



Arbitration CAS 2010/A/2225 P.F.C. Litex Lovech v. Union des Associations Européennes de Football (UEFA) & Debreceni VSC, award of 25 January 2011 (operative part of 24 September 2010)

Panel: Mr Lucas Anderes (Switzerland); Mr Bard Racin Meltvedt (Norway); Prof. Michael Geistlinger (Austria)

Football

Disciplinary sanction for fielding an ineligible player in a match

Conditions for awarding a match by default when fielding an ineligible player in a match

Fielding an ineligible player in a match and application of the principle of proportionality

1. Article 14 of the UEFA Disciplinary Regulations (DR) lists thirteen disciplinary measures, among which *“awarding a match by default”*, which may be imposed against a club which has breached the UEFA Regulations, for instance by fielding an ineligible player. The specific sanction of *“awarding a match by default”* is dealt with in article 14bis DR. Although article 14bis para. 4 DR provides that *“a default result may be awarded against a team that fields an ineligible player”*, the objective of the provision is obviously only to limit the possibility to award a match by default when an ineligible player was fielded in to the two cases contemplated under this provision, namely (1) when the opposing team filed a protest or (2) when the cause of the player’s ineligibility was a disciplinary body decision or directive. This provision is not a *lex specialis* prevailing on article 14 DR and setting a principle of strict liability as to the awarding of a match by default in case of a team fielding an ineligible player. Furthermore, even if the opposing team does file a protest, the competent disciplinary body is not obliged to award by default. The use of the word “may” shows an authorization for the disciplinary body to award a match by default and not an obligation to do so, otherwise the word “must” or “shall”, more common in the legal language, would have been used.
2. The principle of strict liability does not apply when a club fields in an ineligible player. The competent panels apply the principle of proportionality weighing the significance of the breach with the fault or negligence of the party in breach. Therefore, and also in conformity with CAS jurisprudence, article 17 DR imposes on a CAS panel the duty to assess whether the club committed a breach by fault or negligence and if awarding a match by default against a club to the advantage of the other club would be proportionate.

PFC Litex Lovech (“the Appellant” or “Litex”) is a football club registered with the Bulgarian Football Association.

The Union des Associations Européennes de Football (UEFA) is the governing body for football in Europe. It is an association registered in Nyon, Switzerland and governed by Swiss law, notably article 60 et seq. of the Swiss Civil Code (article 1 of the UEFA Statutes).

Debreceni VSC (“Debrecen”) is a football club affiliated with the Hungarian Football Association.

Litex played away against Debrecen on August 19, 2010 in the first leg of the third qualifying round of the UEFA Europa League. Litex was defeated 2-0.

The return leg was played home on August 26, 2010. Litex was defeated 1-2 by Debrecen. During the game, Debrecen fielded the player Peter Máté (“the Player”) at the 90th minute and the Player was on the pitch for the last three minutes of the game.

Debrecen had initially registered the Player in the 25-player list to play the qualifying rounds of the UEFA Champions’ League (List A). However, on August 9, 2010, it removed him from such list and replaced him with another player. As a result, the Player was ultimately not registered for the UEFA Europa League play-off matches against Litex.

On August 27, 2010, Litex lodged a Declaration of Protest before the UEFA Control and Disciplinary Body, which was completed on August 30, 2010 by a further brief, whereby Litex argued that article 14bis of the UEFA Disciplinary Regulations should apply and that, consequently, Litex should win the second leg 4-0 by default. This result would lead to the qualification of Litex to the next stage of the UEFA Europa League to the detriment of Debrecen.

The UEFA Disciplinary Inspector filed a statement in which he held that the protest be set aside, although Debrecen should be fined for having fielded an ineligible player. The UEFA inspector stated notably that: *“There is no doubt that Debrecen fielded a player, who was not eligible to play the UEL playoff matches. It can thus be concluded that the match in question was irregular, at least as far as the additional 3-minute time is concerned. It is also beyond any doubt that Debrecen is responsible for the fielding of a non-eligible player”*. The UEFA Disciplinary Inspector further considered that *“the mistake committed by Debrecen is not as light as the Hungarian club believes. The shortage reveals rather a serious amount of negligence if the club’s organisation allows one individual removing and adding players on the UEFA players’ list without anybody from the technical staff being informed and without further control”*.

After having examined the submissions of Litex, Debrecen and the UEFA Disciplinary Inspector, the UEFA Control and Disciplinary Body rejected Litex’ protest and validated the official match result (1-2) through a decision dated August 31, 2010. In the same decision, the UEFA Control and Disciplinary Body imposed a fine of € 15,000 on Debrecen for having fielded an ineligible player.

On September 3, 2010, Litex appealed the decision of the UEFA Control and Disciplinary Body of August 31, 2010. It requested that the decision be overturned and a 4-0 victory be awarded by default to Litex with the result of having Litex instead of Debrecen entered into the group stage of the 2010/11 UEFA Europe League.

On the same date, Debrecen filed an appeal and requested that its € 15,000 fine be reduced in accordance with the principles of proportionality. In support of its appeal, Debrecen referred to a case involving Litex back in 2007, where Litex was fined € 5,000 for not having listed a fielded player on the match sheet.

The UEFA Disciplinary Inspector called on September 7, 2010 for both appeals to be rejected.

Before the UEFA Appeals Body, Debrecen's representatives explained that the Player had been removed from the list by the club's sport director, following an injury. Debrecen's Managing Director, Mr. Szlágyei, signed the new list without being aware of its content. Due to a lack of communication between the sport director and the technical staff of the club, the latter included the Player in their squad list when they noticed that he had recovered from his injury.

The UEFA Appeals Body issued its decision on September 7, 2010 ("the Decision"). The operative part of the Decision reads as follows:

1. *The appeal of PFC Litex Lovech is rejected and the challenged decision of 31 August 2010 is confirmed.*
2. *The appeal of Debrecen VSC is rejected and the challenged decision of 31 August 2010 confirmed.*
3. *The costs of the proceedings amounting to EUR 8,000 are paid as follows: EUR 7,000 by Debrecen VSC, EUR 1,000 by Litex Lovech. The respective national football federations shall be jointly responsible for the collection of these amounts.*
4. *This decision is final subject to article 66 of the UEFA Disciplinary Regulations.*
5. *[...]*

The Decision was notified to Litex and Debrecen on September 9, 2010.

On 13 September 2010, Litex filed a Statement of Appeal with CAS, including in it its Appeal Brief.

The Appellant filed the following requests for relief:

1. *The decision issued on 3 September 2010 by the UEFA Appeals Body is set aside.*

Ruling de novo:

1. *PFC Litex Lovech JSC is deemed to have won 4-0 the match played on 26 August 2010 against Debreceni VSC.*
2. *PFC Litex Lovech JSC is qualified to play the Group Stages matches of the UEFA Europa League, in lieu of Debreceni VSC.*
3. *PFC Litex Lovech JSC shall bear no costs and shall be reimbursed all advances of costs paid in the framework of these proceedings.*
4. *UEFA and Debreceni VSC shall bear all the costs of this arbitration if any.*
5. *Debreceni and UEFA shall compensate PFC Litex Lovech for the legal and other costs incurred in connection with this arbitration, in an amount at the discretion of the Panel.*

By way of interim measures:

UEFA is ordered to postpone all matches scheduled to be played by Debreceni against all the other clubs of the same group of the UEFA Europa League or at least to postpone the match scheduled for the 16 September 2010 between Debreceni VSC and the Russian Football Club Metalist.

Debreceni and UEFA shall bear the costs relating to the order for interim measures”.

On 15 September 2010, the Appellant withdrew its request for interim measures.

UEFA submitted the following requests for relief:

- I. The appeal lodged by Litex Lovech on 13 September 2010 against the decision issued by the UEFA Appeals Body on 7 September 2010 is rejected.*
- II. The decision issued by the UEFA Appeals Body on 7 September 2010 is confirmed.*
- III. The costs of the arbitration procedure are charged to PFC Litex Lovech.*
- IV. PFC Litex Lovech is required to contribute to UEFA’s costs an amount to be determined by the CAS Panel”.*

Debrecen had filed its comments on the request of interim measures on 14 September 2010. It stressed in particular that it had committed an administrative error which was not intentional or made in bad faith. It further argued that fielding the Player at the 90th minute of the second leg match did not influence the final results of the match and of the round.

The parties had signed the order of procedure before the hearing which was held on 24 September 2010 at the CAS. The Appellant requested that the first Respondent produces the transcript or records of the hearing held on 7 September 2010 by its Appeals Body. Prior to the hearing, the President, confirmed by the Panel, took the decision not to impose such duty on the first Respondent, since the statements of the Debrecen Managing Director at that hearing could well be described by the parties during the hearing without seeing the transcript or listening to records.

LAW

CAS Jurisdiction

1. The decision of the UEFA Appeals Body is a final decision of an internal body of UEFA. Based on article 62 paragraphs 1 and 4 of the UEFA Statutes (Edition 2010) in conjunction with R47 of the Code of Sport-related Arbitration (Ed. 2010), CAS is therefore competent to deal with the appeal lodged by the Appellant, which is not disputed, all parties having further signed the order of procedure, which contains a specific reference to the jurisdiction of CAS.

2. Article 62 paragraph 3 of the UEFA Statutes provides that an appeal must be lodged within “*ten days from the receipt of the decision in question*”. The appeal against the decision of the UEFA Appeals Body which was notified to the Appellants on 9 September 2010 was filed on 13 September 2010. The Appeal was lodged within the statutory time limit set forth by the UEFA Statutes, which is undisputed.
3. The Appellant is directly affected by the decision of the UEFA Appeals Body. As provided under article 62 paragraph 2 of the UEFA Statutes, the Appellant has thus standing to sue, which is also undisputed.
4. It follows that the Appeal is admissible.

Applicable law

5. Art. R58 of the Code provides the following:
“The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the Parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.
6. As provided under article 59 paragraph 3 of the UEFA Statutes, when Litex and Debrecen registered for the 2010/2011 Europa League tournament, they signed a mandatory form called “Recognition of the Court of Arbitration for Sport” in which they undertook, *inter alia*, “*to be bound by and observe the UEFA Statutes and relevant regulations, including the Disciplinary Regulations and relevant UEFA club competition regulations, as well as any other essential decisions taken by the competent bodies regarding the competition in question*”. The Appellant acknowledged those regulations when registering for the 2010/2011 UEFA Europa Leagues qualifying rounds by signing the abovementioned document. Thus, the Appellant submitted to the statutes and regulations of UEFA in force for the season 2010/2011.
7. The present case relates to a disciplinary procedure because of the fielding of the Player at the 90th minute of match Litex vs Debrecen of the third qualifying round of the Europa League 2010/2011, whereas the Player was not on Debrecen’s list A of players. According to article 2 of the 2008 UEFA Disciplinary Regulations (DR), this disciplinary case is thus subject to the UEFA Disciplinary Regulations.
8. In accordance with article 59 of the UEFA Statutes and article R58 of the Code, the Panel will thus decide the present case according to the 2010 UEFA Statutes, the 2008 UEFA Disciplinary Regulations, the 2010/2011 Europa League Regulations and Swiss law, subsidiarily, which is undisputed.

Merits

A. *The Disciplinary breach*

9. In the present case, it has been established, without being disputed by any of the Parties that the Player was fielded in the 90th minute of the return match Litex – Debrecen, when the score was of 1-2 in favour of Debrecen, although the Player was not listed on the relevant players' list A for the play-off stage of the UEFA Europa League 2010/2011.
10. As provided under article 18.05 of the 2010/2011 Europa League Regulations, "*the club bears the legal consequences for fielding a player who is not named on list A or B, or who is otherwise not eligible to play*".
11. According to article 5 par. 1 DR, "*member associations, clubs, as well as their players, officials and members, shall conduct themselves according to the principles of loyalty, integrity and sportsmanship*". A breach of these principles is committed by anyone "*who inscribes on the match sheet a player who is not eligible to play*" (Art. 5 par. 2 lit. i) DR).
12. Under the terms of article 52 of the UEFA Statutes and article 8 DR, infringements of UEFA's Statutes and regulations, notably the UEFA Disciplinary Regulations and the 2010/2011 Europa League Regulations, are sanctioned with disciplinary measures.
13. Based on the foregoing, it appears that Debrecen breached the UEFA Regulations and that according to article 18.05 UEFA Europa League Regulations (ELR) and article 8 DR, in particular, it must face the consequences of this breach by way of a disciplinary sanction. This is not disputed.

B. *Article 14bis DR and the principle of strict liability*

14. Article 53 of the UEFA Statutes and article 14 DR provide for the same list of disciplinary measures which can be imposed against a club which has breached the UEFA Regulations.
15. As provided under article 14 par. 1 lit. g) DR "*awarding a match by default*" is one of the thirteen disciplinary measures which "*may be imposed against member associations and clubs in accordance with Article 53 of the UEFA Statutes*".
16. As to the specific sanction of awarding a match by default, article 14bis DR provides the following:

"Article 14bis Awarding a match by default

1 Any team against which a match is awarded by default shall be deemed to have lost the match 3-0 (5-0 in Futsal competitions). If the actual result is less favourable to the association / club at fault, it will stand.

2 Where matches are played according to the cup (knock-out) system, away goals awarded by default do not count double.

3 In all other cases, the disciplinary body shall decide based on the circumstances, taking into account actual goals scored and goals awarded by default.

4 A default result may be awarded against a team that fields an ineligible player only if the opposing team files a protest, unless the player in question has violated a disciplinary body decision or directive”.

17. The Appellant grounds its appeal on the main submission that article 14bis par. 4 DR sets a principle of strict liability as to the awarding of a match by default in case of a team fielding in an ineligible player. The Appellant claims further that article 14bis DR is a *lex specialis* to article 14 DR, drawing from this assumption the consequence that the UEFA Appeals Body had no other choice but to award a match by default in favor of the Appellant and to the detriment of Debrecen.
18. Debrecen and UEFA strongly oppose to this interpretation of article 14bis DR, arguing that the UEFA Appeals Body had the choice within the catalogue of disciplinary measures provided by article 14 DR and that nothing in article 14bis allows to come to the conclusion that awarding a match by default is the only possible sanction when a club fields in an ineligible player.
19. The Panel read carefully article 14 and 14bis DR, as well as article 18.05 ELR, in their English version, which prevails, according to article 78 DR.
20. Contrary to the Appellant’s opinion, the Panel does not see any room for interpretation in the wording of article 14bis DR. Firstly, the Panel does not see in this provision any *lex specialis* which should prevail on article 14 DR, which would then be the *lex generalis*. The wording of the two articles shows beyond any doubt that the purpose of article 14bis DR is only to provide further details on the circumstances under which a match by default may be awarded (article 14bis par. 4 DR) and the consequences of it in terms of results and calculation of the goals (article 14bis par.1-3 DR).
21. Secondly, the Panel sees in the use of the word “may” under article 14bis par. 4 DR, an authorization for the disciplinary body to award a match by default and not an obligation to do so, otherwise the word “must” or “shall”, more common in the legal language, would have been used. This is for instance the case under article 14 par. 2 DR (“*a fine shall (réd.) be no less than EUR 100 and no more than EUR 1,000,000*”) or under article 14bis par. 1 and 3 DR (quoted above) as well as in numerous other articles of the UEFA Disciplinary Regulations.
22. The objective of article 14bis par. 4 DR is obviously only to limit the possibility to award a match by default when an ineligible player was fielded in to the two cases contemplated under this provision, namely (1) when the opposing team filed a protest or (2) when the cause of the player’s ineligibility was a disciplinary body decision or directive.
23. In the present case, the Appellant filed a protest validly, namely within 24 hours of the match as provided under article 43 par. 2 DR, which is undisputed, and the competent disciplinary body could award a match by default. Yet it did not have to.

24. As the wording of article 14bis par. 4 DR is clear in English, which prevails according to article 78 DR, the Panel does not need and may not make use of the other versions of the DR in French and German. The Appellant's submissions in this respect must be rejected. The Panel rejects as well the Appellant's submissions based on the regulations of other football federations, namely FIFA and the Swiss Football Association, as those regulations are not applicable to the present case.
25. As to article 18.05 ELR, the Panel does not see in the wording "*the club bears the legal consequences for fielding a player who is not named on list A or B, or who is otherwise not eligible to play*". any support to the Appellant's thesis on the application of the principle of strict liability. Eventually, the Panel does not see in the jurisprudence quoted by the Appellant, including the one produced during the hearing, namely CAS 2006/A/1166, any reference to the application of the principle of strict liability within the framework of article 14bis par. 4 DR. In all the cases quoted by the Parties, where application was made of the UEFA Disciplinary Regulations, it appears clearly that the competent panels did apply the principle of proportionality weighing the significance of the breach with the fault or negligence of the party in breach. The Appellant cannot further find any support to its position by drawing parallels between the case at stake and doping or hooliganism cases, which are covered by specific and distinct regulations. The present case is neither a case of doping nor of hooliganism.
26. The Panel concludes that the principle of strict liability does not apply when a club fields in an ineligible player. On the contrary, article 17 DR imposes on the Panel the duty to assess whether Debrecen committed a breach by fault or negligence and if awarding a match by default against Debrecen to the advantage of Litex would be proportionate (see CAS 2010/A/2045, nr 81).

C. *The sanction*

27. The UEFA Appeals Body confirmed the decision of the UEFA Control & Disciplinary Body, which sanctioned Debrecen with a fine of EUR 15,000 for having fielded an ineligible player.
28. The Appellant bases most of its submissions on the principle of strict liability. Those submissions were rejected by the Panel under 6.2 above. Yet the Appellant, notably during the hearing, put forward that even on the basis of the application of the principle of proportionality, provided under article 17 DR, the UEFA Appeals Body should have awarded a match by default in the Appellant's favor.
29. The Panel did consider all the circumstances of the case and came to the following conclusion.
30. Article 17 par. 1 DR provides that:
"The disciplinary body shall determine the type and extent of the disciplinary measures to be imposed, according to the objective and subjective elements, taking into account of both aggravating and mitigating circumstances. Subject to article 6 (1) of the present regulations, no disciplinary measures may be imposed in cases where the party charged bears no fault or negligence".

31. In the present case, it was established that the breach was due to a lack of communication between the different organs and representatives of Debrecen, which is undisputed. Changes were made to the list A without proper information of the people who were in charge of establishing the match sheet and of fielding in the players. This lack of communication and information appears to be the most common way to commit the breach, which is the core of the present proceedings. It is a negligence, which must lead to a sanction, as provided under article 17 par. 1 DR but as such, it does not appear to be an aggravating circumstance. In any case this can only be a mild one.
32. On the other side, there is a multiple of subjective and objective circumstances which lead the Panel to conclude that awarding the match by default to the Appellant would be disproportionate.
33. Indeed, it appears clearly that Debrecen did not act willingly and was not trying to take advantage of the breach. Debrecen was not trying to cheat or acting in bad faith.
34. Not only the people in charge did not know that the Player was ineligible but there were no material sporting reasons for fielding him in. The Player came in three minutes before the end of the game. At that moment, the Appellant needed to score four goals in the last three minutes of the match in order to be qualified. If the people in charge on Debrecen's side had known that the Player was ineligible, there is no doubt that they would have used another substitute. This situation, where the Player could objectively not make a difference on the qualification of his team, excludes to consider that in the particular case there was a breach of sport fairness by Debrecen.
35. The Player had been registered for the previous stages of the UEFA competition and had been removed from the list only because of an injury. This shows further that the Player met all formal requirements for a registration. No breach of transfer regulations took place.
36. After a careful review of all the precedents provided by the Parties, the Panel comes to the conclusion that sanctioning Debrecen with a match lost by default would be too harsh in comparison with the subjective and objective reasons which lead Debrecen to commit the breach and the sporting consequences of such breach.
37. The Panel finds support in its opinion with the decision taken by the UEFA Control and Disciplinary Body on 9 August 2007 where Sliema Wanderers had filed a protest against Litex for the reason that Litex had fielded a player, who was not on the match sheet. This breach, which appeared to be a pure administrative error, just like in the present case, was only sanctioned with a fine. This appeared appropriate in that case and the Panel does not see any reason for drawing another conclusion in the present case.
38. Based on all the circumstances of the case and after a careful review of the applicable regulations and of the precedents available, the Panel concludes therefore that Debrecen should not be sanctioned with a match lost by default.

39. The Panel notes that neither the Appellant nor Debrecen submitted that the amount of the fine pronounced against Debrecen by the UEFA Disciplinary bodies was inadequate. There is no request for relief in this respect. The Panel will therefore not assess the proportionality of the amount of the fine.
40. Considering all the above, the Appeal is rejected and the Decision of the UEFA Appeals Body is confirmed.

The Court of Arbitration for Sport rules:

1. The appeal filed by P.F.C. Litex Lovech on 13 September 2010 against the decision of the UEFA Appeals Body of 7 September 2010, is dismissed.
2. The decision issued by the UEFA Appeals Body on 7 September 2010 is confirmed.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.