



**Arbitration CAS 2002/O/410 The Gibraltar Football Association (GFA)/Union des Associations Européennes de Football (UEFA), award of 7 October 2003**

Panel : Mr. Bruno Simma (Germany), President; Professor Pierre Lalive (Switzerland); Mr. Dirk-Reiner Martens (Germany)

*Football*

*Application for UEFA membership*

*Rules on membership applicable at the time when the application was made*

*Legality of a change of rule with a retrospective effect*

*Principles of fairness and good faith*

*Freedom of association*

1. According to the new version of Article 5 of the UEFA Statutes, UEFA membership is restricted to associations in countries which are recognised as independent States by the United Nations. This new rule should not be regarded as a rule dealing only with procedural aspects justifying immediate application regardless of when the facts at issue occurred. The immediate application in this matter would entail a violation of general principles of law which are widely recognised, particularly the principles of fairness and of good faith.
2. According to the old version of Article 5 of the UEFA Statutes “Membership of UEFA is open to national football associations situated in the continent of Europe which are responsible for the organisation and implementation of football-related matters in their particular territory”. GFA indisputably exercises sole responsibility for the organisation and structure of football in its territory. The concept of “nation” or “country” in the sports environment must not necessarily be “understood within its common political meaning. More importantly, UEFA already has – and had at the time when the application was made – a number of member associations from countries which do not enjoy independent statehood, such as Scotland, Wales or the Faroe Islands.
3. Generally, freedom of association includes the freedom of an association to accept or to refuse any applicant for membership, even if the applicant fulfils all statutory conditions. However, the exclusion of athletes, or of a sports association to which athletes are affiliated, from an international sports organisation which occupies a dominant or monopolistic position in the organisation of sports competitions may have the effect of a boycott. Such an exclusion should therefore be held invalid, at least to the extent that it is not grounded on objective and justified reasons.

The Claimant, the Gibraltar Football Association (“GFA”), is an unincorporated body that is responsible for the organisation of all football in the territory of Gibraltar. The GFA was established in 1895, and today it has between 2000 and 2500 members.

The GFA has a Men’s senior league composed of three divisions, a Junior league, and Ladies and “Futsal” competitions. All football currently organised by the GFA is non-professional.

Despite proposals made in the past that the Claimant may become affiliated to the Spanish Football Association, the GFA has always been independent from any other football association, whether within Gibraltar or elsewhere.

The territory of Gibraltar is a dependent territory of the United Kingdom. It forms part of Her Majesty the Queen’s Dominions, but it is not part of the United Kingdom, and it is not an independent State either although it enjoys a certain level of autonomy.

The Respondent, the Union des Associations Européennes De Football (“UEFA”), is an association incorporated under the laws of Switzerland with its headquarters in Nyon, Switzerland. UEFA is the governing body of European football, dealing with all questions relating to European football and exercising regulatory, supervisory and disciplinary functions over national associations, clubs, officials and players of the European continent.

The Respondent is one of the continental football confederations. All national associations located in Europe and which wish to be affiliated to the Fédération Internationale de Football Association (“FIFA”) must previously become a member of UEFA.

In January 1997, the GFA applied to FIFA for membership.

On 27 November 1997, the English Football Association (“FA”) confirmed to FIFA its thorough support of the GFA's application for membership.

On 3 March 1999, FIFA wrote to the GFA confirming that the “*preliminary procedure*” was completed, and that “consequently, FIFA may submit the file to the confederation concerned for the second phase of the procedure (evaluation of the organisation for a period of at least two years)”.

In that same letter, FIFA further stated that “according to article 4.7 of the FIFA Statutes the confederation concerned shall decide whether to grant provisional membership or associate membership to the applicant association”.

In parallel to this letter, FIFA forwarded to UEFA the GFA's file for membership, as confirmed by UEFA to the Claimant on 23 March 1999. The GFA was consequently invited to make an oral presentation of its application to UEFA representatives in April 1999 in Nyon, Switzerland.

On 20 April 1999, following the presentation made by the GFA's representatives in Nyon, UEFA informed the Claimant that they would examine the file with FIFA, possibly proceed with a visit on site in Gibraltar, and then make a recommendation to the UEFA Executive Committee, outlining that “no final decision will be taken until the year 2000”.

On 7 January 2000, UEFA informed the GFA that FIFA was in the process of reviewing its affiliation procedure rules, that a meeting was scheduled to take place within FIFA's organisation in March 2000 and, therefore, that UEFA would not be able to give the GFA more information on the process of its own affiliation request until that time.

By letter dated 19 January 2000, the GFA responded to UEFA that it failed to understand why a “present ongoing review of affiliation procedure rules” within FIFA should affect the application by the GFA which had been made before such review was commenced. The Claimant further expressed its concern because the UEFA inspection of the GFA's facilities should have occurred already by the end of the year 1999, and it insisted that it be given “the necessary assurances that our application is being processed as per the present applicable procedures”.

By e-mail dated 25 March 2000, UEFA informed the GFA that “FIFA and UEFA administrations have discussed the application procedure for your association. After having received also the green light by the FIFA Committee for national associations we inform you that a joint FIFA/UEFA delegation will visit your association”.

On 25 April 2000, UEFA provided the GFA with details of the visit to the GFA's facilities and infrastructures by representatives of FIFA and of UEFA. Such visit was scheduled to take place between 8 and 10 May 2000.

A joint delegation from the FIFA and UEFA administrations eventually conducted the inspection visit in Gibraltar between 8 and 10 May 2000.

On 11 July 2000, the UEFA delegation issued a report of the visit conducted in Gibraltar two months earlier. In this report, the UEFA delegation proposed *inter alia* that “the FA of Gibraltar be admitted to UEFA on a provisional basis” under three cumulative conditions, namely that (i) Gibraltar teams could not enter club competitions or senior and Under-21 national-team competitions immediately, but only UEFA's youth, women's and amateur competitions; (ii) the football infrastructure in Gibraltar must correspond to the UEFA requirements at the time of entering the relevant competitions; and (iii) the GFA's statutes had to be adapted to UEFA's requirements.

The UEFA administration justified this position, which in principle favoured the affiliation of the GFA, by stating that “the FA of Gibraltar fulfils all requisite statutory conditions for admission to UEFA (Article 2 of the Regulations governing the implementation of the UEFA Statutes)”.

The report on the FIFA/UEFA joint visit to Gibraltar and the proposals contained therein were supposed to be submitted to the UEFA Executive Committee at its next meeting which was scheduled to be held on 25-26 August 2000.

On 3 August 2000, the FIFA Executive Committee apparently decided to freeze all applications from associations to FIFA, pending the approval of new FIFA Statutes in the year 2004. FIFA informed UEFA of this decision in September 2001.

On 26 August 2000, the UEFA Executive Committee decided to postpone its decision concerning the GFA's provisional membership until its next meeting which was scheduled to take place in October 2000, and to call a meeting between UEFA, the English FA and the Spanish FA on 22 September 2000 in order to discuss this matter.

The meeting between UEFA, the English FA and the Spanish FA did not take place until 30 November 2000. During its meeting on 4-5 October 2000, the UEFA Executive Committee had decided to postpone its decision on the matter again as it was waiting for the results of the aforementioned meeting with the English FA and the Spanish FA.

On 14-15 December 2000, the UEFA Executive Committee met again. In respect of the GFA's application for membership, it considered that independent legal advice was necessary for it to be able to evaluate the application. Therefore, the UEFA Executive Committee decided to set up a legal panel with three members from UEFA's External Legal Experts Panel which was entrusted with the preparation of a substantiated report to the UEFA Executive Committee based on the FIFA and UEFA Statutes (the "Expert Panel").

The Claimant was informed of these decisions by UEFA on 15 December 2000. At that time, UEFA also provided the GFA with a copy of a written report that had been filed by the Spanish FA (in which the latter opposed the GFA's application), asking the GFA to comment thereon in writing by the end of January 2001. The same request was made by UEFA to the English FA.

By the end of the year 2000, the Expert Panel set up by UEFA had received all of the written submissions by the Spanish FA, the English FA and the GFA. The Claimant also filed a supplementary report in March 2001.

The aforementioned three parties made oral submissions before the Expert Panel on 19 April 2001. According to the order of procedure decided by its members, the Expert Panel was then to submit a written legal report to the UEFA Executive Committee, for it to take a final decision on the GFA's application.

As from June 2001, the Claimant repeatedly asked the UEFA what the conclusions of the Expert Panel were. The UEFA Executive Committee was to meet in July 2001 and the GFA assumed that the report of the Expert Panel would be available before such meeting, where the GFA's application for membership would be on the agenda.

The UEFA Executive Committee met on 11-12 July 2001. It did not take any decision on the GFA's application. However, what the UEFA Executive Committee did decide was to put an amendment of the UEFA Statutes before the UEFA Congress to be held in October 2001.

According to this proposed amendment, UEFA membership would be restricted to associations in countries which are recognised as independent States by the United Nations.

On 30 July 2001 and 20 August 2001, the GFA again asked the UEFA what the conclusions of the Expert Panel were.

On 27 August 2001, the Expert Panel appointed by the UEFA rendered its written legal opinion to the UEFA Executive Committee.

The members of the Expert Panel unanimously considered that according to Art. 5 paragraph 1 of the UEFA Statutes (NB: the version that came into force on 24 December 1997 and was amended on 30 June and 1 July 2000) and to Art. 1 and 2, sentence 1 of the Regulations governing the implementation of the UEFA Statutes, “the GFA was entitled to provisional admission as a member of UEFA”.

In the same Expert Report of 27 August 2001, the members of the Expert Panel suggested to the UEFA Executive Committee “to amend the UEFA Statutes (...) to avoid similar problems in the future”. The Expert Panel thus proposed “an amendment to the effect that only UN-recognised States may apply for admission to and membership of UEFA”.

On 30 August 2001, the UEFA confirmed to the GFA that the Expert Panel had rendered its decision. However, as per the order of procedure decided from the outset, the UEFA refused to communicate a copy of the Expert Report to the GFA. The UEFA indicated to the Claimant that the report would be discussed by the members of the UEFA Executive Committee on 6-8 September 2001 and that a decision on the GFA's application would then be taken.

In addition, the UEFA also communicated to the GFA on 30 August 2001 that “as regards the extraordinary Congress in October in Prague, we confirm that there is a request for a change of the UEFA Statutes, and especially the provision of UEFA membership. However we cannot provide you with a copy of these amendments until you are part of the UEFA family”.

On 5 September 2001, FIFA's Secretary General wrote to UEFA stating that in FIFA's view it would be premature to proceed with the affiliation of the GFA in the forthcoming months, and that FIFA was planning to change its rules on membership.

On 7 September 2001, UEFA wrote to the GFA and informed it that, at its most recent meeting on the same day, “the Executive Committee did not enter into the request of the Football Association of Gibraltar to be provisionally affiliated to UEFA. The UEFA Executive Committee has already discussed and decided at its July 2001 meeting to change the membership conditions in the UEFA Statutes. These proposals will be dealt with by the UEFA member associations at the next extraordinary Congress in Prague in October 2001. (...) The decision concerning the affiliation request of the Football Association of Gibraltar is therefore postponed until further notice.”

During the same meeting of the UEFA Executive Committee, a request for admission to UEFA filed by the Football Association of Kazakhstan was considered, and the Executive Committee agreed that such request should proceed.

The Football Association of Kazakhstan, which requested admission to UEFA after leaving the Asian confederation in 2001, was eventually admitted as a UEFA member by the UEFA Congress upon the recommendation of the UEFA Executive Committee in April 2002. Kazakhstan is an independent State and accepted as a member by the United Nations.

As from September 2001, the GFA repeatedly requested UEFA to render a decision on its request for provisional membership without delay, and to do so on the basis of the UEFA rules that existed at the time when the application was made.

On 5 October 2001, a meeting took place between senior officers of UEFA and of the GFA during which no solution could be found.

On 11 October 2001, the UEFA Congress approved the change of the UEFA Statutes, whereby UEFA membership would from then on be open only to associations in a country “recognised by the United Nations as an independent State”.

On 13 November 2001, UEFA wrote to the Claimant rejecting the latter’s repeated demands for immediate consideration of its affiliation request and stating that “the Executive Committee has so far not taken a *negative* decision on your application request but has only postponed its decision upon FIFA's request”.

The GFA replied to UEFA on 20 November 2001 that it considered that UEFA had acted illegally in this matter.

It must be noted that in November 2001, a number of national Football bodies of UK Dependencies which are not independent States and not members of the United Nations were already FIFA members, such as the FA of Anguilla or the FA of the Turks and Caicos Islands. Similarly, the FA of the Faroe Islands, which is not an independent State but a dependency of Denmark, is a FIFA member since 1988 and was admitted as a UEFA member in the mid-nineties.

On 26 April 2002, the GFA, acting through one of its counsel, wrote to UEFA stating that “the GFA (...) understands UEFA’s position to be that the GFA is not eligible for membership of UEFA under (new) Article 5.1 and that therefore the GFA's application cannot succeed”. The GFA further stated that “(a) UEFA’s failure to assess the GFA's application to become a member of UEFA by reference to the rules applicable when the application was made in 1999, under which the application would have been successful, and (b) UEFA’s decision instead to change the rules with purportedly retrospective effect in such a way as to make the GFA's application incapable of success, are illegal.”

In that same letter, the GFA requested UEFA to accept CAS arbitration in this matter. The same request was submitted again by the Claimant to UEFA on 6 June 2002.

On 12 July 2002, UEFA confirmed to the GFA that its Executive Committee had accepted CAS jurisdiction in respect of the GFA's claims against UEFA in this matter.

On 16 August 2002, the GFA filed a Request for Arbitration accompanied by 38 Exhibits with the CAS, asking principally (i) that the UEFA Executive Committee be ordered to consider the GFA's application for membership by reference to the rules applicable when the application was made in 1999, (ii) to declare that under those rules the GFA is entitled to provisional membership of UEFA with immediate effect, and (iii) to order payment by the Respondent UEFA of all costs of the arbitration as well as legal costs suffered by the Claimant.

The Respondent filed its Answer, accompanied by 8 Exhibits, on 27 September 2002, requesting the CAS to “dismiss all Principal Orders of the Request for Arbitration”, with all costs and compensations to be charged to the Claimant.

The hearing was held on 27 May 2003 in Lausanne.

The Claimant presented in its Request for Arbitration and specified in its Statement of Claim the following principal requests for relief:

- That UEFA be ordered to decide the GFA's application for membership by reference to the rules applicable when the application was made or was or ought to have been considered prior to 11 October 2001.
- That it be declared that under those rules the GFA is entitled to provisional membership of UEFA with immediate effect;
- That the Respondent UEFA be ordered to pay of all the costs of the arbitration as well as the legal costs incurred by the Claimant.

The Claimant principally submits that:

- a) Under the rules on membership contained in the UEFA Statutes before the modification approved by the UEFA Congress on 11 October 2001, the GFA's application for provisional membership fulfilled all requisite conditions.
- b) Under those rules, the GFA was therefore entitled to membership, as evidenced by the behaviour of the UEFA competent bodies in their processing of the Claimant's application.
- c) The change of the UEFA rules on membership was inspired by the simple wish to prevent the GFA's application from succeeding, and the reason for that wish was to be seen in the political pressure exercised by the powerful Spanish FA.
- d) In July 2001, when the UEFA Executive Committee proposed that the UEFA Statutes be amended to the effect that only associations in countries which are recognised by the United Nations as independent States are eligible for membership, the UEFA Executive Committee must have been aware of the Expert Panel's conclusions.
- e) It would be unfair under the circumstances to permit the dismissal of the GFA's application for affiliation by reference to the amended version of the UEFA rules on membership.

The Respondent submitted in both its Answer and its Response the following principal requests for relief:

- That all of the principal orders requested in the Request for arbitration be dismissed.
- That the Claimant be ordered to pay all of the costs of the arbitration as well as the legal costs incurred by UEFA.

The Respondent is principally of the opinion that:

- a) Under Swiss law, any association, such as UEFA, has a discretionary right to refuse a person or entity as a member, even if such person or entity fulfils all of the conditions stipulated in the association's statutes.
- b) While there are limits to this discretionary right of the association under Swiss law, namely the protection of the personality (art. 28 Swiss Civil Code) and the rules of Swiss Cartel law, those limits were not violated in the present case since UEFA's attitude was neither arbitrary nor based on unjustified reasons.
- c) UEFA's attitude in this matter was not dictated by political pressure exercised by the Spanish FA, which however openly opposed the application made by the GFA.

## LAW

1. The CAS has jurisdiction over this dispute on the basis of the correspondence exchanged by the parties on 6 June and 12 July 2002.  
Furthermore, during the hearing in Lausanne on 27 May 2003, it was explicitly acknowledged between the parties that the competence of the CAS is not in dispute.
2. Pursuant to Article R45 of the Code, the dispute must be decided "according to the rules of law chosen by the parties or, in the absence of such a choice, according to Swiss law".
3. The issue of the Claimant's right to membership of UEFA is to be examined in the light of the applicable UEFA Statutes. The Panel considers that Swiss civil law is applicable to all aspects of the dispute relating to the construction of the FIFA and UEFA Statutes and Regulations, in accordance with Article R45 of the Code, Article 4, par. 3 a) of the FIFA Statutes and Article 59, par. 1 of the UEFA Statutes.
4. In addition, to the extent that it deems it appropriate, the Panel may apply general principles of law, which are applicable as a type of *lex mercatoria* for sports regardless of their explicit presence in the applicable UEFA or FIFA Statutes. Such general principles of law include for example the principle of fairness, which implies *inter alia* the obligation to respect fair procedures (see, in particular, AEK Athens and SK Slavia Prague vs. UEFA, CAS 98/200,

sections 60/61 and 155 and seq., in Digest of CAS Awards II, 1998-2000, edited by Matthieu Reeb, pp. 65-66 and 102-103).

5. At the time when the GFA applied for membership to FIFA, and when FIFA subsequently forwarded the GFA's application file to UEFA, the criteria for eligibility as a member of UEFA provided for under Article 5 paragraph 1 of the UEFA Statutes were set out as follows:

“Membership of UEFA is open to national football associations situated in the continent of Europe which are responsible for the organisation and implementation of football-related matters in their particular territory” (the prevailing German text read “Mitglieder der UEFA können europäische Verbände werden, die in ihrem Gebiet für die Organisation und Durchführung des Fussballsports verantwortlich sind”; hereinafter the “Old Rule”).

6. Article 5 paragraph 1 of the UEFA Statutes was amended by the UEFA Congress on 11 October 2001. According to the new version of this provision, UEFA membership is restricted to associations in countries which are recognised as independent States by the United Nations (hereinafter the “New Rule”). The Panel interprets this text to mean that the respective country must have been admitted as a member of the United Nations. The United Nations do not “*recognise*” countries in the strict sense of the word. However, what is clear is that under the New Rule, the GFA would not be eligible as a member of UEFA, since Gibraltar is not an independent State admitted to membership in the United Nations.

7. The first question which the Panel must address is therefore to establish whether today, taking into account the circumstances of this particular case, UEFA may validly rely on the New Rule to appraise (and hypothetically dismiss) the GFA's application, although such application was filed and dealt with for a period of several years on the basis of the Old Rule.

8. The CAS has already considered in the past that in the absence of an express provision to the contrary, laws and rules relating to procedural matters apply immediately upon entering into force and regardless of when the facts occurred. On the other hand, it is a general principle that laws, regulations and rules of a substantive nature that were in force at the time when the facts occurred must be applied. Such principles were set out in particular in the CAS award S. vs. FINA, CAS 2000/A/274, sections 72-73 (see, in Digest of CAS Awards II, op. cit., p. 405):

“Under Swiss law, the prohibition against the retroactive application of law is well-established. In general, it is necessary to apply those laws, regulations or rules that were in force at the time that the facts at issue occurred (...).

This general principle is, however, subject to several exceptions, including an exception for laws or rules that are procedural in nature. In the absence of an express provision to the contrary, laws and rules relating to procedural matters apply immediately upon entering into force and regardless of when the facts at issue occurred (...).”

9. In the present instance, while the third sentence of Article 2 of the Regulations governing the implementation of the UEFA Statutes sets out the formal conditions which an application for

UEFA membership has to meet, it is quite another question whether Article 5 paragraph 1 of the UEFA Statutes is to be seen as merely procedural.

10. This provision sets out the substantive conditions that any applicant will need to fulfil in order to become a member. For this first reason, in accordance with the general principle of non-retroactivity of laws and rules, the Panel may have to consider that the New Rule may not apply to the GFA's application.
11. Even if the New Rule was to be regarded as a rule dealing only with procedural aspects, the Panel is of the opinion that its application in this matter would entail a violation of general principles of law which are widely recognised, particularly the principles of fairness and of good faith. In particular, the Panel refers to the principle of *venire contra factum proprium*. This principle provides that when the conduct of one party has led to raise legitimate expectations on the part of the second party, the first party is barred from changing its course of action to the detriment of the second party (see, AEK Athens and SK Slavia Prague vs. UEFA, CAS 98/200, in Digest of CAS Awards II, op. cit., pp. 38 and seq.; S. vs. FINA, CAS 2000/A/274, section 37, in Digest of CAS Awards II, op. cit., p. 400; Art. 2 of the Swiss Civil Code).
12. *In casu*, upon receipt of the GFA's application in 1997, the UEFA administration processed it at first without any reservations. The visit on site in Gibraltar by a delegation of UEFA and FIFA representatives in May 2000 was carried out in knowledge of the fact that FIFA was already considering changing its rules on membership in the future (see above).
13. In July 2000, a favourable report was rendered by the UEFA representatives who had inspected Gibraltar's facilities, outlining that all requisite conditions set out in the applicable UEFA Statutes and Regulations were fulfilled (see above). Subsequently, the UEFA Executive Committee decided to ask for advice of an Expert Panel before rendering a decision on the GFA's application. It was therefore legitimate for the GFA to understand that UEFA would decide on its application on the basis of the conclusions of the Expert Panel, bearing in mind that the GFA, the English FA and the Spanish FA had all been requested to make written and oral submissions in this context.
14. The Expert Panel came to the main conclusion that the GFA was entitled to UEFA provisional membership. In the Expert Report which was submitted in writing to the UEFA Executive Committee on 27 August 2001, the members of the Expert Panel suggested to the UEFA Executive Committee "to amend the UEFA Statutes (...) to avoid similar problems *in the future*" (emphasized added). The Expert Panel thus proposed "an amendment to the effect that only UN-recognised States may apply for admission to and membership of UEFA".
15. However, before any decision on the merits was taken by UEFA on the GFA's application on the basis of the Expert Panel's main conclusion, as one would have reasonably expected, the relevant Old Rule on membership was changed in October 2001 upon a recommendation made in July of that same year by the UEFA Executive Committee. The New Rule actually implemented the recommendation that the Expert Panel had made, but only for *future* cases.

16. The present Panel is of the opinion that such a recommendation to replace the Old Rule by the New Rule was made in the light of the conclusions of the Expert Panel. The fact that the UEFA Executive Committee had already made such an amendment proposal at its meeting of 11-12 July 2001 (i.e. prior to receiving the Expert Panel's written report in August) tends to suggest that the UEFA Executive Committee was aware of the Expert Panel's conclusions at that time. The panel is thus satisfied that one of the main purposes for the amendment proposal made by the UEFA Executive Committee was to prevent the GFA's application from succeeding.
17. To apply the New Rule to the Claimant's case under these circumstances would be unfair and contrary to the above mentioned general principles of law. It were the actions of UEFA itself which created legitimate expectations that the GFA's application would be processed under the Old Rule, with adequate speed or at least upon receipt of and in compliance with the advice of the Expert Panel that UEFA had appointed specifically for that purpose.
18. The GFA's application to be admitted as a provisional UEFA member shall therefore be examined on the basis of the Old Rule, namely the rule applicable when the application was made and on the basis of which the Expert Panel appointed by the UEFA rendered its opinion.
19. As mentioned above, according to the Old Rule "Membership of UEFA is open to national football associations situated in the continent of Europe which are responsible for the organisation and implementation of football-related matters in their particular territory".
20. When reviewing whether the GFA's application fulfilled the conditions set out in this provision, the Expert Panel considered that "given that Gibraltar is a European association which is no longer dependent on the [British] FA and which has become autonomous in a sporting respect, and given that the GFA indisputably exercises sole responsibility for the organisation and structure of football in its territory, Article 5 paragraph 1 can only be interpreted as to mean that the GFA from a legal perspective fulfils the criteria of the UEFA statutes for becoming a UEFA member".
21. The same opinion was given by the UEFA administration itself in its inspection report and recommendations issued on 11 July 2000 (see, sections 18 and 19 above).
22. The Panel considers that these opinions are accurate and that there is no reason for considering, as submitted by the Respondent on the basis of the words used in Article 5 paragraph 2 of the UEFA Statutes, that the Old Rule on UEFA membership should in fact – as the New Rule eventually expressed in an explicit way - be construed as restricting eligibility to associations of countries which are recognized politically as independent States.
23. Such a point of view is in fact not supported by the letter of the Old Rule. Neither is it consistent with the opinion of CAS, as expressed in previous cases, that the concept of "nation" or "country" in the sports environment must not necessarily be "understood within its common political meaning" (see, Celtic Plc vs. UEFA, CAS 98/2001, paragraphs 25 seq.,

in Digest of CAS Awards II, op. cit., pp. 118-120). More importantly, the Respondent's argument is contradicted by the fact that UEFA already has – and had at the time when the application was made – a number of member associations from countries which do not enjoy independent statehood, such as Scotland, Wales or the Faroe Islands.

24. As a consequence of the above considerations the Panel is of the opinion that the GFA's application for UEFA membership meets the requirements set out in Article 5 paragraph 1 of the Old Rule.
25. Upon receipt of an application file from FIFA, as in the present case, UEFA must "decide whether to grant provisional membership or associate membership to the applicant association" (Article 4 paragraph 7 of the FIFA Statutes).
26. Article 6 paragraph 3 of the UEFA Statutes provides that the UEFA Executive Committee is competent to admit an applicant association as a provisional UEFA member, while the decision on full admission must be taken by the UEFA Congress.
27. The Respondent submits that even though the GFA's application might meet all requisite conditions for UEFA membership, an association like UEFA remains free to admit or to refuse the applicant as a new member by virtue of the principle of autonomy of the association under Swiss law.
28. The Panel must therefore examine whether the fact that the GFA's application meets the requirements of Article 5 paragraph 1 of the Old Rule entitles the GFA to provisional membership or whether UEFA has discretion to invoke the principle of freedom of association and has the right to deny membership on that basis.
29. Generally, freedom of association includes the freedom of an association to accept or to refuse any applicant for membership, even if the applicant fulfils all statutory conditions (see, *inter alia* HEINI A., *Das Schweizerische Vereinsrecht*, Bâle 1988, p. 48).
30. However, this principle is now generally considered to be limited, such limits being derived in particular from:
  - (i) the contractual nature of the membership to an association and the related obligation to act in good faith in the context of contractual or pre-contractual discussions (Article 2 Swiss Civil Code; see, *inter alia* ZEN-RUFFINEN P., *Droit du sport*, Zurich 2002, n° 279 and references; BADDELEY M., *L'association sportive face au droit*, Genève 1994, p. 75; HEINI A., op.cit., p.48);
  - (ii) the general prohibition of arbitrary decisions and the need of a control of the association's decision to refuse a new member (Article 2 paragraph 2 Swiss Civil Code);
  - (iii) in professional matters, the provisions of competition law and the related need to protect personality rights (see, JdT 1957 I 202-212; Article 7 of the Swiss Federal Law on Cartels).

31. Furthermore, in the context of sports associations, it is now often considered that associations in a monopolistic position – which is undoubtedly the case for the Respondent in Europe – have in fact a duty to accept new members if they fulfil all statutory conditions to that effect. This opinion is derived both from the legislation on cartels and from the provisions on the protection of the personality (see, HEINI A., *op.cit.*, p. 49; BADDELEY M., *op. cit.*, p. 82).
32. The Panel holds, in that respect, that the exclusion of athletes, or of a sports association to which athletes are affiliated, from an international sports organisation which occupies a dominant or monopolistic position in the organisation of the sports competitions at issue may have the effect of a boycott. It is the Panel's opinion that such an exclusion should therefore be held invalid, at least to the extent that it is not grounded on objective and justified reasons.
33. The Respondent itself admitted that a refusal by UEFA to grant the GFA provisional membership could be considered as illegal if it were arbitrary or based on "unjustified reasons".
34. The above legal considerations lead to the general conclusion that, under Swiss law, an association does not remain entitled, under any circumstances, to accept or refuse a new member at its sole discretion. However, in order to rule on the present case, there is no need for the Panel to develop a position of principle on this question. The Panel thus leaves open the question of the right of UEFA to accept or refuse new members at its sole discretion. The Panel is of the opinion that it may rely on the particular circumstances surrounding the GFA's application and the way it was processed by UEFA to decide upon the present case.
35. As pointed out above, UEFA acted from the outset as if the applicant would be granted provisional membership if all applicable conditions were met. The GFA invested a considerable amount of time and resources in obtaining its admission as a UEFA member, relying on the legitimate expectation that UEFA would not refuse its application without any justified reason.
36. The Panel holds that it is therefore the behaviour of the UEFA itself which created such legitimate expectations on the part of the Claimant (visits on site, favourable visit report and recommendation, appointment of an Expert Panel to assist the Executive Committee to decide on the case, favourable conclusions of the Expert Panel following a comprehensive and adversary procedure, etc.).
37. UEFA chose to process thoroughly the GFA's application and by doing so, it led the Claimant to believe that it would be admitted as a provisional member if the Statutes' conditions were met. By doing so, UEFA waived the right that it may have had under Swiss law to reject the Claimant's request for membership without justified reasons.
38. In that respect, it is the Panel's opinion that neither the change of membership rules by UEFA, the purpose of which may have been to enable UEFA to dismiss the GFA's application, nor the clearly negative position allegedly taken by the Spanish FA, which may

have influenced the UEFA's change of attitude and progressive reluctance to decide in a timely manner upon the GFA's application, constitute any such justified reasons.

39. The 11 July 2000 report by the UEFA delegation (see, section 18 above) lists certain conditions which have to be met in order for the GFA application for UEFA membership to succeed. It is for UEFA to decide whether these conditions are in fact met. Given the length of time which has elapsed since the application was first made, such a decision will have to be taken forthwith and will have to conform with the views expressed in this award.
40. The Panel further stresses that the possible change of FIFA rules on membership, which has been put forward by the Respondent as a reason for postponing any decision on the GFA's application, should not be an impediment to the UEFA granting provisional UEFA membership to the GFA.
41. Under Art. 4 paragraph 7 of the FIFA Statutes, the confederation "shall notify FIFA as soon as it considers a provisional member national association to be qualified to become a member of FIFA". This wording suggests that in two years' time, the UEFA shall remain entitled to assess whether the GFA fulfils the criteria for FIFA membership on the basis of the FIFA Statutes then in force.

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

1. UEFA is ordered to decide on the GFA's application for membership on the basis of the UEFA rules applicable at the time when the application was made. The decision has to be made by the UEFA no later than 31 March 2004.
2. GFA's other motions are rejected.
3. (...)