Arbitration CAS 2020/A/7611 Nurlan Ibrahimov v. Union of European Football Associations (UEFA), award of 6 October 2022

Panel: Prof. Martin Schimke (Germany), President; Mr Mark Hovell (United Kingdom); Mr Jakub Laskowski (Poland)

Football
Disciplinary sanction for publishing racist and discriminatory messages
Context of publication as mitigating factor
Assessment of a first offence
Principal of autonomy of association and margin of discretion in imposing sanctions
Proportionality of sanctions

1. **In accordance with article 23(1) of the UEFA Disciplinary Regulations (2020 edition) (UEFA DR), *"the competent disciplinary body determines the type and extent of the disciplinary measures to be imposed in accordance with the objective and subjective elements of the offence, taking account of both aggravating and mitigating circumstances"*. To consider as mitigating factor the context in which a wholly offensive, discriminatory, violent and intolerable post on social media was made, would risk legitimising the publication of such words as being somehow justifiable as a response to a set of circumstances in a particular context.**

2. **While "recidivism" is explicitly identified as an aggravating factor under Article 25(2) UEFA DR, the absence of a previous offence should not be considered as a mitigating one. Rather, it is appropriate that a previously clean record is taken into account in consideration of the proportionality of the sanction.**

3. **The UEFA Control, Ethics and Disciplinary Body (UEFA CEDB) has a margin of discretion through the principle of autonomy of association as a judicial body established under Swiss law, with the consequence that CAS shall demonstrate a certain degree of deference to the decision-making bodies of UEFA. For this margin of discretion to apply, however, requires that the UEFA CEDB has taken account of all the specific circumstances of the case in determining the sanction. Furthermore, the principle of autonomy of association is commonly understood to be broadly interpreted, especially in an international context, to the extent that it may not be used to restrict the scope of review by CAS panels. Therefore, CAS panels shall consider that association's expertise and proximity but, if having done so, a CAS panel considers nonetheless that the sanction imposed by the association is disproportionate, it must, given its *de novo* powers of review, be free to say so and apply the appropriate sanction.**

4. **The proportionality assessment implies that there must be a reasonable balance between the misconduct at the basis of the sanction and the sanction imposed. It**

requires in particular that the sanction is made in pursuit of a legitimate aim, is suitable for achieving that aim, and does not go beyond what is necessary in order to achieve that aim, being reasonable in all the circumstances considering the rights and interests of those concerned. Eradicating racism and discrimination within European football is a stated primary aim of UEFA, as reflected in its statutes and communicated to all those who fall under its jurisdiction. UEFA therefore has a genuine strong interest in sanctioning such behaviour and when that behaviour is particularly egregious, it follows that UEFA has a strong interest in sanctioning that behaviour to the maximum extent of its sanctioning power.

I. PARTIES

1. Mr. Nurlan Ibrahimov (the "Appellant") is an Azerbaijan national and the former press officer of Qarabağ FK (the "Club"), a professional football club which currently competes in the Azerbaijan Premier League, the top flight of Azerbaijani football.

2. The Union of European Football Associations (the "Respondent" or "UEFA") is an association under Swiss law and has its registered office in Nyon, Switzerland. UEFA is the governing body of football at the European level. It exercises regulatory, supervisory and disciplinary functions over national federations, clubs, officials and players in Europe.

3. The Appellant and the Respondent are hereinafter referred to as the "Parties".

II. INTRODUCTION

4. The present appeal arbitration proceedings concern an appeal by the Appellant against a decision of the UEFA Control, Ethics and Disciplinary Body (the "UEFA CEDB") dated 25 November 2020 (the "UEFA CEDB Decision"), banning the Appellant from all football-related activity for life.

5. The Appellant also seeks to set aside the decision of FIFA Disciplinary Committee (the "FIFA DC") dated 2 December 2020 (the "FIFA DC Decision") which extended the lifetime ban rendered by the UEFA CEDB Decision worldwide.

6. Further, the Appellant seeks to have declared void the decision of the UEFA Appeals Body dated 16 December 2020 (the "UEFA AB Decision"), which declared the appeal made by the Appellant against the UEFA CEDB Decision inadmissible.

III. FACTUAL BACKGROUND

A. Background Facts

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

8. On 30 October 2020, while employed as the press officer of the Club, the Appellant, posted a statement on the wall on his Facebook profile (the "Post"), which read as follows[1]:

> *"We must kill Armenians. Their children, women, and elderly - it doesn't matter: we must kill as many of them as we can. We must not pity them or feel sorry for them. If we don't kill them, they will kill us and our children, just like they have been doing for more than 120 years. It is necessary to restore Difai and even create a group of killers. We must bring up Abdullah Chatlis, and we must dig them out of the ground and punish them like Israel. Legally negotiating with them is not going to work. Turkey tried for so many years and it didn't work; in the end it behaved towards them in a language they understood and they wised up.*
>
> *We must kill them so they don't dare to attempt strikes against our lands like Ganja and Barda. Let them know that if they hit 1 of us, 100 of us will hit back -- we must hit back. Don't let anyone talk to me about humanism or about not being like them. Fire burns the place where it falls. You can't put out the fire of a father who has buried his baby in a grave in Ganja or Barda by not acting like them.. We must kill them to the very last one .. To the very last one…".*

9. It shall be noted that – according to the Appellant's written statements – the Post related to the Azerbaijani – Armenian military conflict, which was ongoing at that time, in particular the bombing of Azerbaijani civilians in the city of Barda on 28 October 2020.

10. On 2 November 2020, UEFA appointed an Ethics and Disciplinary Inspector, Mr. Antonio García Alcaraz (the "UEFA EDI") to conduct a disciplinary investigation in relation to the Post made by the Appellant, in accordance with Article 31(4) of the UEFA Disciplinary Regulations (2020 edition) (the "UEFA DR").

11. On 3 November 2020, the UEFA EDI submitted a request for provisional measures with the UEFA CEDB, seeking the provisional suspension of the Appellant from exercising any football-related activity pending the resolution of the investigation into any potential violation of the UEFA DR by the Appellant.

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[1] The Post was written in the Azeri language but for the purposes of this Award is translated into English. The translation that appears here is that provided in the UEFA CEDB Decision and referenced by the Parties in their submissions. Neither Party has challenged the accuracy of the translation in these proceedings.

12. Also on 3 November 2020, the UEFA CEDB granted the UEFA EDI's request for provisional measures and provisionally suspended the Appellant from all football-related activity, pending the resolution of the investigation and any subsequent decision by the UEFA CEDB in the case.

13. On 6 November 2020, the UEFA EDI provided his report to UEFA, recommending (*i.a.*) that the UEFA CEDB commence proceedings against the Appellant and the Club for an alleged breach of Art. 11(1), 11(2)(b) and 14(1) UEFA DR by the Appellant in relation to the content of his post. The UEFA EDI further recommended that the UEFA CEDB impose a lifetime ban on all football-related activity on the Appellant, as well as a fine on the Club.

B. Proceedings before the UEFA CEDB

14. On 9 November 2020, UEFA informed the Appellant and the Club of the commencement of formal disciplinary proceedings against them in relation to the Post made by the Appellant, and invited them to file any statement in relation to the alleged breaches of the UEFA DR by 13 November 2020.

15. On 13 November 2020 and 16 November 2020 respectively, the Club and the Appellant provided the UEFA CEDB with their written statements in relation to their alleged breaches of the UEFA DR.

16. On 26 November 2020, the UEFA CEDB issued the operative part of the UEFA CEDB Decision (that decision having been passed the previous day) which reads as follows:

> *"The Control, Ethics and Disciplinary Body decides:*
>
> *1. Mr. Nurlan Ibrahimov, Qarabağ FK official (i.e. press officer) at the time of the relevant facts, is banned from exercising any football-related activity for life from the date when he was provisionally banned (i.e. 3 November 2020), for the violation of Articles 11(2)(b) and 14(1) DR.*
>
> *2. To request FIFA to extend worldwide the above-mentioned life ban.*
>
> *3. Qarabağ FK ensures that Mr. Nurlan Ibrahimov is personally informed of this decision.*
>
> *4. To fine Qarabağ FK €100,000 for the violation of Articles 11(2)(b) and 14(1) DR.*
>
> *5. The above fine must be paid into the bank account indicated below within 90 days of communication of this decision".*

17. The UEFA CEDB Decision included the following statement at the bottom of the final page, underneath the terms of the operative decision:

> *"Advice as regards to the decision with grounds*
>
> *Written grounds for a decision are provided if one of the parties so requests in writing within five days of receiving the operative part of the decision. Failure to make such a request results in the decision becoming*

final and binding and the parties being deemed to have waived their right to lodge an appeal (Article 52 (1) DR)".

18. On 27 November 2020, the Club sent an email to the UEFA CEDB, requesting for it to be provided with the grounds of the UEFA CEDB Decision.

C. Proceedings before the UEFA Appeals Body

19. On 11 December 2020, the Appellant filed an appeal against the UEFA CEDB Decision with the UEFA Appeals Body.

20. On 16 December 2020, the UEFA Appeals Body declared the Appellant's appeal inadmissible, finding that he had failed to request the grounds of the UEFA CEDB Decision, in accordance with Article 52(1) UEFA DR and the statement contained in the UEFA CEDB Decision.

21. On the same day, the Fédération Internationale de Football Association ("FIFA") notified the Parties of the FIFA DC Decision, to extend the lifetime ban contained in the UEFA CEDB Decision against the Appellant worldwide, in accordance with Articles 54 (e) and 66(5) of the FIFA Disciplinary Code.

22. On 21 December 2020, the Appellant objected to the UEFA Appeals Body's decision to render his appeal inadmissible and requested it to reconsider its decision. The Appellant stated (*i.a.)* that the written statement contained in the UEFA CEDB Decision according to which *"written grounds for a decision are provided if one of the parties so requests in writing within five days […]",* was ambiguous and should be read in favour of the Appellant, in accordance with the principle of *contra proferentem*.

23. On 23 December 2020, the UEFA Appeals Body denied the Appellant's request, informing him that the content of the UEFA CEDB Decision was final.

D. Proceedings before the Court of Arbitration for Sport

24. On 25 December 2020, the Appellant filed his Statement of Appeal via email, in accordance with Articles R47 and R48 of the CAS Code of Sports-related Arbitration (2020 edition) (the "Code"). On the same date, the Appellant requested that the case be heard by a sole arbitrator, and in this respect nominated Dr. Jakub Laskowski, Attorney-at-law in Warsaw, Poland to act as arbitrator in the present proceedings.

25. On 30 December 2020, the CAS Court Office granted the Appellant access to the CAS e-filing platform. On the same day, the Appellant uploaded his Statement of Appeal to the platform.

26. On 4 January 2021, the Respondent stated that it disagreed with the Appellant's request for the case to be heard by a sole arbitrator, and requested that the case by heard by a panel of three arbitrators.

27. On 14 January 2021, the Respondent made a request for bifurcation of proceedings, based on its submission that the Appellant's Statement of Appeal was filed outside the time limit for appeal set out in Article 62(3) of the UEFA Statutes (2020 edition) and was therefore inadmissible. The Respondent requested that the *"proceedings should be bifurcated in order to allow the President of the Appeals Arbitration Division to decide on this procedural issue before the parties unnecessarily engage resources to brief the merits of the case"*.

28. On 19 January 2021, the Appellant provided his response to the Respondent's request for bifurcation of proceedings.

29. Also on 19 January 2021, the CAS Court Office, on behalf of the President of the CAS Appeals Arbitration Division, informed the Parties that the present proceedings would be heard by a three-member panel pursuant to Article R50 of the Code.

30. On 26 January 2021, the CAS Court Office informed the Parties that, pursuant to Article R49 of the Code, the President of the CAS Appeal Division had decided that the Respondent's request for bifurcation would be decided by the Panel, once constituted.

31. On 28 January 2021, the Respondent nominated Mr. Mark Hovell, Solicitor in Manchester, United Kingdom, as arbitrator in the present proceedings.

32. On 2 February 2021, the Appellant filed his Appeal Brief in accordance with Article R51 of the Code.

33. On 9 February 2021, the Respondent requested that its deadline to file its Answer be suspended until the Panel had been constituted and made a decision as to its request for bifurcation of proceedings.

34. On 22 February 2021, on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office communicated to the Parties that the Respondent's deadline to file its Answer was suspended until further notice.

35. On 2 March 2021, in accordance with Article R54 of the Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the arbitral tribunal appointed to decide the present matter was constituted as follows:

President:	Prof. Dr. Martin Schimke, Attorney-at-law in Düsseldorf, Germany
Arbitrators:	Mr. Mark Hovell, Solicitor in Manchester, United Kingdom
	Dr. Jakub Laskowski, Attorney-at-law in Warsaw, Poland

36. On 29 March 2021, the Panel announced its decision to bifurcate proceedings in accordance with the Respondent's request, and invited the Respondent to provide its submissions (strictly limited to the timeliness of the Appeal) by 8 April 2021, following which the Appellant would be granted a corresponding deadline for his response on this point.

37. On 8 April 2021, in accordance with the Panel's instructions of 29 March 2021, the Respondent submitted its observations on the admissibility of the Appeal (as to the timeliness of the Appeal).

38. On 21 April 2021, in accordance with the Panel's instructions of 29 March 2021, the Appellant submitted his observations on the admissibility of the Appeal (as to the timeliness of the Appeal).

39. On 14 June 2021, the CAS Court Office informed the Parties that Mr. Adam Thew, Solicitor, Legal Counsel, International Paralympic Committee (IPC), in Bonn, Germany, would act as *ad hoc* Clerk in the present case.

40. On 22 June 2021, as to the timeliness of the Appeal, the Panel determined that the Appeal was admissible and resumed the Respondent's deadline to file its Answer. The reasons for this decision are set out in Section VI of this Award below.

41. On 23 June 2021, the Respondent submitted a second request for bifurcation, based on the general admissibility of the Appeal.

42. On 29 June 2021, the Appellant submitted his response to the Respondent's second request for bifurcation.

43. On 13 July 2021, the Panel rejected the Respondent's second request for bifurcation on the general admissibility of the Appeal. The reasons for this decision are set out in Section VI of this Award below.

44. On 30 July 2021, the Respondent filed its Answer, in accordance with Article R55 of the Code.

45. On 26 and 27 September 2021, respectively, the Appellant and the Respondent confirmed the list of those persons attending the hearing on their behalf. In addition to the Appellant, his legal counsel and an interpreter, the Appellant identified for the first time two witnesses whom he wished to call to appear at the hearing. The Appellant identified these witnesses as being *"near the Appellant when the respective social media post was written"*.

46. On 28 September 2021, the Respondent raised an objection to the appearance of the two witnesses identified by the Appellant in his letter of 26 September 2021 as being called to appear and testify at the hearing on behalf of the Appellant. Specifically, the Respondent objected that the Appellant had not specified the names of these witnesses in his written submissions, in accordance with Article R51(2) of the Code. Therefore, in accordance with Article R56(1) of the Code, the Appellant should not be permitted to call these witnesses to testify at the hearing (unless justified by exceptional circumstances).

47. On 29 September 2021, the Panel requested the Appellant to comment on the Respondent's objection and specifically inform the CAS Court Office at his earliest convenience, why the two witnesses announced in his letter of 26 September 2021: i) needed to attend the hearing; and ii) were not announced earlier. On the same date, the CAS Court Office requested the Parties to each sign and return a copy of the Order of Procedure, issued on behalf of the Panel.

48. On 3 October 2021 the Appellant provided his response to the Respondent's objection to his calling of the two witnesses. The Appellant explained that the witnesses *"can confirm the exact date of the* [social media] *Post […]"*. As to why the witnesses had not been identified earlier, the Appellant stated that he *"did not know whether the hearing would be held and if yes, its exact date. As such, the availability of the witnesses at the hearing date was confirmed only after the hearing date was known"*. On the same date, the Appellant returned a duly signed copy of the Order of Procedure.

49. On 4 October 2021, the Panel requested the Respondent to confirm whether, in light of the information provided by the Appellant, the Respondent maintained its objection to the appearance of the witnesses at the hearing.

50. On 6 October 2021, the Respondent confirmed that it maintained its objection to the Appellant's witnesses being called to give evidence at the hearing. On the same date, the Respondent returned a duly signed copy of the Order of Procedure.

51. On 7 October 2021, the Panel communicated its decision to the Parties that the Respondent's objection was granted and that therefore the Appellant's witnesses were not admitted to testify at the hearing. The Panel explained that, based on the Parties' submissions, the point on which the Appellant has requested the witnesses to appear did not in fact appear to be disputed between the Parties, and there did not appear to be exceptional circumstances which warranted the witnesses' appearance at the hearing.

52. On 8 October 2021, a hearing was held remotely by way of videoconference. At the outset of the hearing, both Parties confirmed not to have any objection as to the appointment of the Panel.

53. In addition to the Panel, Ms. Andrea Sherpa-Zimmermann, CAS Counsel, and Mr. Adam Thew, *ad hoc* Clerk, the following persons attended the hearing:

For the Appellant:

1. the Appellant;
2. Mr. Farid Hagverdiyev (Counsel); and
3. Mr. Marlen Qacayev (interpreter).

For the Respondent:

1. Mr. Antonio Rigozzi (Legal Counsel)
2. Mr. Eolos Rigopoulos (Legal Counsel); and
3. Mr. Jacques Bondallaz (UEFA Counsel).

54. At the close of the hearing, both Parties confirmed that they did not have any objections as to the procedure adopted by the Panel at the hearing and that their respective rights to be heard had been respected.

IV. SUBMISSIONS OF THE PARTIES

A. Appellant

a. Admissibility

55. As to the admissibility of the Appeal, the Appellant's submissions may be summarised in essence as follows:

Timeliness of the Appeal

- On 25 December 2020, the Appellant filed his Statement of Appeal with CAS by email, within the time limit for an appeal set out in the Code and UEFA Statutes.

- The Appellant also submitted cover email along with the Statement of Appeal which stated the following:

  "Please be kindly asked to confirm my understanding: Due to COVID-19 situation, there is no need to send the documents via courier as well, if they are submitted via e-cas platform. In this regard, please be kindly asked to provide us with the login details, so that we can upload the respective documents. We would kindly ask you also to acknowledge receipt of this email".

- On 28 December 2020, the Appellant submitted the receipt of the payment of the CAS Court fee to the CAS Court Office via email.

- On 29 December 2020, the Appellant contacted the CAS Court Office and informed the answering CAS clerk that the Appellant had not received a response from the CAS Court Office. The CAS clerk acknowledged the receipt of the email and informed the Appellant that the CAS Court Office would reply soon.

- Only after the respective call, the CAS Court Office sent the email dated 29 December 2020 requesting the Appellant to provide the CAS Court Office with the payment receipt of the CAS Court Office fee. However the Appellant had already submitted the proof of the receipt of the payment to the CAS Court Office on 28 December 2020.

- In the urgent reply letter of the Appellant dated 29 December 2020, the Appellant stated the following:

  "As per the filing of the documents, please be kindly informed that it is our understanding that due to the COVID 19 pandemic, we can submit files through an e-filing system. As such, in our email dated 25 December 2020, we requested the CAS Office to issue and provide us with the respective e-login details

(neither Nurlan Ibrahimov nor I had ever been issued CAS e-login credentials before), so that we could upload the respective files via CAS e-login system. Besides, in the guidelines of e-filing submission, it is stipulated that the e-filing service can only be activated after the opening of arbitration proceedings by the CAS Court Office, thus, after the allocation of a case number. However, we did not hear back from the CAS Court Office and we were not provided with e-CAS login details, therefore we could not upload the documents through e-filing. Please be kindly asked to take into consideration the above and we kindly request you to order the issuance of CAS e-login details to us for the purposes of filing of the respective documents. In any case, whilst we await to hear from yourself/your colleague on this matter, we would hope that, for the sake of confirmation, the deadline to e-file has not elapsed, and in any case, cannot begin until we are given the login accordingly. I trust that this is appropriate and agreeable and I look forward to hearing from you at you earliest convenience".

- Had the CAS Court Office carefully acknowledged the content of the Appellant's emails dated 25 December 2020 and 28 December 2020, it would be clear that the Appellant had chosen to file the Statement of Appeal via email and was requesting to submit it via CAS e-filing platform.

- Article R31 of the Code provides the right to submit the documents via the CAS e-filing platform if they are (also) submitted via email. The Code also does not specify period or stipulate that such request (to obtain CAS e-login details) should be made certain days in advance. The Appellant had opted to exercise such a right and the Appellant should not suffer due to the actions of the CAS Court Office. The Appellant has acted with due care and it was beyond his control that he could only upload the respective documents on 30 December 2020.

- The Respondent refers to the *"period of the year which the submission was due"* and implies that the Statement of Appeal was filed during the holiday season and that it was hazardous to exercise the right granted under the Code during such period. This is irrelevant since the Code does not differentiate the "holiday" season or "busy" season. The Appellant cannot be held liable for choice of the electronic submission during such *"period of the year"*.

- The Appellant had already submitted his Statement of Appeal and it was not in his interest, nor would he gain any advantage if he filed the Statement of Appeal one day later. In fact, the Appellant twice requested issuance of the CAS e-login details to submit the Statement of Appeal as soon as possible.

- The Appellant also believes that based on the principle of prohibition of excessive formalism, the "technical lateness" of the submission of the appeal via the CAS e-filing platform cannot be considered as "late" legally, especially considering the importance of the matter (the Appellant's heavy sanction) at stake.

- The Appellant wrote twice (before the expiry of the deadline) and contacted the CAS Court Office via phone (thus using all possible means) to reach the CAS Court Office to obtain the CAS filing login and password. The Appellant does not see how else he could

have acted with more "due care" when he opted to exercise his right to submit his appeal via the CAS e-filing system.

General Admissibility of the Appeal

- The UEFA Appeals Body was wrong to declare the Appellant's appeal against the UEFA CEDB Decision inadmissible.

- In the UEFA CEDB Decision, the Respondent clearly states its *"Advice"* and uses the wording "if one of the parties", in plural. It is obvious that if one of the parties to the UEFA CEDB Decision requested in writing the grounds of the UEFA CEDB Decision, that would have been sufficient to meet the requirement to lodge an appeal. It is clear that the respective parties under the UEFA CEDB Decision were the Appellant and the Club.

- Since the UEFA CEDB Decision was issued as a single decision with regard to the Club and the Appellant, the request of either the Club or the Appellant on issuance of the grounds would have been enough to meet this requirement.

- On 27 November 2020, the Club decided to request the grounds of the appeal in writing for the purposes of lodging appeal (informing the Appellant of this).

- It was therefore not necessary for the Appellant to request the grounds of the decision again due to the above-mentioned "advice" paragraph of the UEFA CEDB Decision.

- Contrary to the claim of the Respondent, the Appellant did not waive his right to lodge an appeal at the UEFA Appeals Body.

- On 4 December 2020, the UEFA CEDB provided the grounds for its decision dated 25 November 2020. The Club also informed the Appellant and familiarized him with the respective grounds of the decision the next day via email.

- As such, the Appellant did not request the grounds of the decision separately, since the Club already did so on 26 November 2020.

- The Appellant acted according to the instruction of the Respondent in the UEFA CEDB Decision and never intended to waive his right to lodge an appeal, especially given the crucial matter at stake. The Respondent fails to substantiate the unlawful rejection of the appeal by stating that the Appellant did not request the grounds of the decision. However, it is obvious that the Appellant did not separately request the grounds of the UEFA CEDB Decision due to the fact that it would be redundant (based on the last paragraph of the UEFA CEDB Decision).

- In any case, the Respondent also violated the principle of *contra proferentem*; pursuant to where a promise, agreement or term is ambiguous, the preferred meaning should be the one that works against the interests of the party who provided the wording.

- This situation also violated the "right to a fair trial" of the Appellant, which is one of the most fundamental human rights and is also specified in the ECHR (Article 6).

- As established in CAS jurisprudence, the best remedy of the violation of the "right to be heard" (right to fair trial) would be the procedure at CAS in the instance case. According to CAS 2020/A/6920, award of 15 December 2020:

  "A party against which a disciplinary measure is issued must have the possibility (orally or in writing) to defend itself against the charges forming the matter in dispute in the disciplinary proceedings. Such right includes the opportunity to file submissions and to present evidence in order to challenge the allegations brought forward against it".

- So far, the Appellant had been denied this and the Respondent is attempting by all means to prevent the appeal of the Appellant to be reviewed at CAS and to have his right to be heard cured.

- At the hearing, the Appellant again affirmed that he had relied on the "advice" provided on the last page of the UEFA CEDB Decision, which differed from the wording in the UEFA DR. The Appellant argued he should not be prevented from appealing by relying in good faith on the Respondent's own wording as to the appeal process.

b. Substantive Arguments

56. As to the merits of the Appeal, the Appellant's submissions may be summarised in essence as follows:

<u>The UEFA EDI and UEFA CEDB lacked impartiality due to outside pressure</u>

- The Respondent did not reveal to the Appellant who had acted as the initiator of the complaint against the Appellant and submitted the post, but the Appellant submits that this was the Football Federation of Armenia.

- This is significant, as the Respondent (the UEFA EDI and the UEFA CEDB indirectly) faced non-stop, aggressive pressure from both the Football Federation of Armenia and various Armenian nationals on social media accounts demanding the Respondent to punish the Appellant and the Club.

- The Appellant himself became the target of hatred and abuse and even received death threats, and online petitions were started against him.

- As a result, the Respondent was under intense pressure and this pressure led to the adoption of the harshest disproportionate sanction with regard to the Appellant and the Club.

- At the hearing the Appellant added that the UEFA EDI's report read "like an indictment" which again reflects the lack of impartiality of UEFA's disciplinary organs.

The UEFA CEDB Decision violated the UEFA DR

- The UEFA CEDB violated the provisions of Article 23 of UEFA DR, by taking into account only the aggravating circumstances when issuing the decision and failing to consider the following mitigating circumstances:

    - The circumstances triggering the Post were not considered, in particular the context of the conflict between Azerbaijan and Armenia. The Appellant wrote the statement in an abnormal state of mind, as an immediate reaction to traumatic events seen on news reports (attacks on cities in Azerbaijan by Armenian forces, and in particular the death of a child). The Post was also written in Azeri and thus not intended to reach a worldwide audience.

    - The Appellant's remorse, sincere confession and apology were not considered (he made a subsequent social media post containing an apology, having removed the first post).

    - The Appellant's previously clean record was not considered.

    - The Appellant was subject to two punishments for his behaviour (one by the Club – his employment terminated, another by UEFA. The Appellant was also fined by an Azeri court.)

- At the hearing, the Appellant again stressed that the Post was written on 28 October 2020 and was an immediate reaction to an attack on a city in Azerbaijan by Armenian forces. He added that this Post was not public, and that he made it to his c. 2,400 followers and 4,000 friends, not anticipating the wider reaction it would generate.

- He also cited three previous incidents in a football-related context where he was "provoked" but did not react – in particular where supporters entered the stadium or flew a drone into the stadium with flags with a political context.

- He re-emphasised that the Post was written in a period of high tension in middle of a conflict, and immediately after he had seen upsetting news reports about an attack on a city nearby.

- He stated that he had decided to remove the Post from Facebook, having been requested to do so by the Club and that he then published a second (public) Facebook post, in which he showed remorse for his actions.

- He further showed his remorse in statement he made to the Respondent during the UEFA CEDB proceedings, which the Appellant translated in his Appeal Brief as: *"The main thing here is [I regret] that Qarabag FC was treated unfairly because of me. I am disappointed that Qarabag FC is accused with the very serious blame"*.

- He also cited his lack of advanced English language skills as a problematic factor for him in the case.

- All these, and his previously "clean record" should, he argued, have been considered as mitigating factors by the UEFA CEDB. In not doing so, the UEFA CEDB violated the terms of the UEFA DR.

The UEFA CEDB sanction is disproportionate

- It is not arguable the Post contained unacceptable language. However, such sanction is completely excessive and unfair towards the Appellant.

- A person with no previous record is deprived of the possibility to carry out any football related activity (although not clearly defined in UEFA regulations, it may be interpreted broadly).

- This was due to a single mistake (which happened off the pitch) not related to football.

- As well as causing severe damage to his reputation, this sanction also affects his family as the Appellant is the sole provider for his family, being a father of four. Even the payment of CAS Court Office fee was very challenging for the Appellant, since the amount is high in local currency considering the minimum wage amount.

- Although the ban relates to football related activity, it is obvious that it will affect the Appellant's future everyday life and career as well. Employers/organisations will be reluctant to hire him because of the life ban.

- In the established jurisprudence, such a sanction is generally applied to persons involved in match-fixing, bribery (corruption) and sexual harassment. However, both the UEFA EDI and the UEFA CEDB seemed to treat the Appellant as a recidivist "racist" person who needs to be secluded from the football community forever.

- There is no evidence that the Appellant would do the same again. During his 15 years in the football community, the Appellant came across many representatives of various ethnicities, nationalities, religions etc. None of them ever faced any racist remarks or behaviour from the Appellant. On the contrary, the letters submitted as evidence characterise the Appellant as a helpful, friendly, tolerant, decent person who deserves a second chance.

- At the hearing, the Appellant disputed that his Facebook Post amounted to advocating genocide, which he defined as organising meetings, speaking to a crowd, etc.

- The Appellant also emphasised the disproportionate hardship that his lifetime ban had caused for him and his family, as he is now unable to use his experience in football to get another job. He explained that Azerbaijan is a relatively small country with a small job market in which his previous conduct is now well-known. Several employers have expressed doubts about hiring him for fear of being sanctioned themselves. UEFA is a reputable organisation whose decisions have wider effect beyond sport. This meant that the lifetime ban has had a disproportionate effect on his life and livelihood, beyond the football industry.

- The Appellant argued that a lifetime ban is usually reserved for individuals involved in corruption, match fixing, sexual harassment, doping etc., and argued that he should not be categorised together with such people as a result of a single social media post.

Appellant's Personal Statement

- At the end of the hearing, the Appellant made a closing personal statement in which he stated (i.a.) the following:

    - The Post was made in the context of a war situation which included bombing and shelling of civilians. As a father of four daughters he could not express the effects such actions had had on him or his fears that they might affect him and potentially cause the deaths of him and his family.

    - He made the Post as a result of this emotional situation, the news reports he had seen and feeling insulted by Armenians. His actions were not in-keeping with his character, demonstrated by his previous good character in 15 years working for the Club.

    - He again cited the previous incidents of "provocation" against the Club to which he had not reacted.

    - When he read the translation of the Post into English he understood that the wording sounded severe, but that in his language this was not the same.

    - He stated that he has Armenian friends and does not hate Armenians generally.

    - He stated that everybody knows that he is deeply sorry about what happened. But he did not expand on this or apologise specifically for making the Post or for its content.

c. Requests for Relief

57. The Appellant sets out his requests for relief in his Appeal Brief as follows:

"We respectfully request the CAS:

1. To admit this appeal;

2. To declare the decision of UEFA Appeals Body dated 16 December 2020 void;

3. To set aside the decision of UEFA CEDB dated 25 November 2020 and subsequently the decision of FIFA Disciplinary Committee dated 2 December 2020 (Ref FDD-6426);

4. To lift any sanction imposed on the Appellant - Mr. Nurlan Ibrahimov or alternatively, significantly reduce the imposed sanction;

5. To order the Respondent to bear all its costs (legal fees) related to this procedure".

B. Respondent

a. Admissibility

58. As to the admissibility of the Appeal, the Respondent's submissions may be summarised in essence as follows:

Timeliness of the Appeal

- In the present case, the UEFA CEDB Decision was notified to the Appellant on 16 December 2020.
- Pursuant to Article R49 of the Code and Article 62(3) of the UEFA Statutes, the relevant time limit to appeal was therefore 26 December 2020.
- However, as 26 December 2020 was a Saturday, according to Article R32 of the Code, the Statement of Appeal had to be filed by Monday 28 December 2020.
- The Appellant filed his Statement of Appeal by email on 25 December 2020, i.e. within the relevant time limit.
- However, in case of filing by email, Article R31(3) of the Code provides that the Statement of Appeal is deemed submitted the day of the email only if it is *"also filed by courier or uploaded to the CAS e-filing platform within the first subsequent business day of the relevant time limit"*.
- In the present case, as the *"relevant time limit"* was 28 December 2020, the first subsequent business day of the relevant time limit" was 29 December 2020.
- It is not in dispute that the Statement of Appeal was not filed by courier and was only uploaded on the CAS e-filing platform on 30 December 2020.

- As such, it is clear from the above that the Appellant's Statement of Appeal was belated. Therefore, the only remaining question concerns the consequence of such belatedness.

- The fact that the Appellant requested to be provided with the login details of the CAS e-filing platform before the expiration of the deadline is irrelevant. The only relevant element is whether the submission was uploaded on the e-filing platform (respectively filed by courier) within the first subsequent business day of the relevant time limit.

- In this respect, UEFA submits that the wording of Article R31(3) of the Code is clear: if the relevant submission is not filed in accordance with the requirements set out in this provision, the CAS *"shall not proceed",* i.e. the appeal shall be declared inadmissible.

- CAS jurisprudence has previously stated in this regard that the time limit for filing an appeal is absolute and strict and that there is no discretion provided under the Code to extend the time limit for filing a notice of appeal.

- Despite the clear indication that the access to the CAS e-filing platform can only be granted after the opening of arbitration proceedings and the allocation of a case number. The Appellant nevertheless elected to file his submission through the CAS e-filing platform.

- The Appellant's decision to file his Statement of Appeal by using the e-filing platform is all the more hazardous given the period of the year during which his submission was due. Indeed, in light of the fact that the Appellant's submission was due in the middle of the holiday period, the Appellant could not reasonably expect that the CAS would grant him the CAS e-filing platform credentials within the relevant time limit (i.e. 29 December 2020). In fact, although he had filed his submission by email on Friday 25 December 2020, it was only on 29 December 2020 in the (late) afternoon that the CAS acknowledged receipt of said filing (by email).

- Indeed, it is clear from the above that as soon as it became apparent that the Appellant would not receive the CAS e-filing login details within the relevant deadline of 29 December 2020, the Appellant could and should have filed his Statement of Appeal by courier, as required under Article R31(3) of the Code.

- The fact that he did not cannot be cured and the only correct consequence is that his appeal should be dismissed as inadmissible.

<u>General Admissibility of the Appeal</u>

- On 26 November 2020, the UEFA CEDB notified the operative part of the UEFA CEDB Decision against the Appellant and the Club.

- The notification below the operative part of the UEFA CEDB Decision expressly drew the Parties' attention to the fact that:

"Written grounds for a decision are provided if one of the parties so requests in writing within five days of receiving the operative part of the decision. Failure to make such a request results in the decision becoming final and binding and the parties being deemed to have waived their right to lodge an appeal (Article 52 (1) DR)".

- On 27 November 2020 (i.e. within the relevant five-day time limit), the Club requested the grounds of the UEFA CEDB Decision. The Appellant, on the other hand, failed to submit such a request.

- Despite this failure, the Appellant filed an appeal against the UEFA CEDB Decision before the UEFA Appeals Body (UEFA AB) on 11 December 2020.

- On 16 December 2020, said appeal was declared inadmissible by the UEFA Appeals Body because the Appellant had failed to request the grounds of the UEFA CEDB Decision in accordance with Article 52(1) of the UEFA DR and was thus deemed to have waived his right to lodge an appeal against the relevant decision (the UEFA AB Decision).

- In this respect, UEFA notes that in a recent CAS award rendered in a similar case *(CAS 2019/A/6253)* regarding a decision from the FIFA DC, the Sole Arbitrator held that the failure to request the grounds of the FIFA DC decision within the relevant time limit resulted in the inadmissibility of the appeal against such decision.

- This CAS award was recently confirmed by the Swiss Federal Supreme Court (Swiss Federal Supreme Court 4A 666/2020 of 17 May 2021), which noted that: *"Strict compliance with the rules on appeals procedures is necessary to ensure equal treatment and legal certainty".*

- The UEFA CEDB Decision is therefore final as far as the Appellant is concerned, having waived his right to appeal that decision.

- As far as UEFA's decisions are concerned, the Appeal is therefore admissible only to the extent that it is directed against the UEFA AB Decision. However, the Respondent also submits that if the Panel finds that the UEFA Appeals Body was incorrect to deem the Appellant's appeal to it against the UEFA CEDB Decision as inadmissible, for the sake of efficiency, the Panel should issue a new decision on the merits of this case.

- The appeal against the FIFA DC Decision is *a priori* inadmissible. The present Appeal is only directed against UEFA, not FIFA. There is no evidence that the Appellant has sought to appeal the FIFA DC Decision before the FIFA appeal authorities.

- Point 2 of the operative part of the FIFA DC Decision expressly states that:

  "This decision will follow the outcome of any possible appeal lodged against the decision passed by the UEFA Control, Ethics and Disciplinary Body as long as the decision on appeal complies with the regulations of FIFA".

- Therefore, even if the Panel were to declare the Appeal against the UEFA CEDB Decision admissible and set the UEFA CEDB Decision aside, the FIFA DC Decision would be automatically adapted to the outcome of that decision.

- At the hearing, the Respondent reaffirmed its position that the Appellant's interpretation of the wording of the "advice" contained in the UEFA CEDB Decision was incorrect, and that its wording was clear. The terms of the UEFA CEDB Decision became final for the Appellant when he failed to request the grounds of the decision within the relevant timeframe.

- Further, the Respondent disputed that it would have been "redundant" for the Appellant to request the grounds of the decision, (as well as the Club). This only required a brief email request, and this is what the wording of the "advice" intended. Parties to a case may not know whether or not other parties have requested the grounds and should not rely on other parties to do so. The Respondent argued that this was reflected in the wording of the email from the Club requesting the grounds of the UEFA CEDB Decision, which related to the strict liability aspect of the UEFA DR and the monetary sanction imposed against the Club, rather than the lifetime ban imposed on the Appellant.

b. Substantive Arguments

59. As to the merits of the Appeal, the Respondent's submissions may be summarised in essence as follows:

<u>No evidence that UEFA CEDB was not impartial</u>

- The UEFA EDI and UEFA CEDB were impartial. In the present case the UEFA CEDB and the UEFA EDI are bodies appointed by UEFA and there is no evidence that the Armenian Football Federation can somehow exert any kind of pressure on them, either directly or through any possible influence within UEFA.

- UEFA bodies, and especially in the context of violations of regulations against racism and discrimination, often have to deal with very sensitive issues that more often than not trigger reactions from the public. This does not mean however that the UEFA bodies do not remain independent and impartial and the Appellant actually does not show how the alleged social media posts would have influenced UEFA in its decision making.

- At the hearing, the Respondent added that the investigation into the Appellant's conduct was opened by the Respondent after observing social media traffic generated by the Appellant's post, and that there was no complaint from the Armenian Football Federation on file.

UEFA CEDB applied the UEFA DR correctly

- Although the Appellant does not contest that he violated Articles 11(1), and (2)(b) and 14(1) of the UEFA DR, UEFA wishes to underline that the Appellant's conduct was extremely offensive and in absolute contradiction with UEFA's core values and fundamental goal to eradicate racism and discrimination.

- The Appellant's statement goes far beyond considerations of "basic rules of decent conduct" (Article 11(2)(b) of the UEFA DR), or "[insulting] the human dignity of a person or group of person" (Article 14(1) UEFA DR).

- This statement is tantamount to an incitement to commit genocide and is especially dangerous coming from a person with a significant reach such as the Appellant who was the *"PR and press officer of [the Club]"* when he made the Post. In light of the foregoing, it is indeed not surprising that the UEFA EDI in charge of the case highlighted "that the [Appellant's conduct] is undoubtedly the most severe behaviour of violence, racism and discrimination that [the UEFA EDI] has had to deal with since his appointment as EDI. […] It is almost impossible for this EDI to imagine statements that could be more severe than those made by Mr. Ibrahimov on social media".

- The unprecedented violence of the Appellant's Post has no place in football and UEFA cannot and will not tolerate such incidents. For these reasons, the Appellant deserves the most severe sanction, i.e. a life ban from all football-related activities.

- The Respondent submits that there are no mitigating circumstances for the Appellant's behaviour:

    - It disputes that this was an immediate reaction to an incident.

    - It argues that it is irrelevant that the Post was written in Azeri (as opposed to a more widely-spoken language such as English).

    - It argues the Appellant has shown no remorse, and admittedly only took the Post down under pressure from others to do so. The Appellant's subsequent statements cite his main regret as being that the Club faced consequences from his actions, and not that he made such a hurtful public statement.

    - UEFA submits that the Appellant's previous clean record is irrelevant here considering the seriousness of the conduct.

    - UEFA submits that the punishment of the Appellant by the Club is irrelevant and had no impact on the UEFA CEDB Decision.

- UEFA cites two aggravating circumstances in this case:
    - The role of the Appellant as senior PR and Press Officer at the Club (for 14 years) means he should be held to a higher standard than others.
    - The Post was made on the Appellant's public Facebook profile for the world to see.
- At the hearing the Respondent argued that it was irrelevant whether or not the Post was written in the immediate aftermath of the attack on a city on 28 October 2020, as it was not posted until 30 October.
- In relation to the Appellant's denial that his Post was advocating genocide, the Respondent pointed out that the Appellant's Post had *"worldwide reach"*. Through his post, the Appellant was addressing at least 2,000 followers and 4,000 friends. These numbers are higher than would likely have been the case if the Appellant was addressing a crowd in person. The Post gained *"traction"* and so the Respondent had to intervene. In particular, the Club had a match in UEFA competition scheduled for 29 November 2020 and this would have given the Appellant a further platform to potentially espouse his views.
- The Respondent added that there was nothing on record about the incidents referred to by the Appellant in relation to previous matches. In any event, the Respondent argued that the case was less about the alleged non-reaction to provocation in the past, as this was no indication of what the Appellant might do again in future. The Post reflects what the Appellant is capable of doing, and a lifetime ban was the correct measure to prevent this happening again.
- The Respondent emphasised the lack of an apology by the Appellant for his actions. The Appellant's second post did not demonstrate genuine apology or regret in relation to the content of his post, only his regret that this had hurt the Club. In its submissions, the Respondent provided a translation of the Appellant's second Facebook post as follows:

    "Those who know me know what Azerbaijan means to me. I'm not going to engage in populism now. I'm also not going to state the tautology of how it feels to serve Azerbaijan for 15 years along with Qarabağ. But the bureaucratic position held by my Qarabağ FC is not more important than my feeling of citizenship. Some opinion or other of mine is not the position of Qarabağ FC, nor can it be. My post was the emotion produced by my shaking hands from the death of Aysun in Barda, who was the same age as my child. I would be surprised if the moment we were all torn apart 3 days ago has cooled into a topic for public discussion 72 hours later. The interests of Azerbaijan, of our state, are more important to me than anything. Everyone who knows me knows that. Very valuable people and people whom I value wanted me to delete that post for the sake of our common interests. You cannot see my post now but even so, Armenians know that no Azerbaijani has killed a single Armenian child or woman, nor will kill them, for the savagery they have committed for more than 100 years. Including myself, who hasn't even been able to hurt a young chicken all his life. […]".

- Nor did any of the Appellant's statements to the Respondent or before the UEFA CEDB contain any genuine apology or words of remorse. The Appellant's focus in such statements was on his regret that the Club had been sanctioned as a result of his behaviour.

- The UEFA CEDB therefore applied the UEFA DR correctly in determining a lifetime ban was appropriate in all the circumstances of the case.

UEFA CEDB sanction was proportionate

- The Respondent submits that the UEFA CEDB Decision was proportionate.

- First, there is no requirement that a violation of the UEFA DR be committed on the pitch, especially when it comes to the senior PR and Press Officer of a club, who by definition has no business on the pitch.

- Second, the Appellant's "related to football" argument should be dismissed because whether an action is related to football or not depends on the totality of the circumstances.

- Thirdly, the impact on the Appellant's family is irrelevant here and especially in light of the seriousness of the Appellant's statement, and he can find employment away from football based on his experience.

- Fourthly, UEFA submits that the violence of the words used by the Appellant is enough of an indication of the risk that he poses to the Respondent for whom the fight against racism and discrimination has always been a top priority.

- At the hearing the Respondent emphasised that, especially considering the lack of a genuine or sincere apology from the Appellant, the sanction of a lifetime ban from organised football was proportionate.

- The Respondent added that the ban is limited to organised football and that the Appellant could still find work as a commentator or journalist, for example. The Respondent cited in *CAS 2016/A/4474* confirming that a different standard is applied to officials than to players in this context.

- The Respondent argued that the UEFA CEDB had not taken a lifetime ban as the "starting point" for the sanction in this case, but that it was undoubtably included among the range of possible sanctions. Whether it was proportionate is a question in all the circumstances of the case. In this context the Respondent believes that someone who has called for genocide and not apologised should not be allowed back into football. The Respondent argued that it would not be possible to identify a previous football disciplinary case before CAS which contains behaviour which worse than this.

- The Respondent compared this sanction to some of those seen in anti-doping regulations (for example a potential four-year ban for three 'whereabouts' violations) and questioned if a lifetime ban for such a serious offence could really be judged as disproportionate in comparison.

- Further the Respondent argued that the sanction was predictable in this case, as it could certainly be anticipated that a lifetime ban would be the sanction for someone who makes genocidal posts. In this respect the Respondent doubted it would be helpful for it to alter its sanctioning regime to specify a list of offences for which a lifetime ban is the sanction applied – e.g. calling for genocide. This list would then have to foresee and account for all possible different types of behaviour, different types of discrimination etc., and may lead to potential gaps in the sanctioning regime.

- The Respondent noted that the decision reached by the Club in disciplining the Appellant was also the strongest sanction possible – termination of his contract. This did not mean however that the Appellant was beaching "punished twice" and in fact supported the fact that a lifetime ban was appropriate.

- The Respondent finally added that the Appellant's behaviour does not deserve anything less than a lifetime ban, and that to rule otherwise would set a precedent in such cases.

c. Requests for Relief

60. The Respondent sets out its requests for relief in its Answer as follows:

> *"1. Dismissing the Appellant's Appeal and all of his prayers for relief expressed in his Appeal Brief dated 2 February 2021.*
>
> *2. Ordering that the Appellant shall bear all costs related to this arbitration.*
>
> *3. Ordering the Appellant to pay a contribution towards UEFA's legal fees and other expenses incurred in connection with these proceedings".*

V. JURISDICTION

61. The jurisdiction of CAS, which is not disputed by the Parties, derives from Article R47 of the Code and the terms of the UEFA Statutes and UEFA DR. Article R47 of the Code provides as follows:

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

62. Article 62(1) of the UEFA Statutes provides:

> *"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".*

63. Further, Article 63(2) of the UEFA Statutes provides:

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

64. The jurisdiction of CAS is further confirmed by the Order of Procedure, duly signed and returned by each of the Parties.

65. It follows that CAS has jurisdiction to adjudicate on and decide the present dispute.

VI. ADMISSIBILITY

A. Background

66. At this stage the Panel draws brief attention to some of the relevant provisions and procedural steps which have informed its decision on the admissibility of the Appeal.

67. Article 62 of the UEFA Statutes provides as follows:

> *"**CAS as Appeals Arbitration Body***
>
> *Article 62*
>
> *1. 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.*
>
> *2. Only parties directly affected by a decision may appeal to the CAS.*
>
> *3. The time limit for appeal to the CAS shall be ten days from the receipt of the decision in question.*
>
> *4. An appeal before the CAS may only be brought after UEFA's internal procedures and remedies have been exhausted".*

68. Article 51(2) of the UEFA DR provides:

> *"In principle, the disciplinary bodies issue decisions without grounds, and only the operative part of the decision is notified to the parties, who are informed that they have five days from that notification to request, in writing, a decision with grounds. Failure to make such a request results in the decision becoming final and binding and the parties being deemed to have waived their right to lodge an appeal".*

69. Article 61(2) of the UEFA DR provides:

> *"No appeal is admissible if* ***a party*** *does not request, in due time, the issuance of a decision with grounds, in accordance with Article 52 of these regulations"* (emphasis added).

70. As per the procedural background set out at Section III of this Award above, on 26 November 2020, the UEFA CEDB issued the operative part of the UEFA CEDB Decision to the Appellant and the Club. The UEFA CEDB Decision included the following statement at the bottom of the final page, underneath the terms of the operative decision:

> *"Advice as regards to the decision with grounds*
>
> *Written grounds for a decision are provided if one of the parties so requests in writing within five days of receiving the operative part of the decision. Failure to make such a request results in the decision becoming final and binding and the parties being deemed to have waived their right to lodge an appeal (Article 52 (1) DR)".*

71. On 27 November 2020, the Club sent an email to the UEFA CEDB, requesting for it to be provided with the grounds of the UEFA CEDB Decision. As explained by the Appellant, based on his interpretation of the applicable UEFA regulations and the above "advice" note on the UEFA CEDB Decision, he did not request the written grounds of the UEFA CEDB Decision as the Club had already done so and informed him of this. As such, he did not believe it was necessary for him to also act to request the grounds from the UEFA CEDB, as this would be *"redundant"*. He therefore believed that his right of appeal to the UEFA Appeals Body had been preserved by the Club requesting the grounds of the UEFA CEDB Decision, and did not intend to waive his right of appeal by not doing so.

72. On 4 December 2020, the Club received the grounds of the UEFA CEDB Decision and shared them with the Appellant. The Club ultimately decided not to appeal the UEFA CEDB Decision.

73. On 11 December 2020, the Appellant filed an appeal against the UEFA CEDB Decision with the UEFA Appeals Body, as referenced at para. 19 above.

74. On 16 December 2020, the UEFA Appeals Body declared the Appellant's appeal inadmissible, finding that he had failed to request the grounds of the UEFA CEDB Decision, in accordance with Article 52(1) UEFA DR and the statement contained in the UEFA CEDB Decision.

75. On 21 December 2020, the Appellant objected to the UEFA Appeals Body's decision to render his appeal inadmissible and requested it to reconsider its decision.

76. On 23 December 2020, the UEFA Appeals Body denied the Appellant's request, informing him that the content of the UEFA CEDB Decision was final.

77. On 25 December 2020, the Appellant filed his Statement of Appeal with CAS against the UEFA CEDB Decision via email. In the cover email, the Appellant requested access to the CAS e-filing platform so that he could also upload his Statement of Appeal to the platform.

78. On 29 December, having not received a response from the CAS Court Office during the Christmas break, the Appellant again requested access to the CAS e-filing platform.

79. On 30 December 2020, CAS granted the Appellant access to the CAS e-filing platform. On the same day, the Appellant uploaded his Statement of Appeal to the platform.

80. Taking into account the above, together with the submissions of the Parties, the Panel's findings on the admissibility of the Appeal are as follows:

B. Timeliness of the Appeal

81. The Appellant stated from the outset with his Statement of Appeal that his understanding was that due to COVID-19 situation, there was no need to send the Appeal documents via courier, if they were submitted via the CAS e-filing platform. The Appellant cites the right provided by Article R31 of the Code in this respect, but adds that he *"could not have sent the documents via courier, even if he wanted to"* as *"there were few couriers available which were engaged in delivering the court documents, urgent correspondences only"*.

82. Article R31(3) of the Code appears to set out a general rule that appeals shall be filed by courier, but also provides:

> *"if they are transmitted in advance by facsimile or by electronic mail at the official CAS email address (procedures@tas-cas.org), the filing is valid upon receipt of the facsimile or of the electronic mail by the CAS Court Office provided that the written submission and its copies are also filed by courier or uploaded to the CAS e-filing platform within the first subsequent business day of the relevant time limit…Filing of the above-mentioned submissions by electronic mail is permitted under the conditions set out in the CAS guidelines on electronic filing"*.

83. It is undisputed that the Appellant filed the requisite Appeal documents with CAS via email within the deadline, on Friday 25 December 2020.

84. It is also undisputed that on Monday 28 December 2020 the Appellant submitted the receipt of the payment of the CAS Court fee to the CAS Court Office.

85. From his first correspondence with the CAS Court Office on Tuesday 29 December 2020, the Appellant requested access to the e-filing platform so that he could also file the documents there, as envisaged by Article R31 of the Code. The *prima facie* deadline for this filing via e-filing was 29 December 2020. Directions as to how to request access are available on CAS' website, but in any event require access to be granted by CAS, with the creation of an account, user name and password, and can only be given following the filing of a Statement of Appeal and allocation of a case number for the proceedings.

86. The CAS Court Office replied to the Appellant's communications on 29 December 2021. The Appellant took proactive action to contact CAS in this regard and repeated his request for access to the e-filing platform. When informed by CAS that he was required to complete a Case Registration Form, he acted on this on the same day. However, due to the late hour, the CAS

Court Office was only able to action this, allocate a case number and provide him access the next day, on 30 December 2021. 30 December 2021 was therefore the first day on which it was possible for the Appellant to complete the formalities of his filing by uploading the documents already filed over email to the CAS e-filing platform.

87. In view of the circumstances of this particular situation (filing of the statement of appeal during the Christmas break, late transmission of the receipt for the payment of the Court Office fee, belated transmission of the Case Registration Form) and in light of Article R31(3) of the Code (*"the first subsequent business day of the relevant time limit"*), the Appellant should not be punished for an impossibility – being unable to file the appeal documents on the CAS e-filing platform before being granted access by the CAS Court Office (being 30 December 2020).

88. In these respects, the Panel notes that from his first message to the CAS Court Office, the Appellant repeatedly made clear his intention to file his statement of appeal via the CAS e-platform, and requested the CAS Court Office's assistance in this respect. Further, the Appellant was proactive in following up with the CAS Court Office to request access to the CAS e-filing platform, and acting immediately when requested to provide details for the creation of an account. The Appellant then submitted the appeal documents via the CAS e-filing platform, as soon as it was possible for him to do so. There is no suggestion that there was any advantage to be gained for the Appellant or that any significant harm was caused to the Respondent by the Appellant's actions in this respect. More generally, the Appellant cannot be suspected of any negligence or bad faith in such circumstances.

89. Further, while the Panel does not take a position as to whether filing by courier would have been possible between Azerbaijan and Switzerland in the timeframe concerned, considering (i.a.) the restrictions caused by the COVID-19 pandemic, it notes the Appellant's comments that this would not necessarily have allowed the Appellant to file any earlier than he was able to do so via email and the CAS e-filing platform. In any event, the Appellant had indeed requested an access to the CAS e-filing platform when sending his Statement of Appeal by e-mail and could legitimately expect to be able to use such platform within the time limit fixed for that purpose, based on the assumption that the CAS Court Office would activate such e-filing access.

90. The Respondent submits that the Appeal should be deemed inadmissible, because the deadline for the Appellant to file his Appeal expired on 29 December 2020, and the Appellant only completed the formalities of filing his Appeal on the CAS e-filing platform on 30 December 2020.

91. In this respect, the Panel notes the Respondent's arguments about the importance of legal certainty and the jurisprudence under Swiss law relating to previous CAS appeals deemed inadmissible due to non-compliance with procedural forms. However, the Respondent has not cited any cases with this or a similar fact pattern which would justify denying the Appellant the right to be heard of the basis of late filing (or e-filing), despite the due care which the Appellant demonstrated to file in the manner and within the timeframe prescribed by the applicable rules. Such an approach would not reflect the specific circumstances of the case, and in particular the fact that the Appellant undisputedly filed his appeal documents via email within the deadline,

was repeatedly proactive in asking for access to the CAS e-filing platform so that he could complete his submission, filed via that platform as soon as he was technically able to do so. In these specific circumstances, the Panel finds that to deem the Appeal inadmissible on the basis of not being filed on time would risk denying the Appellant the right to be heard for reasons of excessive formalism.

92. The Panel is therefore satisfied that the Appeal was timely, having been filed by email on 25 December 2020, and uploaded to the CAS e-filing platform at the first opportunity technically possible for the Appellant, on 30 December 2020.

93. The Appeal was therefore filed within the time limit prescribed by R49 of the Code and Article 62(3) of the UEFA Statutes. The Appeal complies with all requirements of Article R48 of the Code, including the payment of the CAS Court Office fee.

C. General Admissibility of the Appeal – UEFA Decisions

94. The Respondent submits that the Appellant's Appeal should be deemed inadmissible as to the UEFA CEDB Decision, because (unlike the Club) he did not request the grounds of the UEFA CEDB Decision within the permitted timeframe, and the UEFA CEDB decision therefore became final and binding as to him upon the expiration of that timeframe. The Respondent submits therefore that the Appeal is admissible only to the extent that it is directed against the UEFA AB Decision.

95. The Respondent further states, however, that in the event that the Panel agrees with the Appellant's claim that the UEFA Appeals Body erred in considering his appeal against the UEFA CEDB Decision as being inadmissible, for the sake of efficiency, the Panel should issue a new decision on the merits of this case.

96. The Appellant submits that the UEFA Appeals Body erred in finding his appeal against the UEFA CEDB Decision inadmissible. In this respect, the Appellant refers to the content of the UEFA Regulations and in particular to the "advice" note at the bottom of the final page of the UEFA CEDB Decision, beneath the text of the operative decision.

97. The Appellant argues that, based on this wording, it was only necessary for one of the Parties to the UEFA CEDB Decision to request the grounds in order to prevent the content of that decision becoming final and binding on all the parties. As the Club had requested the grounds, it was not necessary for the Appellant to do so as well. The Appellant further argues that the wording of this "advice", if held to be ambiguous, should have been construed *contra proferentem* in favour of the Appellant, so as to allow his appeal before the UEFA Appeals Body to proceed. The Appellant argues that he never intended to waive his right to lodge an appeal, especially given the crucial nature of matter at stake, and that in ruling incorrectly that he had done so, the UEFA Appeals Body deprived him of his fundamental right to be heard.

98. The Panel has analysed the wording of the relevant UEFA Regulations and the "advice" note contained in the UEFA CEDB Decision which cover the procedure as to appeals against that decision.

99. Having done so, the Panel is not persuaded by the Respondent's argument that the correct and logical interpretation of the wording is that each party must request the grounds in order to prevent the decision from becoming final on that party.

100. In terms of the UEFA regulations, a literal reading of the wording of Article 51(2) and 61(2) UEFA DR provides little support for the Respondent's argument that the UEFA CEDB Decision became final and binding on the Appellant despite the Club having requested the grounds of the decision pursuant to the terms of those provisions.

101. Article 51(2) refers twice to *"parties"* (plural), in terms of a failure to request such grounds resulting in the decision becoming final and binding on those parties. Article 61(2) further reinforces that *"No appeal is admissible if* ***a party*** *does not request, in due time, the issuance of a decision with grounds, in accordance with Article 52 of these regulations"* (emphasis added). While both provisions are arguably ambiguous, (in which case they should be read *contra proferentum* against the Respondent), the Panel's literal reading of those provisions is that only one party is required to request the grounds of a decision in order to delay the decision becoming final and binding on all parties. No distinction is drawn between the parties in this respect, so as to say for example that failure of any **one party** to request the grounds of a decision results in the decision becoming final and binding **against that party**. Such words could have been easily drafted by the Respondent if that was in fact the intention of these provisions.

102. In terms of the "advice" note, this also provides that *"written grounds for a decision are provided if* ***one of the parties*** *so requests in writing"* (emphasis added). Again, the literal wording of this provision only requires a single party to request the grounds of a decision in order to trigger the UEFA CEDB's obligation to provide those grounds. The provision goes on to state that a *"failure to make such request results in the decision becoming final and binding and* ***the parties*** *being deemed to have waived their right to lodge an appeal"* (emphasis added). Here again, no distinction is drawn between any of the parties to a case. There is no provision for the situation in which one party requests the grounds of a decision but another does not. It cannot be inferred from the literal wording of the provision that in such a situation, the party which failed to request the grounds of the decision is bound by the terms of the decision. Nowhere is this stated or implied in the wording of the provision.

103. Nor is the Panel persuaded by the Respondent's argument that it should read such words into the provision, because this is the logical interpretation in a scenario whereby a party may not know if the other parties have appealed or not. There is indeed a strong probability, as in this case, that the parties to the decision may communicate with each other, and agree whether or not one of them will request the grounds of the decision, or at least may know that one of them has requested the grounds of the decision. There is no reason to doubt the Appellant's assertion that he communicated with the Club (his employer at that time) throughout the appeal process, and that he did not believe it was necessary to also formally request the grounds to the decision, as he would receive these from the Club following its request, and retain his right to appeal.

104. At 'best' the wording of the UEFA Regulations and "advice" note is therefore ambiguous on an objective reading of their terms and should therefore be read *contra proferentem* against the

Respondent, and in fact a contextual reading supports the Appellant's interpretation of the provisions.

105. The Panel notes further, that by the Respondent's logic, as in this case only the Club requested the grounds of the decision, and the Appellant was deemed to have waived his right to request the grounds through his silence, the reasoned decision of the CEDB need only have contained the reasons for the sanction against the Club (i.e. the fine).

106. Instead, the reasoned decision is a single contiguous decision which sets out in full the basis for the sanction against both the Club and the Appellant. The determination of the sanction is set out in a single section V which is entitled *"the determination of the appropriate disciplinary measure"* (singular). Nowhere is a distinction drawn between the sanction against the Club (which the Respondent argues was at that point still appealable) and that against the Appellant (which the Respondent argues was not). The substance and form of the UEFA CEDB Decision also therefore give no support to the Respondent's argument that the decision was by this point final and binding on one of the parties, but not another.

107. Further, term 3 of the operative part of the UEFA CEDB Decision states *"Qarabağ FK ensures that Mr. Nurlan Ibrahimov is personally informed of this decision"*. It is clear therefore that the justice organs of UEFA channelled their contact with the Appellant through the Club, which is not uncommon for a continental governing body such as the Respondent. It should not be a surprise to the Respondent, therefore, that the Appellant and Club would proceed on the basis that the Club could request the grounds of the decision for the benefit of both those parties, and that the grounds of the decision would be shared between the Club and Appellant, preserving the appeal rights of both.

108. On analysing the relevant provisions therefore, the Panel finds no support for the Respondent's argument that each party to the UEFA CEDB Decision wishing to preserve its rights of appeal needed to request the written grounds of the decision. If this was in fact the intention behind the Regulations and the "advice" note, then it was open to the Respondent to draft them in a way to make this clear. As it did not do so, and there is a genuine doubt, on an objective assessment, as to the true intention behind these provisions, the Panel agrees with the Appellant's submission that this doubt should be resolved in favour of the Appellant, in accordance with the principle of *contra proferentem*.

109. The Panel therefore finds that the UEFA Appeals Body erred in finding the Appellant's appeal to it against the UEFA CEDB Decision inadmissible. The appeal was in fact filed within the timeframe, as the Club's requesting of the grounds of the UEFA CEDB Decision, and the Appellant's reliance on that request, meant that the decision was not yet final and binding upon the Appellant at the time of his appeal.

110. In this event, the Respondent submits that the Panel should issue a new decision on the merits of the case. This is in line with the Appellant's position, which is that the Appeal is admissible as to the content of the UEFA CEDB Decision.

111. The Parties' position in this respect is supported by the wording of Article 62(1) UEFA Statutes, which provides that *"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"*. As such, the Panel is not restricted to hearing appeals from the decisions of the UEFA Appeals Body, but may also hear an appeal against the decision of UEFA CEDB, if all other requirements for admissibility are met.

112. Article 62(3) UEFA Statutes provides that such *"an appeal before the CAS may only be brought after UEFA's internal procedures and remedies have been exhausted"*. On the facts, this also appears to be the case, as the Appellant has sought (unsuccessfully) to appeal the UEFA CEDB Decision to the UEFA Appeals Body, which deemed his appeal inadmissible. He has therefore exhausted UEFA's internal procedures and remedies and seeks a remedy before CAS.

113. It follows that the present Appeal is admissible as to the content of the UEFA CEDB Decision, as well as to the UEFA Appeals Body's decision not to admit his appeal against that decision.

114. In accordance with the submissions of the Parties, the Panel shall issue a new award on the merits of the UEFA CEDB Decision, pursuant to its powers of *de novo* review contained in Article R57 of the Code. Any procedural errors or incorrect findings of the UEFA Appeals Body as to the admissibility of that decision shall be considered cured by the *de novo* nature of this review.

D. Admissibility of the Appeal as to the FIFA DC Decision

115. The Respondent further submits that the Appeal is inadmissible with respect to the FIFA DC Decision, as FIFA is not a party to these proceedings and the Appellant has failed to exhaust his internal remedies to appeal the FIFA DC Decision before the appropriate FIFA authorities. The Appellant has not raised any evidence to dispute this.

116. The Panel agrees with the Respondent's reasoning in this respect, but notes that, in any event, the FIFA DC Decision states explicitly that it will follow the outcome of any possible appeal lodged against the UEFA CEDB Decision, *"as long as the decision on appeal complies with the regulations of FIFA"*.

117. In the event that the Panel upholds the Appeal against the UEFA CEDB Decision and reverses or amends that decision, it will therefore be left to the Parties to separately address the matter of the FIFA DC Decision with the appropriate FIFA authorities, to the extent that FIFA does not automatically amend its decision to reflect the outcome of these proceedings.

E. Conclusion – Panel's Findings as to Admissibility

118. In summary, the Panel's findings as to the admissibility of the present Appeal are as follows:

    i. The Appeal is admissible as to the content of the UEFA CEDB Decision.

ii. Any procedural errors or incorrect findings of the UEFA Appeals Body as to the admissibility of the UEFA CEDB Decision before the UEFA Appeals Body shall be considered cured by the restorative power of the *de novo* procedural powers of CAS.

iii. The Appeal is inadmissible as to the FIFA DC Decision, which in any event self-identifies as following the outcome of any appeal proceedings as to the content of the UEFA CEDB decision.

VII. APPLICABLE LAW

119. Article R58 of the Code provides as follows:

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

120. Article 64 of the UEFA Statutes provides:

> *"**Governing Law and Legal Forum***
>
> *Article 64*
>
> *1. These Statutes shall be governed in all respects by Swiss law.*
>
> *2. The legal forum shall be the headquarters of UEFA. Lausanne (Switzerland) shall be the legal forum for all cases which, in accordance with these Statutes, come under the jurisdiction of CAS".*

121. The Panel accepts the primary application of the various regulations of UEFA, in particular the UEFA Statutes and UEFA DR and, subsidiarily, Swiss law, should the need arise to fill a possible gap in the regulations of UEFA. This approach is not disputed by the Parties.

VIII. MERITS

A. Background

122. Based on the submissions of the Parties, there are three questions which the Panel is required to address in its Award:

i. Was the UEFA CEDB impartial in reaching its decision?

ii. Did the UEFA CEDB apply the UEFA DR correctly?

iii. Was the UEFA CEDB's sanction proportionate?

123. As a precursor to addressing these questions, the Panel restates at this point the details of the offences which the Appellant was found to have committed by the UEFA CEDB and the sanction contained in the UEFA CEDB Decision.

124. The operative terms of the UEFA CEDB Decision, in so far as it relates to the Appellant, read as follows:

> *"1. Mr. Nurlan Ibrahimov, Qarabağ FK official (i.e. press officer) at the time of the relevant facts, is banned from exercising any football-related activity for life from the date when he was provisionally banned (i.e. 3 November 2020), for the violation of Articles 11(2)(b) and 14(1) DR.*
>
> *2. To request FIFA to extend worldwide the above-mentioned life ban".*

125. Articles 11(1) and 11(2)(b) UEFA DR read as follows:

> *"Article 11 General principles of conduct*
>
> *1. Member associations and clubs, as well as their players, officials and members, and all persons assigned by UEFA to exercise a function, must respect the Laws of the Game, as well as UEFA's Statutes, regulations, directives and decisions, and comply with the principles of ethical conduct, loyalty, integrity and sportsmanship.*
>
> *2. For example, a breach of these principles is committed by anyone: […]*
>
> *b. whose conduct is insulting or otherwise violates the basic rules of decent conduct;"*

126. Article 14(1) UEFA DR reads as follows:

> *"Article 14 Racism and other discriminatory conduct*
>
> *1. Any 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, ethnic origin, gender or sexual orientation, incurs a suspension lasting at least ten matches or a specified period of time, or any other appropriate sanction".*

127. It is not disputed that the Appellant was bound by the terms of the UEFA DR at the time of the Post. Nor is it disputed by the Appellant that he committed the offences in question. There is therefore no need for the Panel to address these points before turning to each of the three questions above.

128. In addressing these three questions, it is a well-established principle of CAS jurisprudence that the party which asserts facts to support its rights has the burden of establishing them. This is in line with Article 8 of the Swiss Civil Code which stipulates that: *"Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact".*

B. Was the UEFA CEDB impartial in reaching its decision?

129. The Appellant argues that the UEFA CEDB lacked impartiality in reaching its decision. This argument appears to be based on his claim that the Armenian Football Federation was responsible for reporting the Appellant's Post to the Respondent, and that there followed an intense reaction online and on social media for the Respondent to take action to punish his behaviour. This, the Appellant argues, meant the UEFA CEDB was under *"intense pressure"* and this pressure *"led to the adoption of the harshest disproportionate sanction with regard to the Appellant and the Club"*. The Appellant also claims that he was the recipient of online abuse and threats as a result of his post, though it is not clear how he suggests such threats might have affected the judgment of the UEFA CEDB.

130. The Respondent refutes the Appellant's claims entirely, and submits that there is no evidence to suggest the UEFA disciplinary bodies were not impartial. The UEFA CEDB and UEFA Appeals Body are experienced disciplinary bodies appointed by the Respondent and there is no evidence that the Armenian Football Federation exerted any kind of pressure on them, *"either directly or through any possible influence within UEFA"*.

131. The Panel agrees with the Respondent on this point. The Appellant has not produced any evidence to substantiate his claim that the UEFA CEDB was not impartial. Nor has he provided any evidence that, even if the Appellant's Post was reported to the Respondent by the Armenian Football Federation, this in any way affected the judgment of the UEFA CEDB or the outcome of the Appellant's case. When reading the grounds of the UEFA CEDB Decision, there is no evidence to suggest that any perceived or actual external pressure played any role in determining the decision reached by the UEFA CEDB.

132. Nor does the Panel find anything particularly unusual about the wording of the UEFA EDI's report, which cites the offences which the UEFA EDI alleged the Appellant had committed, the reasoning for his findings and the requested sanctions to be applied by the UEFA CEDB. While the report is strongly-worded, this is in-keeping with the Respondent's consistently-espoused position on the seriousness of the conduct committed by the Appellant, as well as the role of the UEFA EDI set out in Article 34bis(2) UEFA Statutes, to represent UEFA in proceedings before the UEFA CEDB and UEFA Appeals Body.

133. The Panel therefore finds there is no evidence to support the Appellant's unsubstantiated allegation that the UEFA CEDB lacked impartiality in reaching its decision in his case, and dismisses the Appellant's argument on this point.

C. Did the UEFA CEDB apply the UEFA DR correctly?

134. The Appellant argues that the UEFA CEDB misapplied the UEFA DR by failing to take into account certain considerations which he cites as mitigating factors in his case, contrary to Article 23(1) UEFA DR.

135. Article 23(1) UEFA DR provides:

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

136. In analysing the wording of the UEFA CEDB Decision, the Panel notes that the UEFA CEDB directly referenced some of the circumstances which the Appellant cites as mitigating factors as having been considered in the section of the decision entitled *"The responsibility of the Mr. Ibrahimov for posting the statements on his social media account".*

137. For example, at para. 23 of the UEFA CEDB Decision, the UEFA CEDB states:

> *"The CEDB also notes the statements of Mr. Ibrahimov in which he recalls that the post was published as a consequence of an "affective reaction" to the death of a seven-year old girl, emphasising that he was already fined in accordance with Azerbaijani law".*

138. The UEFA CEDB went on to find, however that:

> *"the post has a clear racist and derogatory connotation and went too far beyond any affective reaction. The fact that Mr. Ibrahimov called for a genocide is totally unacceptable and has absolutely no place in football".*

139. The UEFA CEDB also considered the fact that the Appellant subsequently deleted the Post, but found that this was irrelevant as to the commission of the offence, as *"by publishing these racist and discriminatory messages, Mr. Ibrahimov violated the basic rules of decent conduct and breached the general principles of conduct".*

140. In the section of the UEFA CEDB Decision entitled *"The determination of the appropriate disciplinary measure"* the reasoning of the UEFA CEDB reasoning as to the sanction against the Appellant reads as follows:

> *"37. As regards Mr. Ibrahimov, having established that the post published on his social media account is considered as being in breach of Article 11(2)(b) DR in connection with 11(1) DR as well as Article 14(1) DR, the CEDB must determine the appropriate sanction for such behaviour displayed by Mr. Ibrahimov.*
>
> *38. The CEDB notes that the EDI had proposed to ban Mr. Ibrahimov for life from exercising any football-related activity, a sanction which is also contemplated in Article 6(2) DR. In this sense, the CEDB considers that the statements of Mr. Ibrahimov constitutes the most serious violation of the DR and, consequently, that this violation needs to be punished accordingly.*
>
> *39. Considering the above and taking into consideration the disciplinary measures contemplated in Article 6(2) DR, the CEDB deems it appropriate to ban Mr. Ibrahimov from exercising any football-related activity for life. Furthermore, considering the seriousness and gravity of Mr. Ibrahimov statements and his lack of regret for his post calling for a genocide, the CEDB considers appropriate to request FIFA to extend such a ban at worldwide level".*

141. The remaining paragraphs of this analysis section explicitly relate to the sanction against the Club.

142. The Panel notes, therefore, that the relevant section of the UEFA CEDB Decision is short, and does not explicitly reflect that the UEFA CEDB conducted an exercise in which it weighed up the mitigating and aggravating factors in the Appellant's case before it reached a final decision as to sanction.

143. It should be noted, however, that the Respondent's consistent position is that there are no mitigating factors in this case, only aggravating factors. This appears to be the position adopted by the UEFA CEDB in its decision.

144. The UEFA CEDB specifically states that the Appellant's lack of remorse for his post, and cites this as an aggravating factor in the case which justified the strengthening of the sanction by requesting FIFA to extend the lifetime ban worldwide. Based on the assessment of the UEFA CEDB that the Appellant had not shown remorse for his actions, there was therefore no basis for it to consider this as a mitigating factor in the case.

145. In relation to the other key points which the Appellant identified as mitigating factors, the majority of these are referenced at para. 7 of the UEFA CEDB Decision as being contained within the Appellant's submissions to the UEFA CEDB, but are not discussed in any detail in the decision.

146. The Panel notes that it is possible that the UEFA CEDB did consider each of these submissions by the Appellant in detail, but determined that none of them amounted to mitigating factors, and that it was not necessary to include them in the grounds of its decision. This would be in-keeping with the statement in para. 1 of the UEFA CEDB Decision that provides:

> *"The elements set out below are a summary of the main relevant facts as established by the Control, Ethics and Disciplinary Body (CEDB) on the basis of the report of the UEFA Ethics and Disciplinary Inspector ("EDI") and the exhibits filed. While the CEDB has considered all the facts stipulated in the above-mentioned report, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning".*

147. On such a basis, the Panel might already reasonably determine that if the UEFA CEDB analysed the submissions of the Appellant in good faith and came to a reasonable decision that none of the circumstances cited by him amounted to mitigating circumstances, then there was nothing to take into account for the purposes of Article 23(1) UEFA DR and there was therefore no misapplication of that Article by the UEFA CEDB. Considering, however, the lack of reference to the factors cited by the Appellant in the wording of the UEFA CEDB Decision and the *de novo* nature of its powers of review in the present Appeal, the Panel shall briefly address each of the four key points cited by the Appellant as mitigating circumstances to assess whether these should be reflected in the sanction against the Appellant.

The circumstances triggering the Post were not considered, in particular the context of the conflict between Azerbaijan and Armenia.

148. The Panel takes into consideration all of the Appellant's submissions on the context of the conflict situation which existed at the time of the post, in particular the distressing news reports witnessed by the Appellant detailing attacks on cities and deaths of civilians including children, and his fears for his safety and that of his family. The Panel does not doubt the Appellant's sincerity as to the distress which this caused him, nor that his Post was a reaction to these events.

149. However, the Panel also reminds itself of the content of the Appellant's Post at the heart of the case. In the post, the Appellant explicitly calls for the killing of all Armenians *"to the very last one"*, including (specifically and explicitly) *"their children, women, and elderly"*.

150. The wording of the Appellant's Post speaks for itself. It is truly horrific. The Post is a direct call for the genocide of all Armenian people, as defined in a number of internally-recognised legal frameworks such as the Rome Statute of the International Criminal Court, which provides a definition of genocide at Article 6. The Panel has no doubt that such a post would also carry individual criminal liability in a number of jurisdictions, as reflected, for example, in 25(e) of the aforementioned Rome Statute, which criminalises, *"in respect of the crime of genocide, anyone who directly and publicly incites others to commit genocide"*.

151. The Panel agrees with the UEFA CEDB's assessment at para. 24 of its decision that it *"strongly condemns these words and emphasises that these types of comments do not have any place in football, let alone in any civilised society. The CEDB considers that the post has a clear racist and derogatory connotation and went too far beyond any affective reaction. The fact that Mr. Ibrahimov called for a genocide is totally unacceptable and has absolutely no place in football"*. Further, the Panel accepts the Respondent's submission that the Appellant's conduct stands in absolute contradiction to its core values and the fundamental goal to eradicate racism and discrimination from football.

152. The Panel has closely considered the context to the Appellant's behaviour – in particular the situation of conflict which existed at the time of the Appellant's post, close where he lives, the Appellant's submissions on the effects this had on him and his family, and in particular his reaction to the news reports showing (i.a.) the death of children, himself being a father of four. Weighed against this, however, the Panel must consider the abhorrently horrific and violent nature of the words chosen by the Appellant, and the potential damage such words may cause, including in such a conflict situation.

153. The wording of the Appellant's Post is so wholly offensive, discriminatory, violent and intolerable that to consider the context in which it was made as a mitigating factor would risk legitimising the publication of such words as being somehow justifiable as a response to a set of circumstances in a particular context. Indeed it is hard for the Panel to imagine any set of circumstances which would justify the wording of the Appellant's Post.

154. As such, while the Panel has fully considered the Appellant's submissions on this point, it cannot find that the circumstances triggering the Post were a mitigating factor which justify a reduction in the sanction against him.

The Appellant's remorse, sincere confession and apology were not considered (he made a subsequent social media post containing an apology, having removed the first post).

155. The Appellant's argument that he has apologised and shown remorse for his actions, and this should be taken into account as mitigating factor, appears to be based primarily on the content of a second Facebook post which he made, following deletion of the Post for which he was sanctioned, as well as in statements he made to the Respondent during the course of the UEFA CEDB proceedings.

156. It is undisputed that the Appellant has admitted his commission of the offence, following the commencement of proceedings against him by the Respondent. There was in any event, little doubt in this, as the Post was made by him through his named Facebook profile, and the words in the Post undoubtedly represent a breach of the UEFA DR.

157. It is disputed by the Respondent, however, that the Appellant has apologised for or shown any genuine remorse for his actions.

158. Upon analysis of the wording of the second Facebook post by the Appellant (as translated by the Respondent and uncontested by the Appellant), and the submissions made by the Appellant during the course of the UEFA CEDB proceedings, the Panel agrees with the Respondent that there is no evidence of the Appellant having made a full apology or shown remorse for the content of the Post itself.

159. These comments by the Appellant focus primarily on: (i) explaining his motivations for the post; and (ii) showing his regret that the Club was also caught up in the UEFA CEDB proceedings and received criticism as a result of his actions. In neither respect can this accurately be deemed an apology for the action of posting the offensive words in question, nor showing remorse for his actions or the effects those words caused on others.

160. Even making allowance for the Appellant's lack of English language skills, the Appellant must surely understand and appreciate the difference between, on the one hand, his clear expression of regret and sympathy for the Club having suffered as a result of his actions, and on the other hand, his complete lack of contrition, apology or remorse for the actual content of his post, its violent, racist and inflammatory nature and the widespread actual and potential offence which it undoubtably caused.

161. Had the Appellant made a genuine apology as to the actual content of the Post, accepted that the words he used were deeply offensive, wrong and inappropriate, and shown remorse and contrition for the effects that his Post may have caused, the Panel would have deemed it appropriate that this would be considered a mitigating factor, which the UEFA CEDB should have in turn taken into account when determining the sanction. As this did not happen, the Panel finds there is no basis to find that mitigating circumstances exist in this respect.

162. The Panel notes that the Appellant has also had every opportunity during the course of these proceedings before CAS to apologise and show remorse in a way that he did not do before the UEFA CEDB, but that he has failed to do so. The Panel shall turn to this point in more detail when considering the proportionality of the sanction at point D below.

The Appellant's previously clean record was not considered.

163. The Panel notes that this was the first recorded incidence of this Appellant being found to have breached the UEFA DR or otherwise being sanctioned by UEFA for his behaviour and finds that this should be taken into account. However, the Panel also notes the Respondent's submissions that the Appellant's previous clean record is irrelevant here considering the seriousness of the conduct.

164. Again considering the extremely serious nature of the conduct in question, the Panel has difficulty accepting that the Appellant's previously clean record in and of itself should be held to be a mitigating factor. The language used by the Appellant was so offensive and violent, that he must surely have understood his posting of it was wrong, and would inevitably leads to serious consequences.

165. Further, the Panel does not find that the Appellant's described non-reaction to previous incidents of alleged "provocation" against him and/or the Club constitute mitigating circumstances for his behaviour. While the Panel is willing to accept that incidents such as those described by the Appellant may well have occurred (e.g. opposition fans bringing flags with a political context into the stadium), and that such incidents may have generated an emotional response from the Appellant, such incidents would in no way excuse or explain him posting a statement advocating genocide. The appropriate response to such incidents would be for the Appellant and/or the Club to have reported such incidents to UEFA or other appropriate authorities (which they may well have done). The fact that the Appellant did not previously respond to such incidents in a way which breached the UEFA DR does not constitute a mitigating factor for him now having done so.

166. In this context, the Panel notes that 'recidivism' is explicitly identified as an aggravating factor under Article 25(2) UEFA DR. In the context of the UEFA DR, the Panel therefore views the Appellant's previously clean record primarily as the absence of an aggravating factor, rather than the presence of a mitigating one.

167. Therefore, while the Panel believes that it is appropriate that the previously clean record of the Appellant is taken into account, the more appropriate point at which to do this is in considering the proportionality of the sanction and whether a lifetime ban is truly necessary and proportionate in order to sufficiently punish the conduct and prevent recidivism, considering this is the first offence of this kind committed by the Appellant. The Panel addresses this question at point D below.

The Appellant was subject to two punishments for his behaviour (one by the Club – his employment was terminated, another by UEFA. The Appellant was also fined by an Azeri court)

168. The Panel notes that in addition to the lifetime ban from football-related activities, the Appellant submits that separately his employment contract was terminated by the Club, and that he was also fined as the result of court proceedings in Azerbaijan.

169. The Panel however agrees with the Respondent that such disciplinary procedures are separate from and have no bearing on the outcome of the present case. The Panel does not find these to be mitigating circumstances in that they do not reduce the culpability of the Appellant for his actions.

Aggravating factors

170. The Panel notes that the Respondent has also cited two factors which it identifies as aggravating circumstances in the present case, namely: (i) role of the Appellant as senior PR and Press Officer at the Club for 14 years means he should be held to a higher standard than others; and (ii) the Post was made on the Appellant's public Facebook profile for the world to see.

171. The Panel does not deem it necessary to take a position as to whether these factors constitute aggravating circumstances in this case, considering the maximum period of time for a ban (lifetime) was already imposed by the UEFA CEDB and that the Respondent only asks for the UEFA CEDB Decision to be upheld, not for its sanction terms to be extended or amended. To the extent that these points remain relevant, they may be considered by the Panel in assessing whether or not the sanction contained in the UEFA CEDB Decision was proportionate in all the circumstances of the case, at point D below.

172. Having determined that the UEFA CEDB applied the UEFA DR correctly in dismissing the Appellant's arguments on the presence of mitigating factors, the Panel shall now proceed to this proportionality assessment.

D. Was the UEFA CEDB's sanction proportionate?

173. In line with its *de novo* powers, when determining whether the sanction contained in the UEFA CEDB Decision is proportionate, all the specific circumstances of the case must be taken into account. The Panel notes the margin of discretion afforded to the UEFA CEDB through the principle of autonomy of association as a judicial body established under Swiss law, with the consequence that CAS shall demonstrate a certain degree of deference to the decision-making bodies of UEFA against which the appeal is made. For this margin of discretion to apply, however, requires that the UEFA CEDB has taken account of all the specific circumstances of the case in determining the sanction. Furthermore, the principle of autonomy of association and the application of Article 75 of the Swiss Civil Code has been extensively discussed in previous CAS decisions, and are commonly understood to be broadly interpreted, especially in an international context such as this one, to the extent that it may not be used to restrict the

scope of review by CAS panels (see, for example, *CAS 2012/A/2912*, and also LEWIS/ADAM/TAYLOR (eds.), *Sport: Law and Practice*, (3rd edition) (2014) paras. E3.90-E3.94).

174. As stated by the panel in *CAS 2019/A/6326* (para. 224):

> *"According to the CAS jurisprudence, whenever an association uses its discretion to impose a sanction, the panel shall consider that association's expertise and proximity but, if having done so, the panel considers nonetheless that the sanction is disproportionate, it must, given its de nova powers of review, be free to say so and apply the appropriate sanction (see CAS 2015/A/4338)".*

175. It is also well-established (and uncontested by the Parties) that there is no principle of binding precedent (*stare decisis*) at CAS. To the extent that it finds it useful, however, the Panel is free to take note of the decisions in previous cases which involved broadly similar circumstances, in order to aid it in determining whether the sanction in the UEFA CEDB Decision is proportionate in all the circumstances.

176. As stated at para. 128 above, it is the responsibility of the Appellant in this case to prove that the sanction is disproportionate (see, for example, *CAS 2013/A/3297*).

177. As such, the question the Panel has to ask itself is simply whether, in all the specific circumstances of the case, the Appellant has proved that the sanction is disproportionate to the offences he has committed.

178. The test the Panel will apply in this respect is the same proportionality test that CAS panels have consistently applied in accordance with Swiss law (which applies subsidiarily in this case), as referenced, for example by the Panels in *CAS 2019/A/6219, CAS 2019/A/6220 and CAS 2019/A/6344*. This test implies that there must be a reasonable balance between the misconduct and the sanction, and requires in particular that the sanction is made in pursuit of a legitimate aim, is suitable for achieving that aim, and does not go beyond what is necessary in order to achieve that aim, being reasonable in all the circumstances considering the rights and interests of those concerned.

179. The Panel begins its proportionality assessment by acknowledging that there is no "starting point" for the applicable sanction here contained in the applicable UEFA Regulations. This is in contrast to some other sanctioning regimes (for example those within the ambit of the World Anti-Doping Code) which specify such a starting point for a list of specific offences and then adjust the final sanction in light of the degree of fault or negligence of the offender and any other applicable mitigating or aggravating circumstances.

180. As referred to in para. 12 of the UEFA CEDB Decision, *"Article 2 of the UEFA Statutes establishes that "[t]he objectives of UEFA shall be to: […] (b) promote football in Europe in a spirit of peace, understanding and fair play, without any discrimination on account of politics, gender, religion, race or any other reason".*

181. This was clearly reflected in the decision making of the UEFA CEDB, which stated at paras. 20-21 of the UEFA CEDB Decision:

> *"20. The CEDB recalls the importance of good behaviour of players and officials on and off the pitch, as they are followed by a large number of supporters around the world. In this regard, the CEDB stresses that it cannot allow football matches organised by UEFA to become forums for people who want to abuse the game's popularity to publicise provocative political, religious, ideological or offensive opinions which are unrelated to sports events.*
>
> *21. For this reason, the CEDB emphasises the importance that member associations and clubs, as well as their players and officials, comply with the general principles of good conduct, avoiding the use of inappropriate gestures, vulgar or aggressive words, threats, aggressive attitudes, insults or any other type of unsporting behaviours".*

182. The Panel accepts that for the Respondent, eradicating racism and discrimination within European football is a stated primary aim of the organisation, as reflected in its statutes and communicated to all those who fall under its jurisdiction. It therefore has a genuine strong interest in sanctioning such behaviour. When that behaviour is particularly egregious (and the facts of this case represent the most egregious form of that behaviour possible in written terms), it follows that the Respondent has a strong interest in sanctioning that behaviour to the maximum extent of its sanctioning power.

183. The Panel is satisfied that the Respondent has a legitimate aim in sanctioning this sort of behaviour (to eradicate racism and discrimination in football), and that the sanction is suitable for achieving that aim (by removing the Appellant from the world of organised football to deny that forum to him, act as a deterrent and prevent recidivism). The question of proportionality therefore hinges primarily on whether or not the measure is necessary for achieving that stated aim, and is reasonable in all the circumstances of the case.

184. In this respect, the Appellant submits that the lifetime ban from football-related activities is disproportionate, in particular in terms of the effect it has had on the Appellant's family (being a father of four). He argues that it has effect beyond the football world, in discouraging other employers from hiring someone who is subject to such a sanction. The Appellant argues that a lifetime ban is usually reserved for individuals involved in corruption, match fixing, sexual harassment, doping etc., and argues that he should not be categorised together with such people as a result of a single social media post. Further he argues that there is no evidence that he would do the same thing again, citing his 15 years' experience in the football community in which he did not react to previous "provocations" with such behaviour.

185. The Respondent argues, on the contrary, that the sanction is the only proportionate sanction for the Appellant's behaviour. The Respondent strongly stressed the horrific nature of the Appellant's post, which is a clear incitement to genocide. The Respondent argues that the violence of the words used by the Appellant is enough of an indication of the risk that he poses to the Respondent for whom the fight against racism and discrimination has always been a top priority. It argues that the ban is limited to organised football and that the Appellant could still find work as a commentator or journalist, for example. Further, the Respondent emphasised the complete lack of a genuine or sincere apology from the Appellant, despite having had ample opportunity to make one. In these circumstances, it submits that the Appellant's behaviour does

not deserve anything less than a lifetime ban, and that to rule otherwise would set a precedent in such cases.

186. The Panel has considered all the submissions of the Parties on the proportionality of the sanction and all the circumstances of the case. As stated at para. 172, the Panel has determined that the UEFA CEDB was right to find that there were no substantive mitigating factors present at the time of the UEFA CEDB Decision.

187. As referenced at para. 152 above, while the Panel recognises the role that the Azerbaijan-Armenia conflict played in precipitating the Appellant's post, and that his Post was a reaction to traumatic events which he had witnessed in news reports, this neither excuses nor reduces the potential impact of the violent, abhorrent nature of the Appellant's words, which are a clear incitement to genocide. The Panel cannot think of any set of circumstances which would excuse the Appellant making a Facebook post calling for genocide of an entire population, in which he specifically states things such as *"We must kill Armenians. Their children, women, and elderly - it doesn't matter: we must kill as many of them as we can…We must kill them to the very last one..To the very last one"*. Nor does the broader situation which existed at the time of the Appellant's Post lessen the potential impact of the Appellant's words, or the harm to the Respondent's image which would be caused by allowing the Appellant to continue working in organised football in future, particularly in the context of its campaign to eradicate racism and discrimination from the sport.

188. As referenced at para. 162 above, the Panel notes that the Appellant has failed to apologise in full for the conduct at the heart of this case. In this respect, the statements which the Appellant cites as representing an apology, such as that contained in his second Facebook post and in his submissions before the UEFA CEDB and this Panel, are focused on his regret that the Club received negative publicity and ultimately a financial sanction as a result of his conduct. Nothing that the Appellant has done or said to date indicates that he has any broader remorse or regret for the abhorrent, racist, and genocidal content of the Post itself, for the widespread distress and anger which it caused or for the violence which it sought to incite.

189. The Panel would again stress that the Appellant has been afforded every opportunity to apologise and show such remorse. This included not least the personal statement which he gave at the end of the hearing. Even then, however, the Appellant made no clear apology for his actions. While he briefly reiterated that he was *"deeply sorry about what happened"*, as the Appellant did not elaborate, there is no reason to think that this statement goes beyond those he has previously made, as to his regret that the Club was caught up in the aftermath of his conduct. In short, there is little indication that even now the Appellant understands the degree of harm which he has caused or the fact that his words were fundamentally wrong.

190. Had the Appellant taken the opportunity to make a full apology for the content of the Post and his behaviour, demonstrating his remorse, confirming his understanding of the harm his actions caused and showing a desire to change his behaviour in future, the Panel would have taken this to be a mitigating factor in this case. Even had such an apology come after the close of the UEFA CEDB proceedings, the Panel would have considered the apology in determining whether or not the sanction was proportionate. As it is, the Appellant has not availed himself of such an opportunity. This strengthens the Respondent's argument that the sanction is

proportionate, considering the risk that the Appellant will repeat his behaviour in future, at great potential harm to the Respondent's image and to its efforts to tackle racism and discrimination in football.

191. As referenced at para. 167 above, the Panel notes that this is the Appellant's first offence under the UEFA DR in some years within the football community and considers this in its assessment of the proportionality of the sanction. Considering, however, the lack of an apology in this case, the Panel is not prepared to conclude based on the evidence before it that it is unlikely that the Appellant will repeat his behaviour. It is unclear to the Panel from this evidence whether or not the Appellant truly understands the gravity of his actions and is committed to avoiding them again in future. Further, the Panel notes that lifetime bans have been held to be a proportionate sanction in several cases brought by FIFA and UEFA in recent years for first offences (primarily in the context of corruption, bribery and/or match fixing). In these circumstances, the fact that this is the Appellant's first offence is not in and of itself a strong mitigating factor, considering in particular the very serious nature of the offence. The most that can be said in this context is that there is no aggravating factor present in the form of recidivism, which is in any event dealt with separately under UEFA's regulations.

192. As referenced at para. 170 above, the Panel has also considered the circumstances which the Respondent has cited as aggravating factors in this case, namely the role of the Appellant as PR and Press Officer at the Club, and the fact that the Post was made publicly for the world to see (this point is disputed by the Appellant, who argued that only the second post was public). In respect of the first point, the Panel would agree with the Respondent's assessment that, considering the Appellant's position, he would undoubtably have understood the potential harm which his Post could cause. If the Appellant did not understand after several years' experience of public communications roles in football that such a post was fundamentally wrong, inciteful and dangerous, then there must remain a concern as to whether he would come to realise this in future, if allowed to return to such a position.

193. In relation to the second point on the public nature of the post, even if the Post was made "only" to the Appellant's considerable number of Facebook friends and followers, this still represents a large number of people to whom he broadcast his incitement to genocide. The language of the Post *"we must kill…we must kill them"* clearly speaks of a desire to communicate a message for the consumption of others. These are not the private thoughts of the Appellant communicated within a private messaging group or through encrypted communication channels, etc. This is a public message intended for wider consumption, regardless of whether the audience was a few thousand people, or more. It is this specific nature of the post, as an incitement to violent action, which makes it so particularly egregious, abhorrent and dangerous.

194. The Panel notes that the sanction is a severe one; effectively the strongest available under the applicable UEFA regulations. The Appellant argues that such a sanction is usually reserved for those associated with corruption, match fixing or bribery etc. However in this respect the Panel notes that the UEFA regulations do not distinguish between these different forms of conduct in terms of which may be judged to be more serious. As stated above, eradication of racism from football is an expressed key goal of the Respondent, as set out in its regulations and espoused regularly in its communications. Just as corruption, match fixing and bribery pose a

fundamental threat to the integrity and public trust in organised football, so does the encouragement and advocation of racist, violent behaviour which would seek to cause divisions within the football community.

195. The Respondent's position is that there is no previous case it has brought before CAS which contains behaviour more serious than the Appellant's in this case. In this respect, it is hard for the Panel to compare the Appellant's actions to those seen in bribery or corruption cases, for example. It is undoubtable, however, that the Appellant's words are amongst the most offensive, violent and potentially dangerous imaginable. If previous Panels have found that first time offences of bribery, corruption and match fixing may be punishable with a lifetime ban, the Panel therefore finds no reason why the Appellant's behaviour may not also be met with such a sanction.

196. The Appellant also argues that the sanction is disproportionate because it goes beyond the world of football, by making it harder for him to find employment in other industries. The Panel notes however that the sanction is clearly restricted to employment within organised football, and that the Respondent has no control beyond that industry. While the Appellant's claim that potential employers have demurred from offering him employment due to the UEFA sanction remains unsubstantiated, the Panel is clear that it should in theory be possible for the Respondent to find alternative employment. It refers in this respect to the findings of previous Panels in cases such as *CAS 2016/A/4474* in confirming that a different standard is applied to officials than to players in this context. While players are generally less likely to be able to find alternative employment outside organised football, officials such as the Appellant should be able to make use of their transferable skills and experience to find employment in other industries.

197. Further, the Panel notes that a reduction in the sanction period would not affect whether employers outside the football industry would associate the Appellant with the conduct for which he has been punished. The reactions of potential employers may equally be influenced by the Club's termination of the Appellant's employment contract and/or the decision of the state courts to fine him for his behaviour, as much as the length of any sanction determined by this Panel.

198. Similarly, the Panel does not find that the additional measures brought against the Appellant by the Club (termination of his employment contract) and the state courts (a fine) support the view of the lifetime sanction brought by the Respondent as disproportionate. It is a logical consequence of the ban from football-related activities that the Appellant's contract with the Club would be terminated. Further, the Respondent has no control over the procedures applicable under the national laws of the Appellant. The Appellant was not fined by the UEFA CEDB, and any fine applied to the Appellant under national laws is entirely a matter for the relevant state authorities.

199. In considering all the above points, the Panel concludes that the sanction represents a very significant limitation to the Appellant's opportunity to pursue his choice of employment, especially in the football sector, but that in all the circumstances this should be considered reasonable when weighed against the interests of the Respondent in tackling racist and

discriminatory behaviour in football and maintaining public trust in its governance of the sport. The Panel must also consider the interests of others within the football community, who would expect strong action to be taken against someone within that community who publicly advocates genocidal violence. Noting this, the Panel returns finally to the question of whether the Respondent could achieve these aims with a less severe measure. After deliberation, the Panel agrees on balance with the Respondent that it likely cannot.

200. In this respect the Panel again notes the Appellant's lack of a full and clear apology for his behaviour. The Panel is not persuaded by the Appellant that he truly understands the seriousness of his wrongdoing or the dangerous potential of his words. Fundamentally, the Appellant has given no solid indication to suggest that, if allowed to participate in organised football again in future, he would refrain from repeating his advocation of genocide. While the Panel feels that it is probably a fairly unique case which would see a lifetime sanction awarded for a single social media post, such a measure may be the only proportionate sanction when the content of that post is so extremely offensive and dangerous, that to risk allowing it to reoccur would post a high degree of threat to the fundamental interests of the Respondent and others in the football community. There is therefore no apparent alternative less onerous measure which would provide the same level of certainty that the Respondent's legitimate aim in this context would be achieved.

201. The Panel finds, therefore, that even proceeding on the basis that there is no "starting point" of a lifetime ban when determining the sanction in this case, considering the nature of the Appellant's violation of the UEFA DR, the lack of mitigating factors, presence of aggravating factors, and all the other circumstances of this case, a lifetime ban is a proportionate sanction in this case.

202. The Panel therefore determines that the Appellant has failed to establish that the sanction was disproportionate in all the circumstances of the case.

E. Conclusion - Summary of the Panel's Findings on the Merits

203. The Panel has answered "yes" to each of three questions set out at para. 122 above. The Panel has determined that:

    i. there is no basis to find the UEFA CEDB was not impartial in reaching its decision;

    ii. the UEFA CEDB correctly applied the UEFA DR in determining that there were no mitigating factors in the present case; and

    iii. the sanction contained in the UEFA CEDB Decision was proportionate.

204. The Panel therefore finds that the Appellant's lifetime ban from all football-related activities contained in the UEFA CEDB Decision should be maintained and that the Appellant's appeal should be dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Nurlan Ibrahimov on 25 December 2020 against the decision of the UEFA Control, Ethics and Disciplinary Body dated 25 November 2020 is dismissed.

2. The decision of the UEFA Appeals Body dated 16 December 2020 is set aside.

3. The decision of the UEFA Control, Ethics and Disciplinary Body dated 25 November 2020 is confirmed.

4. The appeal filed by Nurlan Ibrahimov on 25 December 2020 against the decision of the FIFA Disciplinary Committee dated 2 December 2020 is inadmissible.

5. (…).

6. (…).

7. All other motions or prayers for relief are dismissed.