



**Arbitration CAS 2020/A/7363 Football Club Prishtina v. Union des Associations Européennes de Football (UEFA), award of 25 October 2021**

Panel: Mr Benoit Pasquier (Switzerland), President; Mrs Raphaëlle Favre Schnyder (Switzerland); Mr Patrick Grandjean (Switzerland)

*Football*

*Forfeit of a match due to the impossibility to play it before the applicable deadline*

*Legal interest*

*Damage claim in appeal*

*Distinction between travel restrictions and travel conditions in UEFA regulations*

*Interpretation of statutes and regulations of sports associations*

*Proportionality of the sanction*

- 1. In order to initiate legal proceedings before CAS, the party in question must have a sufficient legal interest in the outcome of the case. Only an aggrieved party, having something at stake and thus a concrete interest in challenging a decision adopted by a sports body, may appeal to the CAS against that decision.**
- 2. The intention of the appellants to subsequently introduce a claim for damages against the respondent does not constitute a sufficient motive to grant them standing to appeal. However, in cases where the appealed decision triggered the possible damage, a party should not be prevented from submitting a claim for damages at CAS level for the only reason that the claim was not yet included prior to the CAS proceedings (since the damage at that time had not yet materialized).**
- 3. Travel restrictions are set out in Annex I.1 to the Regulations of the UEFA Champions League 2020/2021 Season (UCLR). In this regard, the provision expressly refers to restrictions such as “e.g. border closures and quarantine requirements” that are applicable to all inbound travelers. In turn, testing requirements are not mentioned in Annex I.1. to the UCLR. The latter are only contained in Annex I.2 to the UCLR. Travel restrictions as per Annex I.1.1 are to be understood as restrictions rendering the playing of the match impossible irrespective of the testing results, as for example border closures or mandatory quarantine for all persons entering the country, to be compared to e.g. visa-requirements.**
- 4. The interpretation of the statutes and rules of sport associations has to be objective and always start with the wording of the rule. The language of a provision governs its interpretation, where the language is clear and explicit and does not involve an ambiguity or absurdity (in claris non fit interpretatio).**
- 5. CAS panels shall give a certain deference to decisions of sports governing bodies in**

**respect of the proportionality of sanctions, the measure of the sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rules can be reviewed only when the sanction is evidently and grossly disproportionate to the offence. A sanction imposed by a disciplinary body can only be reviewed if it is considered to be evidently and grossly disproportionate to the offence.**

## **I. PARTIES**

1. Football Club Prishtina (the “Appellant”, the “Club” or “FC Prishtina”) is a football club with its registered office in Prishtina, Kosovo. It is a member of the Football Federation of Kosovo (“FFK”), which in turn is affiliated to the Union des Associations Européennes de Football.
2. The Union des Associations Européennes de Football (the “Respondent” or “UEFA”) is an association under Swiss law and has its registered office in Nyon, Switzerland. It exercises regulatory, supervisory and disciplinary functions over national federations, clubs, officials and players at European level.
3. The Appellant and the Respondent are hereinafter jointly referred to as the “Parties”.

## **II. THE DECISION AND ISSUE ON APPEAL**

4. FC Prishtina appeals a decision rendered by the UEFA’s Appeals Body (the “Appeals Body”) dated 24 August 2020 (the “Appealed Decision”). The Appeals Body declared the 2020/2021 UEFA Europa League (“UEL”) preliminary round match between Lincoln Red Imps FC and FC Prishtina (the “Match”), that was initially scheduled to be played on 18 August 2020 in Gibraltar, as forfeited by FC Prishtina. The Appealed Decision further provided that FC Prishtina was therefore deemed to have lost the match 3-0. FC Prishtina is challenging the Appealed Decision in these proceedings.

## **III. FACTUAL BACKGROUND**

5. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions and the CAS file. References to additional facts and allegations found in the Parties’ written submissions and evidence will be made, where relevant, in connection with the legal analysis that follows. While the Panel has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, the Panel refers in its award only to the submissions and evidence it deems necessary to explain its reasoning.

## A. Background Facts

6. On 15 July 2020, via Circular Letter No.53/2020, the UEFA administration notified its member associations, including the FFK, and their affiliated clubs of the implementation of the so-called “UEFA Return to Play Protocol” (the “Protocol”). The Protocol, which was approved by the UEFA Executive Committee on 9 July 2020, is a set of rules addressing measures concerning the COVID-19 pandemic in Europe in relation to UEFA club competitions. Particularly, pursuant to the Preamble of said Protocol, it “*sets out the framework of medical, sanitary and hygiene procedures together with the operational protocols that are to be applied when staging UEFA competition matches*”.
7. On 3 August 2020, via Circular Letter No. 58/2020, the UEFA administration informed its member associations and their affiliated clubs of the immediate introduction of Annex I to the Regulations of the UEFA Europa League 2020/2021 Season (the “Annex I”). Annex I, which was approved by the UEFA Executive Committee on 3 August 2020, sets out “*special rules applicable to the qualifying phase and play-offs due to COVID-19*”.
8. The UEFA Europa League preliminary round match between Lincoln Red Imps FC and FC Prishtina was scheduled for 18 August 2020 at 18:00 CET at Victoria Stadium, Gibraltar (the “Match”). Before departing to Gibraltar, the delegation of FC Prishtina was tested at the National Institute of Public Health of Kosovo (the “Institute”) on 15 August 2020. On 16 August 2020, all members of the delegation of the Appellant received a negative test result from the Institute.
9. On 17 August 2020, the Appellant’s delegation (the “First Delegation”) travelled to Gibraltar and upon arrival, as required by the local authorities of Gibraltar, the whole delegation had to undergo mandatory COVID-19 testing at the airport. The test samples were evaluated by the Gibraltar’s Public Health University Lab (the “Lab”) which, according to a media article dated 26 August 2020, returned negative results for all players. On the same day, the test samples were sent to and were evaluated by Synlab, UEFA official testing centre, which reported that seven (7) players of the Appellant tested positive.
10. On 18 August 2020, the Government of Gibraltar decided to place the entire delegation of the Appellant into mandatory quarantine following the positive tests of seven (7) players of the Appellant’s delegation (the “First Quarantine Decision”). The First Quarantine Decision also granted an exceptional permission to the Appellant to leave the country on a chartered flight.
11. Upon return to Kosovo, the seven (7) players who were tested positive by Synlab underwent a Covid-19 test by the Institute on 19 August 2020. It resulted that, out of the seven (7) players, four (4) players tested again positive by the Institute.
12. On 19 August 2020, the Appellant requested UEFA to reschedule the Match in order for it to provide a list of new players tested negative and eligible to play the match. Pending the arrival of the Appellant’s second delegation (the “Second Delegation”) and the

implementation of the testing measures outlined in the Protocol, the Match was temporarily rescheduled to 22 August 2020 at 18:00 CET.

13. On 20 August 2020, before its departure to Gibraltar, the Second Delegation of the Appellant was tested by the Institute in Kosovo. All Covid-19 tests were negative.
14. On 21 August 2020, the Second Delegation arrived in Gibraltar. All members of the Second Delegation were tested by the local authorities in Gibraltar upon their arrival. On the next day, according to a media article dated 26 August 2020, the results showed a negative result for the entire Second Delegation.
15. On 22 August 2020, the Appellant was informed that eight (8) players returned positive Covid-19 test results conducted by Synlab. Following the positive test results, the authorities in Gibraltar decided to put the entire team in quarantine until arrangements were made to transfer it to its aircraft for departure (the “Second Quarantine Decision”).
16. Upon return of the Second Delegation to Kosovo, the eight (8) players who were tested positive by Synlab returned negative tests following tests conducted by the Institute.

## **B. Proceedings before the UEFA’s Judicial Bodies**

17. On 22 August 2020, FC Prishtina was notified that UEFA had initiated formal disciplinary proceedings against it. The Appellant was given a deadline to submit its statement in relation to the disciplinary proceedings by not later than 24 August 2020 at 8:00 CET. The Appellants submitted its position within the deadline.
18. On 24 August 2020, in accordance with the UEFA Disciplinary Regulations (the “DR”), the chairman of the UEFA Control, Ethics and Disciplinary Body (the “CEDB”) referred the case to the Appeals Body due to its urgent nature.
19. On the same date, the Appeals Body rendered the Appealed Decision. Therein, the Appeals Body held, inter alia, as follows:
  - “(...) *the Appeals Body emphasises that UEFA do not, nor do its disciplinary bodies, have the ability to overrule any laws or regulations of the local authorities with respect to national COVID-19 legislation, i.e. the Gibraltar laws and authorities in the present case. Furthermore, the Appeals Body confirms that, pursuant to paragraph 7.6 of the Protocol, COVID-19 test results are not subject to challenge.*
  - (...) *in application of Annex I.2.1, the Appeals Body recalls that upon the request of the Club, the Match was rescheduled to 22 August 2020 at 18:00 CET in order for the Club to provide a list of new eligible players to play the Match.*
  - *However, the Appeals Body recalls that on 22 August 2020, the Club was informed that eight players from this second group returned positive COVID-19 test results, resulting in the second group*

*of the Club's players being placed in mandatory quarantine by the authorities in Gibraltar (i.e. the Second Decision).*

- *In this respect, the Appeals Body notes that it was impossible for the rescheduled Match to take place by the 22 August 2020 deadline applicable for the preliminary round of the 2020/21 UEL season.*
- *Due to the fact that the Match could not take place within the 22 August 2020 deadline, and by virtue of Annex I.2.1, which states that “[t]he club that cannot play the match will be held responsible for the match not taking place [...]”, the Appeals Body is comfortably satisfied that the Club shall be held responsible for the Match not taking place.*
- *On these grounds, the Appeals Body decides:*

*To declare the 2020/21 UEFA Europa League preliminary round match between Lincoln Red Imps and FC Prishtina, that was initially scheduled to be played on 18 August 2020, as forfeited by FC Prishtina, who is therefore deemed to have lost the match 3-0 in accordance with Annex I.2.1 to the Regulations of the UEFA Europa League (2020/21 Season)”.*

#### **IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

20. On 27 August 2020, FC Prishtina filed a request for urgent provisional measures, pursuant to Article R37 of the CAS Code of Sports-related Arbitration (the “Code”) with the CAS Court Office. The Appellant filed, inter alia, the following requests for provisional relief:

“(…)

*2. Ordonner à l'Union des Associations Européennes de Football (UEFA) d'interdire le match du 27 août 2020 opposant le Lincoln Red Imps Football Club (Gibraltar) à l'Union Titus Petange;*

*4. Ordonner à l'Union des Associations Européennes de Football (UEFA) d'annuler sa décision du 24 août 2020 (...).”*

#### Free English translation

“(…)

*2. Order UEFA to cancel the match scheduled on 27 August 2020 between Lincoln Red Imps Football Club (Gibraltar) and Union Titus Petange;*

*4. Order UEFA to annul its decision dated 24 August 2020”.*

21. On the same day, the CAS Appeals Arbitration Division President dismissed the Appellant's request for Urgent Provisional Measures *ex parte*.

22. On 3 September 2020, the Appellant filed a Statement of Appeal, pursuant to Article R48 of the Code with the CAS Court Office and nominated Ms. Raphaëlle Favre Schnyder, Attorney-at-Law, Zurich, Switzerland, as arbitrator.
23. On 10 September 2020, the CAS Court Office acknowledge receipt of the Statement of Appeal and provided a deadline of 10 days to the Respondent to nominate an arbitrator and 3 days to submit any objections on the language of the proceedings to be conducted in French.
24. On the same date, the Appellant objected to the proceedings to be conducted in French and requested that the proceedings be held in English.
25. On 11 September 2020, the Appellant requested, via email, an extension of the deadline for filling its Appeal Brief since a decision on the choice of language of the proceedings was still pending and that evaluating evidence and potential witness statement during the current crisis required more time due to the limited availability of the relevant persons.
26. On the same date, the CAS Court Office requested the Respondent to provide its position on whether it agreed on the proceedings to be conducted in the English language until 15 September 2020 and suspended the deadline to file the Appeal brief until same date.
27. By letter dated 11 September 2020, UEFA agreed on the language of the proceedings and requested that its pending deadlines be suspended until a decision was rendered on the language of the proceedings.
28. On 14 September 2020, the CAS Court Office took note of the agreement of the Parties that these proceedings be conducted in English and granted an extension of seven (7) days to the Appellant for filing its Appeal Brief.
29. On 21 September 2020, the Appellant filed its Appeal Brief in accordance with R51 of the CAS Code.
30. On 24 September 2020, UEFA nominated Mr. Patrick Grandjean, Attorney-at-Law, Lausanne, Switzerland, as arbitrator.
31. On 15 October 2020, UEFA's legal representative, Dr Jan Kleiner, informed the CAS Court Office that he had been officially mandated to represent UEFA in the proceedings and requested that the deadline to submit the Answer be set aside and that a new deadline be fixed once the Appellant had paid its share of the advance of costs.
32. On 10 November 2020, the CAS Court Office acknowledge receipt of the payment of the advance of costs by the Appellant and provided twenty (20) days to the Respondent to file its Answer.
33. On 23 November 2020, the CAS Court Office acknowledged receipt of the Appellant's Supplemental Appeal Brief filed on 19 November 2020 and invited the Respondent to comment on the admissibility of such brief by 30 November 2020.

34. On the same date, the reasoned Order of the Request for Urgent Provisional Measures rendered by the President of the Appeals Arbitration Division was notified to the Parties.
35. On 26 November 2020, the Respondent declared that it did not object to the admission of the Supplemental Appeal Brief but requested an extension to file its Answer until 11 January 2021.
36. On 1 December 2020, the CAS Court Office informed the Parties that the Appellant did not provide within the prescribed deadline any objection on the request for extension of the deadline to file the Answer.
37. On 11 January 2021, the Respondent filed its Answer in accordance with Article R55 of the CAS Code.
38. On 12 January 2021, the CAS Court Office invited the Parties to inform the CAS Court Office whether they preferred a hearing to be held in these proceedings by 19 January 2021.
39. In the same correspondence, pursuant to Article R54 of the CAS Code, the CAS Court Office informed the Parties, on behalf of the Deputy Division President, that the arbitral tribunal appointed to decide the present matter was constituted as follows:  
  
President: Mr. Benoit Pasquier, Attorney-at-Law, Zurich, Switzerland;  
  
Arbitrators: Ms. Raphaëlle Favre Schnyder, Attorney-at-Law, Zurich, Switzerland  
  
Mr. Patrick Grandjean, Attorney-at-Law, Lausanne, Switzerland
40. On 19 January 2021, the Appellant informed the CAS Court Office that it did not deem it imperative to hold a hearing. In addition, the Appellant commented on the Answer of the Respondent.
41. On the same day, the Respondent informed the CAS Court Office that it did not deem it necessary to hold a hearing in these proceedings.
42. On 21 January 2021, the CAS Court Office informed the Parties that the Panel had decided to render an arbitral award on the basis of their written submission, without holding a hearing. In addition, in view of the comments submitted by the Appellant on the Respondent's Answer, the Panel decided to give the Parties the possibility to file a Reply/Rejoinder and invited the Appellant to file its Reply by 1 February 2021.
43. On 1 February 2021, the Appellant filed its Reply. On the same day, the Respondent requested an extension by seven (7) working days of the deadline to submit its Rejoinder.
44. On 24 February 2021, the Respondent filed its Rejoinder within the extended deadline.

45. On 4 and 5 March 2020 respectively, both Parties returned duly signed copies of the Order of Procedure to the CAS Court Office. The Respondent included a remark in the Order of Procedure that it disputed the admissibility of the Appeal.

## V. SUBMISSIONS OF THE PARTIES

46. 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 necessarily comprise each and every contention put forward by the Parties. The Panel has nonetheless carefully considered all the written submissions made by the Parties, even if no explicit reference has been made in the following summary. The Parties' written submissions, documentary evidence and the content of the Appealed Decision were all taken into consideration.

47. In its Appeal Brief dated 21 September 2020, the Appellant filed the following prayers for relief:

- “1. *Set aside the Decision rendered by the UEFA Appeals Body on 24 August 2020 (Decision No. 33733 – UEL – 2020/21);*
2. *Declare that the sanction – a match declared lost by forfeiture 3:0 – imposed on FC PRISHTINA was unlawful;*
3. *Declare that no sanction should have been imposed on FC PRISHTINA by UEFA;*
4. *Declare that the sanction – a match declared lost by forfeiture 3:0 – should have been imposed on Lincoln Red Imps. by UEFA;*

*Alternatively:*

5. *Declare that the sanction imposed on FC Prishtina – a match declared lost by forfeiture 3:0 – was disproportionate;*

*In any event:*

6. *Order UEFA to pay FC PRISHTINA the amount of EUR 1'440'000.*
7. *Order UEFA to bear all costs of this arbitration and to pay all legal fees and other expenses incurred by the Appellant in connection with these proceedings”.*

48. The submissions of FC Prishtina as contained in its Appeal Brief dated 21 September 2021 and in its Supplemental Brief dated 19 November 2020, in essence, may be summarised as follows:



*I. The sanction imposed by UEFA is unlawful*

- The Appellant submits that it is not liable for that the Match not taking place and that the club Lincoln Red Imps (Gibraltar) should be held liable due to the First Decision and the Second Decision (the “Decisions”). The Decisions were based on the Civil Contingencies Emergency Regulations 2020 (the “Gibraltar Restrictions”) which set out specific provisions applying to groups arriving on a plane in Gibraltar. In addition, this set of rules enables detention of a group of people arriving in Gibraltar on the same aircraft from the same country to enable screening and assessment and also empowers the Minister to require an entire group to self-isolate. Hence, the Gibraltar Restrictions qualify as travel restrictions within the meaning of Article I.1.1 of Annex I.
- The Gibraltar Restrictions came into force on 16 August 2020, after the deadline stipulated in Article I.1. of Annex I for the clubs to inform the UEFA administration about any travel restrictions imposed between countries. In addition, these Gibraltar Restrictions were not part of the travel restriction shared by UEFA which were in force in all UEFA member associations and which had to be confirmed to UEFA by the member associations. Said Gibraltar Restrictions applied to groups travelling on the same chartered aircraft to Gibraltar and must therefore qualify as travel restrictions within the meaning of Article I.1.1 of Annex 1, which defines a restriction as “*border closures and quarantine requirements*”. In addition, mandatory quarantine if tests were positive at the airport does qualify as travel restriction.
- Due to the Gibraltar Restrictions, the Match scheduled on 18 August 2020 and rescheduled to 22 August 2020 could not take place. UEFA wrongly assessed the facts of the case and applied Article I.2.1 of Annex I instead of Article I.1.6 of Annex I which is applicable in the present case. Indeed, the club Lincoln Red Imps FC whose national authorities have imposed the Gibraltar Restrictions was to be held responsible in accordance with Article I.1.6 of Annex I. The Match would have had to be declared lost by forfeit by Lincoln Red Imps FC, which thus should have been considered to have lost the match 3-0.
- The differentiation between “*travel restrictions*” and “*travel condition*” made by the Sole Arbitrator in the case CAS 2020/A/7356 is not convincing and shall not be applied in the present case since testing at the airport and subsequent quarantine obligations qualify as travel restriction pursuant to Article I.1.1 of Annex I and not as a travel condition. In *casu*, the Gibraltar Restrictions qualify as travel restriction and were causal for the cancelation of the Match.
- Article I.2.1 of Annex I does not provide a necessary clear and unambiguous legal basis to impose the sanction applied. According to Swiss association law and standing CAS jurisprudence, an association may impose disciplinary measure against its members only if a provision provides a clear and unambiguous authority to do so. The wording of Article I.2.1 is unclear and ambiguous, and cannot be construed as a legal

basis for the sanction imposed on the Appellant based on the principle of trust. According to the Appellant's understanding of Annex I, the adverse consequences for a club resulting from the impact of Covid-19 are in principle attributed to the club out of whose sphere the ground for cancellation of a match arises. If restrictions by local authorities of the home club cause the match not to take place, the home club shall be held responsible. Furthermore, it cannot be understood that pursuant to Annex I the visiting club would be held responsible for the non-taking place of a match where local authorities cancelled a match exclusively relying on tests results that were generated by Synlab which were not required by applicable regulations and directly contradicted tests results of local authorities.

*II. Synlab test results contradict the Institute and the Gibraltar Lab results*

- Regarding Covid-19 testing, before departing to Gibraltar, the Club enquired with Synlab where to conduct the required test in its home country since Synlab has no presence in Kosovo. It was referred to the Institute. On 15 August 2020, tests were conducted by the Institute in the Appellant's home country in accordance with the Protocol. All players of the First Delegation received negative test results. Upon arrival on 17 August 2020 in Gibraltar, the First Delegation had to undergo testing as required by the national legislation of Gibraltar. Test samples were sent to the Lab and to the UEFA testing centre Synlab. Test results from the Lab returned negative while the test results from Synlab showed that seven (7) tests were positive. Later, on 19 August 2020, the seven (7) players that had shown a positive test underwent additional tests in Kosovo, of which only four (4) returned positive.
- In the same context, on 20 August 2020, the players of the Second Delegation were all tested at the Institute and received negative tests results. Upon arrival in Gibraltar on 21 August 2020, tests were also conducted. The test samples were also sent to Synlab in Spain. The test results from the Gibraltar's Public Health University Lab returned negative, the tests results from the Synlab showed eight (8) positive results. It follows that the Second Delegation tested negative twice before departure and upon arrival in Gibraltar. Only the additional tests conducted by Synlab generated eight (8) positive tests. This demonstrates that the Synlab tests results contradict the tests results of the Institute and the Gibraltar Lab, and raises severe doubts about the testing results of Synlab. In addition, according to public information, test results may vary and whether they are declared positive or not depends on who has the power to decide. Other cases also cast doubt about the accuracy of the UEFA's Covid-19 testing since testing methods applied by UEFA are apparently more susceptible to errors.
- UEFA ignored the results of the tests conducted by the Institute and by the Lab, despite the fact that the tests generated by Synlab were not foreseen by the Protocol, thus without legal basis.
- The Appellant is an "early victim" since UEFA's approach with regard to matches has become less strict in the meantime and the general approach now is that matches

should be played when at least thirteen (13) players in one team are available to play. Also, states apply quarantine requirements less strictly and, in most cases, matches could be played, even though some players tested positive.

*III. The Sanction imposed is disproportionate and infringes the Appellant's personality rights*

- The Appellant also submits that the sanction imposed is clearly disproportionate and grossly unfair. UEFA neglected that the tests were taken and tests results were generated in a procedure not foreseen by the UEFA Protocol, thus without legal basis. The sanction was imposed based on the wrong decision and the sanction applied is arbitrary, grossly unfair and must be declared disproportionate.
- The Appellant submits that the sanction imposed infringes the Appellant's personality rights pursuant to Article 28 of the Swiss Civil Code (the "SCC"). The unlawful application of Annex I impaired on the Appellant's development of both the sporting and economic personality, and it cannot be justified on the basis of Article 28 (2) SCC. Furthermore, the Appellant did not consent to such decision based on the application of the wrong article and there is no public interest that would override the Appellant's interest in a correct application of UEFA's regulations.

*IV. Damages suffered following the sanction*

- The Appellant claims compensation for damages amounting to a total of EUR 1,440,000 on the basis of Article 97 *et seq.* of the Swiss Code of Obligations (the "SCO"), and on the basis of Articles 41 *et seq.* SCO and 55 (2) SCC because UEFA imposed an unlawful sanction which caused damages to the Club.
- These damages result from the fact that no solidarity payment for qualifying to the next round will be paid out to the Appellant, the negative impact on the Appellant's UEFA coefficient, the negative impact on the Appellant's brand and merchandising, and players departures following the elimination of the Appellant from the UEL.

49. In its Response dated 11 January 2021, UEFA submitted the following prayers for relief:

1. *To declare the Appeal inadmissible and to confirm the Appealed Decision;*
2. *In the event the Appeal were considered admissible, to dismiss the Appeal and confirm the Appealed Decision;*
3. *In any event, to charge the costs of the present arbitration proceedings to FC Prishtina;*
4. *In any event, to order FC Prishtina to pay an amount of CHF 30'000 as contribution to the costs and expenses incurred by UEFA".*

50. The submissions of UEFA in its Answer dated 11 January 2021, in essence, may be summarised as follows:

*I. The Appeal is inadmissible*

- The Respondent submits that the Appellant has no legal interest in challenging the forfeit defeat since the Appealed Decision to declare the match as lost by the Appellant with the score of 3-0 has already long been executed. Such defeat by forfeit can no longer be changed, neither legally nor factually, since the competition has long advanced and that the Appellant cannot be reintegrated into the UEL which is confirmed by the Appellant itself.
- Pursuant to the well-established principle of “no interest, no action”, and since the sanction has already been executed, the Appellant has no legal interest to lodge this Appeal. The only purpose of this appeal is to lodge a claim for damages against UEFA. The Appellant brings a new claim in front of CAS. Such claim was not raised in front of the Appeals Body and cannot be raised for the first time in CAS appeal proceedings. The object of an appeal to CAS cannot go beyond the scope of the challenged decision. Therefore, such claim for compensation raised by the Appellant shall be declared inadmissible.

*II. The Appeal has no merits*

- The Appealed Decision is correct and lawful. It was rendered in full compliance with the applicable UEFA rules.
- The Appellant accepted to participate in the UEL and to be bound by the different applicable rules. It followed all steps foreseen in these rules, in particular in the Protocol and Annex I, as long as it suited the Appellant. Once the Appellant was confronted with a negative consequence, it started to object to the rules.
- The Appellant does not dispute that the Second Delegation returned eight (8) positive Covid-19 tests. When referring to the contradicting test results from Synlab, the Appellant does not bring forward any substantiated argument why the Synlab test results might not be correct. The Protocol unequivocally determines that test results cannot be subject to challenge.
- The Appellant misunderstands the applicable rules in the present case. The mandatory testing requirement upon arrival does not fall under travel restrictions but under travel condition, which has been confirmed by the Sole Arbitrator in CAS 2020/A/7356. Only Annex I.2.1 is pertinent to the present case and was correctly applied by the Appeals Body.
- Regarding the absence of clear wording of the UEFA regulations, CAS supported the content of Annex I and the application by the Appeal Body in 2 similar cases CAS 2020/A/7356 and CAS 2020/A/7331. Indeed, CAS decided to fully uphold the respective decisions of the Appeals Body. Even the CAS Appeals Division President

did not raise any doubt about the clarity of the UEFA's regulations in her Order for the Request of Urgent Provisional Measures.

- The UEFA regulations are clear and were applied correctly by the Appeals Body which resulted in the Appealed Decision. Nothing in the Appealed Decision is disproportionate or arbitrary. According to the consistent CAS jurisprudence, only if a sanction turns out to be grossly and evidently disproportionate CAS can review such sanction.
- On the alleged violation of personality rights, the Appellant accepted the validity of the Annex I and of the Protocol so that it could participate in the UEL. It accepted to be bound by those rules and by doing so also accepted all possible negative regulatory consequences that might arise out of the application of Annex I and of the Protocol. This qualifies as consent in the meaning of Article 28 (2) SCC. Moreover, UEFA has a prevailing interest to apply the rules in the same manner to all participating clubs and players. Such prevailing interest was also noted by the CAS Appeals Division President in her Order rejecting the Request for Urgent Provisional Measures.
- Regarding the claim for damages based on Article 42 (2) SCO, apart from being inadmissible, the Appellant fails to substantiate and quantify its alleged damages. The damage calculation consists only of speculations, mere assertions and other baseless theories. Said article cannot remediate this failure. Furthermore, under Swiss law, a liability exists only where the competent body or person commits inexcusable mistakes or where a grave violation of duties occurs which is not the case in the present dispute since the Appeals Body applied the rules correctly.

51. In its Reply dated 1 February 2021 to the Answer of UEFA, the submissions of the Appellant, in essence, may be summarised as follows:

- The Appeal is admissible since the Appellant is aggrieved by the Appealed Decision and has a legitimate legal interest in challenging it. It was also impossible for the Appellant to raise the claim for damages in the proceedings before the Appeals Body as the damage had not actually occurred yet. Furthermore, in its Prayers for Relief, the Appellant did not demand a reintegration into the competition as argued by UEFA.
- It is arbitrary to ignore tests results in Kosovo and to base a decision exclusively on tests and local authorities' orders in the host city. It was the local rules and the local authorities in Gibraltar decisions that prevented the Club's players from playing the Match. As per the Protocol, the host clubs, in this case Lincoln Red Imps FC, must disclose the restrictions applicable in their country and bear the consequences if the local restrictions do not allow a match to take place.
- The Appellant disputes that the Synlab tests were conducted properly and that there was a legal basis in the applicable rules for such tests. The additional testing by Synlab was neither foreseen in the Protocol nor required by local regulations.

- After the First Decision, the Appellant did not request to travel back to Kosovo and to send a second team; it was UEFA together with the local authorities that decided that the team must fly back to Kosovo. Annex I foresees an alternative in this respect: to retest the players instead of sending the whole team back home. Such alternative was not offered.
- After the First Decision, the Appellant followed UEFA's guidance and did everything possible in order to remain in the competition and play the Match. This does not mean that it cannot challenge the application of the wrong legal basis later. At that time, the Club did not know that Gibraltar had new regulations in place since these were introduced only one (1) day prior to its arrival. In addition, the First Decision did not mention any restriction in place in Gibraltar but only referred to the Protocol.
- All in all, the Appellant maintains that the Appealed Decision is disproportionate, arbitrary and unfair, and that the figure of the claim for damages amounting to EUR 1,440,000 was demonstrated in its Appeal Brief.

52. In its Rejoinder dated 24 February 2021, UEFA's submission, in essence, may be summarised as follows:

- On the inadmissibility of the Appeal, CAS Appeal Proceedings are always and exclusively about an analysis whether a decision rendered by a sport federation is correct. As confirmed by the CAS jurisprudence, CAS Appeal proceedings cannot be used to just lodge a claim for damages against a sports federation.
- In August 2020, no travel restrictions existed in Gibraltar. Travel and entry to Gibraltar were entirely free for everybody. There were no general quarantine requirement, no general border closures, no general restrictions on travellers entering the country nor any other general restrictions that would apply to all inbound travellers. The only mandatory requirement to enter Gibraltar at the time were mandatory Covid-19 tests upon arrival. Such requirement cannot be qualified as travel restrictions, as recently confirmed by the CAS (CAS 2020/A/7356).
- Pursuant to the Protocol, the tests results are not subject to challenge. The Appellant accepts that there were eight (8) positive tests prior to the rescheduled match. The Protocol clearly sets out that tests will be necessary on MD-1 on arrival at the host city if required by the local authorities. The samples rendered by the Second Delegation were sent to Synlab to ensure Fair-Play and equal treatment so that both clubs were subject to the same testing standards of Synlab.
- Pursuant to the Protocols, the Appellant cannot challenge the legitimate decisions issued by the competent health authorities in Gibraltar in proceedings before the Appeals Body. To recall, the Club had eight (8) players tested positive and this was the reason why the local authorities decided to impose a mandatory quarantine on the Appellant's team.

- The claim for damages remains unsubstantiated and meritless since the Appellant does not quantify the damage and thus does not meet the high threshold imposed by Article 42 (2) SCO.

53. On this basis, UEFA reiterated its request for relief.

## VI. JURISDICTION

54. Article R47 (1) of the CAS Code provides as follows:

*“An appeal against the decision of a federation, association or sports-related body may be filed with the CAS if the statutes or regulations of 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”.*

55. Article 62 (1) of the UEFA Statutes (2020 Edition) states as follows:

*“Any decision taken by a UEFA organ may be disputed exclusively before the CAS in its capacity as an appeals arbitration body, to the exclusion of any ordinary court or any other court of arbitration”.*

In addition, the Appealed Decision further provided that the *“present decision may be appealed in writing before the Court of Arbitration for Sport [...]”*.

56. The Appealed Decision is a decision passed by a legal body of UEFA. It is a final decision in accordance with Article R47 of the CAS Code, since no internal legal remedies is available against it. Thus, the above requirements are fulfilled. In addition, neither the Appellant nor the Respondent objected to the jurisdiction of the CAS, and both Parties confirmed the CAS jurisdiction when signing the Order of Procedure.

57. As such, the Panel finds that it has jurisdiction to decide on the present dispute.

## VII. ADMISSIBILITY

58. Article R49 of the CAS Code provides as follows:

*“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late”.*

59. The deadline provided in Article R49 of the CAS Code is only relevant in the absence of a time limit set in the statutes or the regulations of the relevant federation. The UEFA Statutes provide in Article 62 (3) that *“the time limit for appeal to the CAS shall be ten days from the receipt of the decision in question”*. Therefore, the appeal against the Appealed Decision must be filed with the CAS within 10 days from its receipt.

60. The Appealed Decision was notified with grounds to the Appellant on 24 August 2020, and the Appellant's Statement of Appeal was lodged on 3 September 2020, i.e. within the statutory time limit of 10 days set forth in Article 62 (3) of the UEFA Statutes, which is not disputed. Furthermore, the Statement of Appeal and the Appeal Brief complied with all the requirements of Articles R48 and R51 of the CAS Code.
61. The Panel notes that the Respondent disputes the admissibility of the Appeal with regard to the lack of legal interests of the Appellant in challenging the Appealed Decision and the claim for damages raised for the first time in front of CAS.
62. In this respect, UEFA submits that the only true purpose of the Appellant's Appeal is an attempt to request a compensation for damages from UEFA in front of CAS. Indeed, according to the Respondent, the Appellant has confirmed that it has no actual and legitimate legal interest in challenging the Appealed Decision to declare the Match as lost by forfeit by the Appellant. The sanction has been executed and can no longer be changed since the Competition has long advanced. The reintegration of the Appellant into the Competition is impossible. Even if the Appellant's appeal is upheld, the legal situation of the Appellant would remain unaffected since the sanction set out in the Appealed Decision has already been served. This is in line with the well-established principle of "*pas d'intérêt, pas d'action*" ("*no interest, no action*").
63. Regarding the introduction of a claim for damages by the Appellant, the Respondent refers to the constant CAS jurisprudence and submits that the object of an appeal to CAS cannot go beyond the scope of the Appealed Decision. Since the claim for damages has not been submitted in front the Appeals Body, it cannot be submitted subsequently in front of CAS. Therefore, the claim for damages shall be declared inadmissible.
64. On the other hand, the Appellant submits that the Appeal is admissible. The Appellant was excluded from the Competition and as a consequence it suffered damages. It has a legitimate interest in challenging the Appealed Decision. It opposes the argument of the Respondent according to which the Appellant should have raised the claim for damages before the Appeals Body. According to the Appellant, it was impossible to raise such claim in the proceedings in front of the Appeals Body before the damages actually occurred.
65. Against this background, the Panel recalls that, in order to initiate legal proceedings before CAS, the party in question must have a sufficient legal interest in the outcome of the case. Such principle is also confirmed by the constant CAS jurisprudence (*ex multis* CAS 2009/A/1880-1881 and CAS 2019/A/6591) "*only an aggrieved party, having something at stake and thus a concrete interest in challenging a decision adopted by a sports body, may appeal to the CAS against that decision*". The Panel also notes that pursuant to the jurisprudence of the Swiss Federal Tribunal (4A\_56/2018), "*the intention of the appellants to subsequently introduce a claim for damages against the respondent does not constitute a sufficient motive to grant them standing to appeal*".
66. In the present case, the Panel first notes that there is an explicit reference on the last page of the Appealed Decision to the right to appeal such decision to CAS, in the following terms:



*“Advice as to rights of appeal:*

*The present decision may be appealed in writing before the Court of Arbitration for Sport, subject to the Articles 62 and 63 of the UEFA Statutes” (emphasize added).*

67. The Panel notes that Articles 62 and 63 of the UEFA Statutes mentioned in the *“Advice as to rights to appeal”* is a reference to the condition for admissibility which have to be complied with for an appeal to be lodged in front of the exclusive jurisdiction of CAS. In particular, according to Article 62 (2) of the UEFA Statutes, *“only parties directly affected by a decision may appeal to the CAS”*. In the present case, the Panel finds that the Appealed Decision concerned only one party, the Appellant, and that the Appealed Decision affected the Appellant. Indeed, since the Appeals Body declared the Match as forfeited by the Club who is deemed to have lost the match 3-0, the Panel notes that the Club was eliminated from the Competition as a consequence of the Appealed Decision.
68. The Panel further considers article 63 para. 1 of the UEFA Statutes which states as follow:
- “Article 63 Excluded Jurisdiction*
- The CAS is not competent to deal with:*
- a) matters related to the application of a purely sporting rule, such as the Laws of the Game or the technical modalities of a competition;*
  - b) decisions through which a natural person is suspended for a period of up to two matches or up to one month;*
  - c) awards issued by an independent and impartial court of arbitration in a dispute of national dimension arising from the application of the statutes or regulations of an association”.*
69. The Panel finds that the matter of the Appealed Decision, a match not being played due to several players of a club being tested positive for COVID-19, does not fall under the list of Article 63 (1) of the UEFA Statutes.
70. Regarding the argument submitted by UEFA that the claim for damages should have been submitted in the proceedings before the Appeals Body, the Panel considers that the Club could not have lodged the claim for damages in front of the Appeals Body prior to these CAS proceedings since the damages at that time had not materialised yet. In the Panel’s view, it is the Appealed Decision which sanctioned the Appellant that triggered a possible damage for the Appellant to claim in the subsequent appeal procedure. The Panel notes that in the case CAS 2014/A/3703, the panel came to the same conclusion in a similar case: *a club should not be prevented from submitting a claim for damages for the only reason that the claim was not yet included within the scope of the UEFA bodies.*
71. Finally, in the Panel’s view, UEFA’s position on the admissibility of the appeal of the Appellant can be considered as abusive. Indeed, while the Appealed Decision provides for a right to appeal to CAS within ten (10) days, UEFA scheduled the next match of the UEL between Lincoln Red Imps and Union Titus Petange on 27 August 2020, i.e. only three (3)

days after the Appealed Decision was notified to the Appellant and within the ten (10) day deadline to appeal to CAS. As such, scheduling the next match of the UEL, without taking into consideration the right to appeal of the Appellant, and arguing thereafter that the Appellant has no legal interest in these proceedings leads to an abusive and contradictory position which does not stand in these proceedings.

72. In light of the above, the Panel considers that the Appellant is affected by the Appealed Decision and that it has a legal interest in challenging the Appealed Decision.

73. Consequently, the Panel finds that it is competent to decide on the Appellants' claim for damages and that the Appellant's appeal is therefore admissible.

### **VIII. APPLICABLE LAW**

74. Article 63 (2) of the UEFA Statutes states as follows:

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

75. Article R58 of the 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".*

76. Article 64 (1) of the UEFA Statutes states the following:

*"These Statutes shall be governed in all respects by Swiss law".*

76. The Panel finds that the various regulations of UEFA are indeed primarily applicable, in particular the UEL Regulations, the Protocol and its Annex I, and is satisfied to accept the subsidiary application of Swiss law should the need arise to fill a possible gap in the various regulations of UEFA.

### **IX. MERITS**

#### **A. The Main Issues**

77. The main issues to be resolved by the Panel are the followings:

- i. Who is responsible for the Match not being played?
- ii. What is the consequence of being responsible for the Match not being played?

iii. Is the sanction disproportionate?

***i. Who is responsible for the Match not being played?***

78. The Appellant submits that that the Appeals Body incorrectly applied Annex I.2.1 instead of Annex I.1.6. According to the Appellant, the Match could not take place due to the Gibraltar Restrictions which came into force on 16 August 2020, two (2) days prior to the first match, and which were not shared by Lincoln Red Imps FC in accordance with the Protocol with UEFA and the Club. According to the Gibraltar Restrictions, if only one (1) passenger of the aircraft tested positive upon arrival, the entire group risked to be quarantined. For this reason, the Gibraltar Restrictions qualify as travel restriction within the meaning of Annex I.1.1 which defines a restriction as “border closures and quarantine requirements”. Consequently, the club Lincoln Red Imps FC whose local authorities have imposed said restrictions was to be held responsible and the Match should have been declared lost by forfeit by Lincoln Red Imps FC in accordance to Annex I.1.6.

79. Regarding the Gibraltar requirement of testing upon arrival, UEFA is of the view that it qualifies as a mere travel condition which was confirmed in a similar case CAS/A/7356. Since the Club returned positive tests prior to the Match, which resulted in the First Decision, and the rescheduled Match, which resulted in the Second Decision, the Club was to be held responsible for the Match not taking place. The Appeals Body hence applied correctly Annex I.2.1 and declared the Match as forfeited by the Club.

80. The Panel first observes that the current situation of the Covid-19 is exceptional in nature and still has an unmeasurable impact on European football competitions and clubs. In this respect, the Protocol clearly emphasise this exceptional situation and the manner in which UEFA aims at dealing with it, as follows:

*“[T]he evolution of the COVID-19 situation is dynamic and unpredictable, both in terms of its epidemiology and the nature of the countermeasures imposed by national governments, and while it is impossible to establish a completely riskfree environment, the aim is to lower the risk as far as possible by applying current medical advice and best practice.*

*[...] Minimising the risk to UEFA competitions from COVID-19 relies on thorough and robust preparations and onsite organisation, but also to a large extent on the cooperation, behaviour and understanding of the teams, their players, officials and technical staff, as well as the UEFA referees, the UEFA venue staff and all target groups involved in the matches.*

*[...] The UEFA Protocol is subject to legal provisions and other orders issued by the competent local authorities in the various countries”.*

81. Regarding travel restrictions applicable between countries across Europe, the Panel notes that Annex I.1 provides the following information:

*“I. 1.1 UEFA will publish before each draw the list of known travel restrictions between countries, e.g. border closures and quarantine requirements (hereafter: restrictions). By 24.00 CET two days prior to the relevant*

*draw clubs must – after consultation with their respective national association and national/ local authorities - inform in writing the UEFA administration whether such known restrictions apply or if other previously unknown restrictions have been imposed by their respective national/ local authorities that would impact the clubs' travelling. In absence of any information from the relevant club the list published by UEFA will be considered final.*

*I.1.2 If a club fails to inform the UEFA administration by 24.00CET two days prior to the relevant draw of any existing restrictions other than those published by UEFA in accordance with Annex I.1.1 that affect the organisation of the match and as a consequence the match cannot take place, the club in question will be held responsible for the match not taking place and the match will be declared by the UEFA Control, Ethics and Disciplinary Body to be forfeited by the club in question, which will be considered to have lost it 3-0”.*

*“I.1.6 Restrictions imposed by the national/ local authorities of either club in a tie [sic!] after the deadline for the clubs to inform the UEFA administration in accordance with paragraph I.1.1 shall, in principle, not be taken into account. In such cases, the club whose national/ local authorities have imposed restrictions preventing the match from taking place as scheduled will be held responsible and the match will be declared by the UEFA Control, Ethics and Disciplinary Body to be forfeited by such club, which will be considered to have lost it 3:0”.*

82. In addition, the Panel considers Annex I.2.1 which states, *inter alia*, the following:

*“If it is not possible to reschedule the match in accordance with the deadlines set out in Annex I.3.1, the club that cannot play the match will be held responsible for the match not taking place and the match will be declared by the UEFA Control, Ethics and Disciplinary Body to be forfeited by the club, which will be considered to have lost the match 3-0”.*

83. In light of the above background and pursuant to the regulations contained in Annex I, the Panel considers important to distinguish between the terms “travel restrictions” and “travel conditions”.

84. Indeed, considering that they were issued after the deadline set in Annex I.1.1, if the Gibraltar Restrictions providing for mandatory testing upon arrival in Gibraltar are qualified as travel restrictions, then in application of Annex I.1.6, the responsibility for the Match not having been played would lie on Lincoln Red Imps FC and not on the Appellant, who would have won the Match 3-0 by forfeit. However, if the Gibraltar Regulations are found to be merely travel conditions, then in application of Annex I.1.2, the responsibility of the Match not having been played lies with the Appellant who would lose 3-0 by forfeit.

85. While the Appellant contends that there is no mention of a differentiation between travel restrictions and travel conditions in the Protocol or its Annex I, the Panel finds that differentiating between the two concepts is necessary as it leads to different consequences.

86. The Appellant considers that a comparison between the presentation of one's passport and the obligation to physically endure testing upon arrival as made by the Sole Arbitrator in CAS 2020/A/7356 is not appropriate.

87. The Appellant further contends that the definition of travel restrictions contained in Annex I.1.1 (i.e. *border closures and quarantine requirements*) would make no sense if applied following the qualification made by the Sole Arbitrator in CAS 2020/A/7356. Also, the Appellant argues that while quarantine requirements do qualify as restrictions as per the definition of Annex I.1.1, various quarantine restrictions are conceivable but not specifically mentioned in Annex I. This is also evidenced by the list of different restrictions issued by the different countries for the clubs participating in the UEFA Champions League 2020/2021.
88. The Panel considers that the distinction made by the Sole Arbitrator in CAS 2020/A/7356 between travel restrictions and travel conditions is necessary, correct and also applicable to the case at hand. Indeed, the Panel agrees with the following finding of the Sole Arbitrator:
- “Travel restrictions are set out in Annex I.1 to the UCLR. In this regard, the provision expressly refers to restrictions such as “e.g. border closures and quarantine requirements” that are applicable to all inbound travellers. In turn, testing requirements are not mentioned in Annex I.1. to the UCLR. The latter are only contained in Annex I.2 to the UCLR. Based on this systematic distinction in Annex I to the UCLR, the Sole Arbitrator is confidently satisfied that testing requirements cannot be qualified as travel restrictions”.*
89. The Panel finds that travel restrictions have to be assessed in an objective manner, in view of the facts applicable to anyone entering a particular country, no matter the specificity of each individual’s situation, whereas travel conditions must be assessed in a subjective manner, taking into consideration the specific and personal condition of an individual. In other terms, travel restrictions are applicable to anyone, without exception, whether they tested positive or whether they are in possession of the required travel documents. On the other hand, travel conditions set requirements that, if met by individuals in view of their specific situation, entitle individuals to travel and enter a specific country.
90. In this particular case, the Panel considers that travel restrictions as per Annex I.1.1 are to be understood as restrictions rendering the playing of the match impossible irrespective of the testing results, as for example border closures or mandatory quarantine for all persons entering the country, to be compared to e.g. visa-requirements. The Gibraltar Restrictions did not render the playing of the game impossible from the outset, as entering the country and playing the game remained possible, providing the players tested negative. The Match was not played only because of the positive testing of certain members of the delegation of the Appellant.
91. Consequently, the Panel considers that the requirement to test on arrival and the consequences resulting from a positive test were not travel restrictions as per Annex I.1.1 and that therefore, club Lincoln Red Imps FC was not in breach of its obligation to inform UEFA pursuant to the Protocol and Annex I about the Gibraltar Restrictions in place. Hence, the club Lincoln Red Imps FC is not be held responsible for the Match not being played.
92. Regarding the contradicting tests results between the ones conducted by the Lab and the Institute on one hand and Synlab on the other hand, the Appellant submits that UEFA ignored the test results taken at the Institute in Kosovo before the departure of the First and Second Delegation, and also the tests results conducted upon arrival by the Gibraltar authorities which were negative. The Appellant further questions why these tests were also sent to Synlab, even

though no legal basis in the Protocol foresees testing by Synlab upon arrival of the visiting team. In other words, UEFA generated these facts that let the Gibraltar authorities to decide to cancel the Match. In addition, the Club submits that others similar cases of contradictory results occurred in the UEFA competitions which cast some doubt on the accuracy of Synlab testing methods.

93. UEFA submits that Synlab is a well reputed and specialized laboratory that has been appointed by UEFA to conduct the testing. The Protocol clearly sets out the legal basis for testing at Article 7.5.1 of the Protocol and for the tests sent to Synlab, UEFA wanted to ensure that the players of both teams, Lincoln Red Imps FC and the Club were treated equally and were subject to the same testing standards of Synlab. In addition, regarding the test results, UEFA states that the test results are not subject to challenge which is clearly set out in Article 7.6 of the Protocol. Finally, on the basis on Section 2 of the Protocol, there is no possibility to challenge the legitimate decisions issued by the competent health authorities in Gibraltar in proceedings before the Appeal Body. It also recalls that eight (8) individuals from the Second Delegation tested positive which resulted in the Second Decision and the Match not taking place.
94. First, the Panel observes that the Protocol states the following with respect to *“Sample collection and laboratory diagnostic service provider”*:
- “UEFA will appoint a sample collection and laboratory diagnostics service provider (hereinafter “Testing Service Provider”) as the entity in charge of sampling and testing for all UEFA Matches”.*
95. In this respect, the Panel notes that UEFA officially appointed Synlab to carry out the required COVID-19 testing across UEFA’s competitions, which is not contested. In this context, the Panel adheres to UEFA’s position that it is of outmost importance that a specific, neutral and independent service provider be in charge of testing for all UEFA competitions in order to ensure that all clubs and players are treated in a fair and equal manner. All tests are dealt with the same medical standards and the results are centralised within the same laboratory.
96. Secondly, the Panel notes that Article 7.5.1 of the Protocol states the following for the visiting team:
- “Visiting team: sample collection and testing will take place with the Testing Service Provider before leaving their home country. (...) An additional test will be necessary on MD-1 on arrival at the host city if required by the relevant local authorities”.*
97. In addition, the Panel takes note of Section 2 paragraph 2 of the Protocol which states the following:
- “The UEFA Protocol is subject to legal provisions and other orders issued by the competent local authorities in the various countries”.*
98. The Panel further notes that tests results conducted by Synlab are not subject to challenge pursuant to Article 7.6 of the Protocol which states the following:

*“Test results are not subject to challenge”.*

99. In the present case, the Panel notes that the First Delegation of the Appellant was tested in Kosovo at the Institute prior to departure. The results of the tests were negative. Upon arrival in Gibraltar and as per requirement by the local authorities, the First Delegation was tested by the Lab. The results of these tests were also negative. The same tests were sent to Synlab in Spain. According to the tests conducted by Synlab, seven (7) players tested positive from the First Delegation. The Panel notes that the First Decision is based on the Synlab tests conducted on the First Delegation which resulted in positive tests and on a self-isolation required by the Gibraltar authority. In addition, the First Delegation was then given the opportunity to travel back to Kosovo where the seven (7) players were tested by the Institute. In this respect, the Panel notes that, out of the seven (7) players, four (4) returned positive results.
100. Regarding the Second Delegation, the Panel notes that said Delegation was also tested prior to departure to Gibraltar by the Institute. All test results were negative. Upon arrival in Gibraltar, said Delegation was tested by the Lab and the test results were negative. Following the same procedure as for the previous delegation, UEFA sent the tests samples to Synlab for testing. The Synlab tests resulted in (8) players testing positive.
101. The Panel finds it noteworthy to underscore that, according to the Appellant’s own evidence (Exhibit 25 to its Appeal Brief), the discrepancy between the positive Synlab results and the negative Lab results, can be explained by the fact that the Synlab laboratory is a diagnostic lab which requires a high level of accuracy at the cost of time, as its tests are designed for hospital care, whereas the Lab seeks to screen the population (as opposed to individuals) and has its own processes and thresholds. The procedure put in place by the Lab *“is designed to provide rapid tests ‘at the cost of a little accuracy’”*.
102. In this respect, the Panel considers that the testing procedure adopted and followed for the First and Second Delegation complied with the requirements set out in the Protocol.
103. Indeed, the Panel considers that in the presence of tests carried out by the Lab, the Institute and by Synlab, it was for the Appellant to prove that the tests conducted by the Lab or the Institute must prevail over the ones conducted by Synlab. In the present case, the Appellant has not established which of the tests (the ones carried out by the Lab, the Institute or by Synlab) are the relevant tests for the purpose of the Protocol. In other words, the Appellant failed to establish that the Lab or the Institute was the official “sample collection and laboratory diagnostics service provider” for Gibraltar pursuant to Article 7.2 of the Protocol. Under these circumstances, the Panel has all the reasons to accept that Synlab was the official testing service provider of Gibraltar, which coincidentally issued the First and Second Quarantine Decisions based on its tests results.
104. While the Panel understands that there are contradicting test results between the Synlab tests results and the ones from the Institute and the Lab, the Panel finds that the results of Synlab, as Official Testing Service Provider, shall prevail over any other test results conducted by third parties. The Panel adheres with UEFA’s position that all clubs and players participating in the

UEFA Competitions shall be treated in an equal, neutral and fair manner, in particular with COVID-19 testing procedures, and consequently only Synlab's test results shall be taken into consideration.

105. The Panel also notes the possible risks that some laboratories in the home country of some participating clubs might provide friendly test results in order to avoid any risk of having a match forfeited by their club on the basis of positive test results. In order to avoid such situation of friendly test results, the Panel is of the view that it is crucial that an independent and neutral entity conducts the sampling and testing in order to avoid any bias in the testing results.
106. Finally, the Panel notes that as the First and Second Quarantine Decisions were rendered by the Gibraltar authority pursuant to the Section 2 paragraph 2 of the Protocol, those Decisions are not subject to challenge.
107. In light of this, the Panel is satisfied that i) test conducted by Synlab, as the appointed Testing Service Provider for all tests to be conducted in UEFA competitions, shall prevail over the tests of the Lab and the Institute, ii) tests that were sent to Synlab after the First and Second Delegations tested negative upon arrival in Gibraltar were conducted pursuant to Article 7.5.1 of the Protocol, iii) the Appellant's team members returned positive tests pursuant to the Synlab test results and iv) because of the Appellant's team members positive tests, the Match could not take place.
108. Consequently, the Panel finds that the tests result of Synlab following the tests conducted on 17 and 22 August 2020 are not subject to challenge in accordance with Article 7.6 of the Protocol and that the Appellant is responsible for the Match not being played.

***ii. What is the consequence of being responsible for the Match not being played?***

109. Having considered that the Match could not take place due to the positive test results of the Appellant's team members, the Panel now has to consider the consequences of such responsibility.
110. The Appeals Body held that the Appellant was liable under Article I.2.1 of Annex I which stipulates the following:

*"(...) the club that cannot play the match will be held liable for the match not taking place and the match will be declared (...) to be forfeited by the club, which will be considered to have lost the match 3-0. Given the strict and literal wording of the Article I.2.1 of Annex I, it had no scope or margin to apply any discretion when determining the consequence of such responsibility. It had no choice to declare the Rescheduled Match to be forfeited by the Club who shall be considered to have lost the match 3-0".*

111. The Appellant submits that Article I.2.1 of Annex I does not provide a necessary clear and unambiguous legal basis to impose the relevant sanction. Said article is poorly drafted and does not provide for a clear and unequivocal wording. In particular, according to the Club's understanding of Annex I, the adverse consequences for a club drawn from the impact of



Covid-19 are in principle attributed to the club out of whose sphere the ground for cancellation of a match arises. If restrictions by local authorities of the home club cause the match not to take place, the home club shall be held responsible. Furthermore, it cannot be understood that pursuant to Annex I the visiting team would be held responsible for the non-taking place of a match where local authorities cancelled a match exclusively relying on tests results that were generated by Synlab which were not required by applicable regulations and directly contradicted tests results of the local authorities. Therefore, Article I.2.1 of Annex I cannot be construed as a legal basis for the sanction imposed based on the principle of trust.

112. UEFA objects to the Appellants submissions and refers to two (2) recent CAS cases (CAS 2020/A/7356 and CAS 2020/A/7331) in which the CAS Panel supported the content of Annex I and UEFA's application thereof. Both appeals were rejected in full and the Appeals Body decisions were fully upheld. Furthermore, the CAS Appeals Division President did not raise any doubt on the clarity of UEFA Regulations and she even confirmed in the ruling of the Order on Provisional Measures that the rules were perfectly clear.

113. In respect to the interpretation of statutes and regulations of sports associations, the Panel notes the consistent CAS jurisprudence (*ex multis* CAS 2011/A/2675) according to which "*the interpretation of the statutes and rules of sport associations to be objective and always start with the wording of the rule*". The Panel also takes note of the following analysis of a panel in the case CAS 2006/A/1152: "*the Panel observes that the language of a provision governs its interpretation, where the language is clear and explicit and does not involve an ambiguity or absurdity (in claris non fit interpretation)*".

114. In the present case, the Panel observes first the wording of Article I.2.1 of Annex I which states the following:

*"(...) the club that cannot play the match will be held liable for the match not taking place and the match will be declared (...) to be forfeited by the club, which will be considered to have lost the match 3-0"*.

115. Although the proportionality of the sanction will be discussed below, the Panel has no doubt that the wording of Article I.2.1 of Annex I is specific, clear and unambiguous and this provision clearly justifies the disciplinary sanction imposed by the Appeals Body. Indeed, given the strict and literal wording of said article, the Panel finds that in the event a club is responsible for a match not being played, said club shall bear the consequence of such responsibility. In the Panel's view, there is no room for any other interpretation than the one given by the Appeals Body in the Appealed Decision. In other terms, the Panel adheres to the decision taken by the Appeal Body which declared that the Match had to be considered to have been lost by forfeit by the Appellant.

***iii. Is the sanction disproportionate?***

116. The Appellant submits that the sanction imposed is disproportionate and grossly unfair and that the Appealed Decision is arbitrary and violates the law. According to the Appellant, Annex I provides UEFA with the possibility to decide whether the club shall be held responsible. UEFA did not take into consideration the tests conducted by the Institute and the Lab but relied only on the tests conducted by Synlab without a legal basis. The club could

not be held responsible for the Match not taking place and thus the sanction applied is arbitrary, grossly unfair and must be declared disproportionate.

117. UEFA on the other hand submits that the Regulations are clear and the Appealed Decision is in line with the UEFA regulations. It also states that in accordance to the well-established CAS jurisprudence the proportionality of a sanction can only be reviewed by a panel if said sanction is grossly and evidently disproportionate.

118. As argued by UEFA, the Panel notes the consistent CAS jurisprudence (in particular CAS 2016/A/4595) in respect to the CAS panels' assessment of disciplinary sanctions imposed by sports governing bodies as follows:

*“The Panel observes that it is consistent jurisprudence of CAS that CAS panels shall give a certain deference to decisions of sports governing bodies in respect of the proportionality of sanctions:*

*In this latter respect, this Panel agrees with the CAS jurisprudence under which the measure of the sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rules can be reviewed only when the sanction is evidently and grossly disproportionate to the offence (see e. g. the awards of: 24 March 2005, CAS 2004/A/690, § 86; 15 July 2007, CAS 2005/A/830, § 10.26; 26 June 2007, 2006/A/1175, § 90; and the advisory opinion of 21 April 2006, CAS 2005/C/976 & 986, § 143)” (CAS 2009/A/1817 & CAS 2009/A/1844)”.*

119. The Panel fully adheres to the consistent CAS jurisprudence and finds that the sanction imposed by the Appeals Body can only be reviewed if it is considered to be evidently and grossly disproportionate to the offence.

120. Against this background, the Panel finds that the sanction imposed on the Appellant is not disproportionate in view of the clear wording of article I.2.1 of Annex I which clearly states that *“the club that cannot play the match will be held responsible for the match not taking place and the match will be declared (...) to be forfeited by the club, which will be considered to have lost the match 3-0”.*

121. The Panel also notes that the above is directly confirmed by the Appellant. Indeed, according to its submission, the Appellant acknowledges that Article I.2.1 of Annex I *“does not provide the decision-making body with any latitude as to the severity of the sanction to be imposed if a match cannot be played”.* As decided by the Panel, the Club is responsible for the Match not being played, then it has to bear the consequences of it which are clearly stated in Article I.2.1 of Annex I.

122. In view of all the above, the Panel is not convinced by the Club's arguments as to why the sanction imposed on the Club by the Appeals Body should be disproportionate since the Appeals Body strictly followed the wording of Article I.2.1 of Annex I.

123. Consequently, the Panel finds that the sanction imposed on the Club by means of the Appealed Decision is not evidently and grossly disproportionate to the offence and is therefore confirmed.

124. As such, the Panel does not deem it necessary to address the Club's further claims or requests for relief, all of which are dismissed.

**B. Conclusion**

125. Based on the foregoing, the Panel finds that:
- i. FC Prishtina is responsible for the Match not being played as a result of the positive tests of members of its First and Second Delegations;
  - ii. FC Prishtina is considered to have lost the Match by forfeit 3-0 as declared by the Appeals Body;
  - iii. The sanctions imposed on FC Prishtina by the Appeals Body is not disproportionate.
126. All other and further motions or prayers for relief are dismissed.

**ON THESE GROUNDS**

**The Court of Arbitration for Sport rules that:**

1. The appeal filed on 3 September 2020 by FC Prishtina against the decision rendered on 24 August 2020 by the UEFA Appeals Body is dismissed.
2. The decision issued on 24 August 2020 by the UEFA Appeals Body is confirmed.
3. (...).
4. (...).
5. All other and further motions or prayers for relief are dismissed.