



**Arbitration CAS 2014/A/3703 Legia Warszawa SA v. Union des Associations Européennes de Football (UEFA) & Celtic Football Club, order of 1 September 2014 (operative part of 18 August 2014)**

*Football*

*Request for provisional measures*

*Forfeit of a match in case of fielding of a non-eligible player*

*Compensation of financial damage*

1. **The UEFA Disciplinary Code is clear and straightforward and does not leave any room for interpretation: once a team is found guilty of fielding a player who is suspended, the forfeit is automatic and the UEFA Disciplinary Bodies do not have any latitude in terms of sanctions.**
2. **The UEFA rules have clear provisions with respect to prize money related to UEFA competitions. Such rules constitute a strong basis to assess any potential financial damage caused by the loss of opportunity to compete in a UEFA competition.**

**1. THE PARTIES**

- 1.1 Legia Warszawa SA (the “Appellant”) is a professional Polish football club based in the city of Warsaw, Poland.
- 1.2 The Union of European Football Associations (“UEFA” or the “First Respondent”) is an international association of European football federations, and is the governing body of European football, dealing with all matters relating thereto and exercising regulatory, supervisory and disciplinary functions over national federations, clubs, officials and players affiliated to the UEFA or participating in its competitions. The UEFA is the organizing authority of all football competition for clubs at European level, among which the UEFA Champions’ League and the Europa League. The UEFA has its seat in Nyon, Switzerland, and enjoys legal personality under Swiss law.
- 1.3 Celtic Football Club (the “Second Respondent”) is a professional Scottish football club based in the city of Glasgow, Scotland.

## 2. FACTUAL BACKGROUND

- 2.1 On 13 February 2014, a player of Legia Warszawa, *i.e.* Bartosz Bereszynski (the “Player”), was suspended for the next three (3) UEFA competition matches. This decision was not appealed and became therefore enforceable.
- 2.2 Based on the results obtained at domestic level during the 2013/2014 football season, Legia Warszawa had qualified for the 2014/2014 UEFA Champions League (“UCL”), entering in the second round of qualification.
- 2.3 On 9 July 2014, Legia Warszawa submitted to UEFA its list of players participating in the UCL second qualifying round scheduled on 16 and 23 July 2014 against St Patrick’s Athletic FC. The list of players did not include Bartosz Bereszynski. The Player did therefore not participate in either games against St Patrick’s Athletic.
- 2.4 In the UCL third qualifying round, Legia Warszawa faced Celtic Football Club. Legia Warszawa submitted its list of players to UEFA on 24 July 2014. The Player was included in this list. The latter did not participate in the first leg match but played the last minutes of the return leg match scheduled on 6 August 2014 in Glasgow.
- 2.5 On 7 August 2014, the UEFA Administration initiated disciplinary proceedings against Legia Warszawa “*for having fielded a player serving a disciplinary sanction during the return leg match of the third qualification round of the UCL 2014/2015 played against Celtic FC on 6 August 2014*”.
- 2.6 On 8 August 2014, the UEFA Control, Ethics and Disciplinary Body decided as follows:
1. *To declare the UEFA Champions League match Celtic FC vs Legia Warszawa played on 6 August 2014 as forfeit with a final result of 3:0 in favour of Celtic FC.*
  2. *To suspend the Legia Warszawa SA player Bartosz Bereszynski for one additional UEFA competition match for which he would be otherwise eligible. This suspension shall be added to the remaining two matches suspensions the player still has to serve in accordance with the Control and Disciplinary Body decision of 13 February 2014”.*
- 2.7 Following an appeal lodged by Legia Warszawa, the UEFA Appeals Body issued a decision which was notified on 14 August 2014. The Appeals Body decided as follows:
1. *The appeal lodged by Legia Warszawa SA is dismissed. Consequently, the UEFA Control, Ethics and Disciplinary Body’s decision of 8 August 2014 is upheld”.*

## 3. PROCEEDINGS BEFORE THE CAS

- 3.1 On 15 August 2014, Legia Warszawa filed a statement of appeal against UEFA and Celtic Football Club with respect to the decision issued by the UEFA Appeals Body on 14 August 2014. Together with its statement of appeal, the Applicant filed, pursuant to Article R37 of the

Code of Sports-related Arbitration, 2013 edition (the “Code”), an urgent request for provisional measures in the following terms:

- “1. Order UEFA to allow Legia Warszawa SA to participate in the next round games (Play-offs) of the 2014/2015 UEFA Champions League scheduled on 20 and 26 August 2014.
2. Order UEFA to allow LEGIA WARSZAWA SA to participate in the next rounds of the UEFA Champions League 2014/2015 for which it will qualify, until CAS has issued a final award on the merits;
3. UEFA shall bear all the costs of the Order on Provisional Measures and shall be ordered to pay compensation towards the legal fees and other expenses incurred by the Appellant in connection with these Provisional Measures”.

3.2 On the same day, the CAS Court Office initiated an appeals arbitral procedure under the reference CAS 2014/A/3703 Legia Warszawa SA v. UEFA & Celtic Football Club and invited both Respondent to file their respective answers with respect to the application for provisional measures by Monday, 18 August 2014 at 1.00 pm (CET).

3.3 On 18 August 2014, UEFA and Celtic Football Club filed their answers at the CAS Court Office.

3.4 The President of the CAS Appeals Arbitration Division has reviewed the parties’ respective positions and shall refer to it below if necessary.

#### **4. JURISDICTION OF THE CAS**

4.1 In accordance with Article 186.1 of the Swiss Private International Law, the CAS has power to decide upon its own jurisdiction.

4.2 The extent of the jurisdictional analysis at this point is to assess whether on a *prima facie* basis the CAS can be satisfied that it has jurisdiction to hear the appeal. The final decision on jurisdiction will be made by the Panel.

4.3 Article R47 of the Code states that, “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”.

4.4 In the absence of a specific arbitration agreement, in order for the CAS to have jurisdiction to hear an appeal or a request for provisional and conservatory measures, the statutes or regulations of the sports-related body from whose decision the appeal is being made must expressly recognise the CAS as an arbitral body of appeal.

- 4.5 Article 62.1 of the UEFA Statutes 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*”.
- 4.6 The decision appealed against was issued by the UEFA Appeals Body and, therefore, was subject to a possible appeal at CAS.
- 4.7 In view of the above, it can be assessed, *prima facie*, that the CAS has jurisdiction to hear the present case, without prejudice of any other decision that the Panel could take once constituted.

## 5. ADMISSIBILITY

- 5.1 According to article R49 of the Code, “*In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against*”.
- 5.2 Article 62.3 of the UEFA Statutes provides that the time limit for an appeal to the CAS shall be ten (10) days from the receipt of the decision appealed against.
- 5.3 The Decision was rendered on 14 August 2013, and the statement of appeal was filed on 15 August 2013.
- 5.4 In view of the above, *prima facie*, the appeal is admissible, without prejudice of any other decision that the Panel could take once constituted.

## 6. LEGAL DISCUSSION

- 6.1 The President of the CAS Appeals Arbitration Division has the ability to consider an application for provisional measures before the Panel of arbitrators is constituted, pursuant to article R37 of the Code.
- 6.2 The President of the CAS Appeals Arbitration Division reminds the relevant criteria for successfully grounding an application for provisional measures: according to well established CAS jurisprudence, the Panel may grant provisional relief if (1) the party seeking such relief would suffer irreparable harm if the relief were not granted, (2) that party has a likelihood of success on the merits of the appeal, and (3) the interests of the Appellant outweighs those of the other party (award of 15 September 2003, CAS 2003/O/486; order of 25 May 2001, CAS 2001/A/329; order of 15 March 2001, CAS 2001/A/324; order of 12 July 2007, CAS 2007/A/1317; and order of 6 April 2010, CAS 2010/A/2071).

6.3 The three requirements for the grant of provisional measures (*i.e.* irreparable harm, likelihood of success on the merits of the appeal and balance of interests) are cumulative (order of 12 December 2007, CAS 2007/A/1403; and order of 6 April 2010, CAS 2010/A/2071).

**1. Likelihood of Success on the merits**

6.4 In accordance with CAS jurisprudence, as a general rule, “*the Appellant must make at least a plausible case that the facts relied upon by him and the rights which he seeks to enforce exist and that the material criteria for a cause of action are fulfilled*” (CAS 2008/A/1453; CAS 2008/A/1630).

6.5 The President of the CAS Appeals Arbitration Division notes that the Appellant argues that a *prima facie* examination can only lead the CAS to consider that the chances of success are existing. Indeed, the Appellant argues that, *inter alia*, the player Bartosz Bereszynski already served his three (3) match suspension during the UCL 2014/2015 second qualifying round against St Patrick’s Athletic FC and the first leg match against Celtic FC and that the sanction of 3:0 defeat by forfeit imposed by UEFA is disproportionate.

6.6 In its answer, UEFA referred to article 18.01 of the UCL Regulations which provides that:

*“In order to be eligible to participate in the UEFA competitions, players must be registered with UEFA within the requested deadlines to play for a club and fulfil all the conditions set out in the following provisions. Only eligible players can serve pending suspensions”* (emphasis added by UEFA).

6.7 The President of the CAS Appeals Arbitration Division notes that it is not contested by the Appellant that the Player was not included in the players list for the UCL 2014/2015 second qualifying round against St Patrick’s Athletic FC. Consequently, as the Player was not mentioned in the players list, the latter was not duly registered to participate in the UEFA competition and was therefore not eligible to serve his pending suspension. As a matter of fact, the President of the CAS Appeals Arbitration Division finds that the Player started to serve his three (3) match suspension during the first leg match against Celtic FC.

6.8 With respect to the sanction imposed by the UEFA Disciplinary Bodies to the Appellant, article 21 para. 2 of the UEFA Disciplinary Code (“UEFA DR”) provides that:

*“A match is declared forfeit if a player who has been suspended following a disciplinary decision participates in the match”.*

6.9 In view of the foregoing, the President of the CAS Appeals Arbitration Division notes that the wording of article 21 para. 2 of the UEFA DR is clear and straightforward and does not leave any room for interpretation: once a team is found guilty of fielding a player who is suspended, the forfeit is automatic and the UEFA Disciplinary Bodies do not have any latitude in terms of sanctions.

- 6.10 Consequently, the 3:0 forfeit imposed to the Appellant by the UEFA Control, Ethics and Disciplinary Body, then confirmed by the UEFA Appeals Body, appears to be the only appropriate sanction in the present matter.
- 6.11 In view of the above, the Deputy President of the CAS Appeals Arbitration Division considers, *prima facie* and in the light of the evidence submitted by the parties so far, that the Applicant has not made a plausible case that the rights which it seeks to enforce exist, at least at this stage of the proceedings.

## **2. Irreparable Harm**

- 6.12 In accordance with CAS jurisprudence, as a general rule, when deciding whether to stay the execution of the decision being appealed the CAS considers whether the measure is useful to protect the applicant from substantial damage that would be difficult to remedy at a later stage (“irreparable harm” test): *“The Appellant must demonstrate that the requested measures are necessary in order to protect his position from damage or risks that would be impossible, or very difficult, to remedy or cancel at a later stage”* (CAS 2007/A/1370-1376; CAS 2008/A/1630).
- 6.13 The President of the CAS Appeals Arbitration Division notes that the Appellant argues that, should the provisional measures not be granted, it will suffer a damage difficult to compensate as it is not only financial but also sporting. With respect to the financial aspect, the Appellant splits the damage in three (3) main parts: (i) EUR 8,600,000 as UCL participation’s prize money, not including the potential amounts for victories (EUR 500,000), (ii) loss of media exposure and, therefore, potential new sponsors and (iii) PLN 500,000 as bonus granted by one sponsor in case of qualification to the UCL 2014/2015 group stage.
- 6.14 In this respect, the President of the CAS Appeals Arbitration Division considers that such damage may be remedied by means of financial compensation which the Appellant will be entitled to claim against UEFA. Although the Appellant is of the view that the loss of opportunity to compete in UEFA competitions would be difficult to compensate financially, it must be emphasized that the UEFA rules have clear provisions with respect to prize money related to UEFA competitions. Such rules would constitute a strong basis to assess any potential financial damage caused to the Appellant.

## **3. Balance of Interests**

- 6.15 In accordance with CAS jurisprudence, as a general rule, when deciding whether to grant provisional and conservatory measures the CAS considers whether the interests of the applicant outweigh those of the opposite party and of third parties (“balance of interest” test): *“It is then necessary to compare the disadvantages to the Appellant of immediate execution of the decision with the disadvantages for the Respondent of being deprived such execution”* (CAS 2008/A/1453; CAS 2008/A/1630; CAS 2008/A/1677).

- 6.16 The Appellant considers that its interest in being granted the provisional measures clearly prevails on the other parties to the refusal of such measure. If CAS were to uphold the appeal, the provisional measures are the only way to prevent the Appellant from an irreparable harm.
- 6.17 The President of the CAS Appeals Arbitration Division considers that, in view of its finding on the chances of success, the interest of the Appellant cannot outweigh the interests of UEFA or Celtic FC should the provisional measures be granted. On the contrary, the President of the CAS Appeals Arbitration Division considers that granting the provisional measures less than 48 hours before the match concerned would have massive consequences on other teams, media outlets (television), and spectators which cannot be disregarded.
- 6.18 Finally, the President of the CAS Appeals Arbitration Division considers irrelevant the fact that the Appellant's interests should prevail over those of Celtic FC because it won both games 4:1 and 2:0. Indeed, the President of the CAS Appeals Arbitration Division reminds the Appellant the jurisprudence of the CAS pursuant to which there cannot be any security for a football team or any athlete that it will win a competition (or the next match) and nobody can predict the outcome and results of a future match (order of 8 July 2011, CAS 2011/A/2479).
- 6.19 In view of the above, the President of the CAS Appeals Arbitration Division concludes that the Appellant has not demonstrated that its interests outweigh those of UEFA and Celtic FC.

### ***Conclusion***

- 6.20 On the basis of the above and in view of the fact that the Appellant has not met any of the criteria above to be granted provisional measures, the President of the CAS Appeals Arbitration Division considers that the Appellant's application for provisional measures shall be dismissed.

## **ORDER**

**The President of the CAS Appeals Arbitration Division, ruling *in camera*, decides that:**

1. The application for provisional measures filed by Legia Warszawa SA on 15 August 2014 in the matter CAS 2014/A/3703 *Legia Warszawa SA v. UEFA & Celtic Football Club*, is dismissed.
2. (...).