceedings (CAS 2014/A/3562).
168. Therefore, since it is established that the symbolism contained in the Banner is objectively connected to Nazi ideology, which is not disputed, the Panel believes that the Appellant should have provided decisive and material proof to the contrary, if it wished effectively to dispute the indication of a racist nature of the code featured in the Banner.
169. The UEFA Appeals Body in the Juventus case (decision of the Appeals Body of 29 August 2013) overturned a decision where the Club had been sanctioned by the CEDB for discriminatory behaviour of one of its supporters for displaying a banner containing the words

“Via Filadelfia 88”. The Appeals Body dismissed the allegation of discriminatory behaviour, (noting that the case was *“unusual for many reasons”*) on the basis that, Juventus was able to prove that *“Via Filadelfia 88”* is in point of fact the existing address corresponding to the location of the stadium entrance where Juventus supporters used to meet before home matches. Moreover, a book called *“Via Filadelfia, Una Storia, Una Curva”* demonstrated the connection between the club’s history and the number 88 which was not found to be associated to discriminatory context as it represents the entrance number of the club’s location at *via Filadelfia*. A case described as, unusual for many reasons provides no precedent or read across to a case, such as the present, without any such or similar features and where there was no perceptible ambiguity in the Banner in question.

170. The Appellant’s claim that the Banner only refers to the fact that the club’s relevant fan club (‘Old School 1988 fan club’) was founded in the year 1988, as is allegedly confirmed by the use of the numbers 1 - 9 - 8 - 8, in combination with the name of the club. The Panel notes that the Appellant has provided close to no information in relation to the Old School fan club. Furthermore, the Panel notes that Mr Akaki Luarsabishvili, a representative of the alleged Old School fan club had been called as a witness but did not appear before the Tribunal. In view of the above, neither the reference to *“Old School 1988”*, nor the laurel wreath can affect or cause to read down the Banner’s clear and objective racist meaning. Accordingly, in the Panel’s view, the Appellant failed to provide any compelling evidence capable of disproving the racist connotation of the Banner otherwise apparent from the file. Such evidence even if provided, would have been more likely to touch in the issue of intention so going to sanction rather than the issue of breach, since protestations of the rationale for or history of the banner would not of themselves been relevant to the issue of the Banner’s meaning.

171. In this respect, the Panel notes that the Appellant attached the following documents:

- a) Exhibit A42, a written statement dated 12 August 2019, signed by Mr Akaki Luarsabishvili as the head of Dinamo Tbilisi Fan Club, whereby the year 1988 is referred to as the unofficial date when Dinamo fans *“organized their support in the away matches with the Tbilisi team”* (Vilnius, Lviv, Dnepropetrovsk, Moscow, etc.);
- b) Exhibit A43, extracts of few pages from a web forum related to Dinamo fans stating in the relevant part *“Back in Soviet times, Dynamo had a small group of fans led by Carlson and Laval. The first one still runs the sector! They made their first trip back in 1988”*, with some pictures of different banners.

172. The written testimony signed by Mr Akaki Luarsabishvili on 25 November 2019, as Fan Club Manager stating as follows: *“This banner ‘Old School 1988’ is not for any organization, also it’s not an organization. It’s created by old fans FC Dinamo Tbilisi. Our first organized travel was in 1988, it was first away match, that’s why we created that banner, it’s just our history. (...) We use the last two digit to describe any particular year, based on the specifics of the Georgian language. For example: I was born in 1990, but I say, that I was born in the ‘90s. That’s why 88 is greater than 19. Old School of dynamo Tbilisi never had an intention to promote racism. The creator of this banner is himself an ethnic Georgian. He is Armenian by nationality”*. The Panel recalls that, although he was summoned by the Appellant, Mr Akaki

Luarsabishvili failed to appear at the hearing. In view of all the above, the Panel believes that the Appellant's defensive claims are based on fragile grounds and are not sufficient to disprove the objective racist content of the symbolism featured in the Banner, as specified above, since there is no solid proof of any overt link between the '88' code number and the fan club's history.

173. The Panel's conclusion is further fortified by the fact that, as appears from the file, the Appellant had already been sanctioned by the CEDB with the decision rendered on 27 July 2018 for very similar discriminatory behaviour in violation of Article 14 DR (case 31507 – UEL – 2018/19) as already mentioned before in the present award. In that case, the FARE Observer reported the use of numerous graffiti featuring neo-Nazi symbols and codes, such as Celtic cross and the code 14/88 meaning the "*supremacy of the white race*". In addition, mention was made to the meaning of number code '88' as corresponding to the 'Heil Hitler' salute. This previous incident provides evidence that the Appellant had already been made aware of the discriminatory meaning of the relevant symbolism of the Banner and makes its claims of its non-discriminatory nature even weaker. In this respect, the fact that the Banner was already displayed in the past without being reported to UEFA does not provide, as already noted, any proof of the non-discriminatory nature of the Banner, nor any justification for the Appellant to display it once more, neither did it create any legitimate expectation on the Appellant's part that the Banner would not be reported or sanctioned in the future. Therefore, the so-called "*unintentional racism*" (which would in any event go to sanction only) is not applicable to the present case, nor is the Appellant entitled to enjoy the benefit of any doubt either as to its meaning or as to the possible sanction attendant on its display.
174. As a consequence, the Panel believes that, in light of all the evidence demonstrating the association with the Nazi symbolism, the discriminatory context of the Banner has been amply proven, and therefore the Club shall be strictly liable for the conduct of its supporters, in accordance with Article 14 DR.

2. The Sanction

175. Article 14(2) DR provides:

"If one or more of a club's supporters engage in the behaviour described in paragraph 1, the (...) club responsible is punished with a minimum of a partial stadium closure".

176. Article 14(3) DR states as follows:

"The following disciplinary measures apply in the event of recidivism:

a) a second offence is punished with one match played behind closed doors and a fine of € 50,000".

177. The Panel observes that Article 14(3)(a) DR is applicable to the present case, since the Appellant is responsible for recidivism. Notwithstanding the Appellant's arguments, the decision in case 31507 - UEL - 2018/19 has become final and binding, since it has remained unchallenged.

178. The Panel further observes that according to Article 23 DR:

- “(1) 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 into account of both aggravating and mitigating circumstances.*
- (2) if the competent disciplinary body is of the opinion that information provided by the party charged has been decisive in uncovering or establishing a breach of UEFA’s rules and regulations, it may exercise its discretionary powers and scale down its disciplinary measures or even dispense with them entirely.*
- (3) Disciplinary measures can be reduced or increased by the competent disciplinary body on the basis of the circumstances of the specific case. In the case of offences related to Article 16(2) (a) and (e), the competent disciplinary body may take into consideration the immediate reaction of the host club or national association as a mitigating circumstance”.*

179. Addressing the Appellant’s plea that the sanction imposed on it is disproportionate in the context of this legal framework, the Panel notes that, (i) the Appellant did not demonstrate any behaviour either to prevent or to censure its supporters’ behaviour; (ii) on the contrary, the Appellant has also tried, turning a blind eye, to justify the offence with inconsistent and specious arguments; (iii) UEFA has a policy of no tolerance towards racism and discrimination; (iv) it is a regrettable reality that, from time to time, football fans continue, despite all efforts made by national and international sport’s governing bodies and other institutions involved in the battle against race discrimination, to act in such an unacceptable manner. Accordingly, after taking into account all the elements of the present case, the Panel considers that there are no mitigating circumstances which would justify a *deviation* from the sanction imposed by the Appealed Decision which, in its view, is properly proportionate.

180. As a consequence, the Panel has reached the conclusion that the Appeal filed by Dinamo shall be rejected in its entirety and the Appealed Decision shall be confirmed.

181. Any other issue and all other motions or prayers for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by FC Dinamo Tbilisi against the decision issued by the UEFA Appeals Body on 9 September 2019 is dismissed.
2. The decision rendered by the UEFA Appeals Body on 9 September 2019 is confirmed.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.