



**Arbitration CAS 2017/A/5338 Olegs Penkovskis v. Latvian Football Federation (LFF), award of 7 June 2018**

Panel: Mr Lars Hilliger (Denmark), Sole Arbitrator

*Football*

*Match-fixing*

*Burden and standard of proof in match-fixing cases*

*Evidence required in match-fixing cases*

*Requirements of claim for compensation for non-material damage*

1. In match-fixing cases the burden of proof regarding alleged involvement in match manipulation and/or any other breach of the principles of fair play lies with the governing body of the respective sport. Furthermore, CAS jurisprudence has constantly upheld the standard of proof in match-fixing cases to be the one of comfortable satisfaction, defined as being greater than a mere balance of probability, but less than proof beyond a reasonable doubt. While applying this standard of proof in match-fixing cases, one should bear in mind *“the seriousness of the allegation which is made”* and that most likely any corruption and manipulation is *“by its nature, concealed as the parties involved will seek to use the evasive means to ensure that they leave no trail of their wrongdoings”*.
2. The fact that a match, based on specific evidence, is considered manipulated for betting purposes is only the first step in deciding whether a certain player or a certain club is to be considered with comfortable satisfaction directly or indirectly involved in such match manipulation. It is crucial whether it is possible, on the basis of the player’s/clubs’ conduct on the pitch during the match or otherwise, to conclude that the player/club was involved in manipulation and/or in any other way breached the principles of fair play. Put differently, a link has to be established between the match manipulation and the player/club and/or a breach of the principles of fair play committed by the player or club. The sole match report of a betting fraud detection system is not in itself, and without further documentation or evidence, sufficient to establish such link. In this context, the fact that a team captain, due to its influence within the squad, is often targeted by match-fixers or plays a crucial role in executing the match-manipulation plan does not in itself provide a sufficient basis for assuming, without the production of further evidence in support thereof, that the captain of a team participating in a manipulated match is automatically, as a matter of course, involved in the manipulation of the match or in any other way breaches the principles of fair play.
3. In order for a claim for compensation for non-material damage to be successful the claimant has to establish the legal basis for a respective claim and submit evidence to prove that, and to what extent, his or her reputation and good name were affected as a result of the alleged reproachable conduct of the counterparty.

## I. THE PARTIES

1. Mr Olegs Penkovskis (the “Player” or the “Appellant”) is a football player of Latvian nationality. The Player was at the time playing in the Latvian football clubs FK Jekabpils/JSC (“Jekabpils”) in the Latvian first division and FC Raita (“Raita”) in the Latvian second division. Both clubs are in turn members of the Latvian Football Federation.
2. The Latvian Football Federation (the “LFF” or the “Respondent”) is the governing body of football in Latvia. The LFF is a member of the Union of European Football Associations (“UEFA”) and of the Fédération Internationale de Football Association (“FIFA”).

## II. FACTUAL BACKGROUND

3. The elements set out below are a summary of the main relevant facts as established by the Sole Arbitrator on the basis of the decision rendered by the Appeals Commission of the LFF on 21 August 2017 (the “Decision”), the written and oral submissions of the Parties and the evidence filed. Additional facts may be set out, where relevant, in the legal considerations of the present Award.
4. On 6 May 2017, the match FK Ogre v. Jekabpils in the Latvian first division (“Match 1”) ended with a 9-2 win for FK Ogre. The Appellant played the match for the Jekabpils team.
5. On 20 June 2017, the match Raita v. EXCONDO in the Latvian second division (“Match 2”) ended with a 5-1 win for EXCONDO. The Appellant played the match for the Raita team.
6. Finally, on 9 July 2017, the match Jekabpils v. FK Jelgava in the Latvian football cup (“Match 3”) ended with a 8-0 win for FK Jelgava, which team is playing in the Virsliga, the best football league in Latvia.
7. In his match delegate’s report of 10 July 2017 regarding Match 3, the match delegate noted, *inter alia*, as follows:

*“According to my opinion, the players of [Jekabpils] through their activities helped the opponent team players to score goals on the 42<sup>nd</sup> min, 67<sup>th</sup> min, 78<sup>th</sup> min. (deliberately lost the ball, made deliberate errors, made passes to the opponents, did not prevent the opponents from coming close to their own team’s goal)”.*

8. On 11 July 2017, following observations of suspicious international betting patterns regarding Match 3, the UEFA Betting Fraud Detection System (the “BFDS”) issued a Match Report regarding Match 3 (the “BFDS Match Report”), which, *inter alia*, concluded as follows:  
  
*“There is clear and overwhelming betting evidence that the course or result of this match was unduly influenced with a view to gaining corrupt betting profits. The betting evidence ultimately indicates that bettors held prior knowledge of FK Jekabpils/JSC losing the match by at least seven goals”.*
9. Furthermore, the BFDS Match Report stated, *inter alia*, as follows:

***“1) Suspicious live betting for FK Jekabpils/JSC to lose the match by at least six and seven goals***

*Suspicious betting emerged towards the end of the first half (at 0:3) in favour of FK Jekabpils/JSC losing the match by at least a six-goal margin, with odds for this outcome decreasing against all logical expectations to uncompetitive levels. Suspicious betting for FK Jekabpils/JSC to then lose by at least seven goals continued into the early stages of the second half (at 0:4), with bettors clearly undeterred by the constantly diminishing time remaining for this outcome to occur. Whilst match reports and highlights demonstrate that FK Jekabpils/JSC were the inferior side, this was to be expected given the clear gulf in ability of the two sides and was certainly insufficient to explain not just the strength of the betting witnessed but also the specific timing of the betting as well. Overall, these irregular patterns cannot be justified by logical sporting factors, and demonstrate that bettors held advanced knowledge of FK Jekabpils/JSC suffering defeat by at least a seven-goal margin.*

***2) Suspicious live betting for at least seven goals to be scored in total***

*There was additional suspicious betting observed for at least seven goals to be scored in the match that similarly emerged towards the end of the first half, with odds abruptly and illogically decreasing to wholly uncompetitive levels during this period of the game (at 0:3). The suspicious betting then ceased after the fourth goal of the match was scored as bettors could no longer profit from prior knowledge of the match containing at least seven goals, indicating that bettors had prior knowledge of the match outcome rather than responding to events on the pitch. When viewed alongside the suspicious betting observed opposing FK Jekabpils/JSC, it is abundantly clear that bettors held prior knowledge of the result of the match and were therefore exploiting all relevant markets at precise times as a consequence.*

***Summary***

*Suspicious live betting for FK Jekabpils/JSC to lose the match by at least six and seven goals, indicating that an attempt was made to unduly influence the course or result of this match with a view to gaining corrupt betting profits.*

***1) There was suspicious betting witnessed for JK Jelgava in the live Asian Handicap (AHC) market.***

*[...]*

***a) As illustrated in the graph above, very strong and suspicious betting emerged for FK Jelgava to win the match by at least six clear goals towards the end of the first half (0:3), with odds for this outcome decreasing against expectations. These patterns are firmly irregular, as in a legitimate market odds for this outcome should have been increasing notably, given the constantly diminishing time remaining for FK Jelgava to overcome a significant handicap. That the opposite patterns occurred here is deemed to be concerning from an integrity perspective.***

***b) Following FK Jelgava’s fourth goal in the 42nd minute (0:4), bettors proceeded to display a suspicious confidence in FK Jelgava winning the match by at least seven goals. At this stage, odds for FK Jelgava to extend their lead by a further three unanswered goals decreased marginally from the end of the first half until FK***

*Jelgava scored their fifth goal in the 58th minute, with bettors demonstrating an entire disregard for the increasingly tight time constraints on this outcome occurring.*

**c)** *Indeed, such was the strength of the betting witnessed that odds of 1.41 in the 57th minute implied that the probability of FK Jelgava winning the match by at least seven goals was 71%, whilst BFDS calculated odds of 2.78 implied a true and fair probability of 36% for this outcome to occur. As a result, it is clear that bettors held prior knowledge of FK Jelgava winning this match by a minimum of seven goals and the BFDS deem these betting patterns to be suspicious.*

**d)** *Whilst match action indicates that FK Jelgava were the more dominant side throughout this match, such markedly strong betting cannot be fully justified by this alone. Indeed, bookmakers had adequately accounted for this by imposing a significant handicap upon FK Jelgava in their initial odds compilation. Arguably the most important factor to highlight is that bettors targeted this market precisely. Had these strong betting preferences been related to match action, the BFDS would have expected to see similar betting for FK Jelgava throughout the match. The fact that truly suspicious betting was only observed for a 20 minute period either side of half-time, suggests that bettors were exploiting the market at a specific time based on prior knowledge of at least a seven-goal margin of victory.*

## **Summary**

*Suspicious live betting for at least seven goals to be scored in total, indicating that an attempt was made to unduly influence the course or result of this match with a view to gaining corrupt betting profits.*

**2)** *There was suspicious betting for at least seven goals being scored in the live Totals market.*

[...]

**a)** *Similar to the live AHC market, suspicious betting developed towards the end of the first half (0:3), as odds for at least seven goals being scored decreased significantly in a very short period of time, contrary to what the BFDS would expect to see in a legitimate market. Indeed, the BFDS would expect odds for further goals to be scored to increase as time elapses given the time constraints on the required goal(s) being scored, therefore to witness odds fail to trade in such a manner is considered to be concerning from an integrity perspective.*

**b)** *As alluded to previously, whilst match highlights indicate that FK Jelgava were very attacking throughout the match, this is insufficient to justify the irregular nature of the betting patterns that transpired, particularly given that strong betting was only observed for a specific period and not throughout the entire match. In this case, suspicious betting initially transpired when a 6.75 Totals line was offered, and bettors could profit from knowledge of at least seven goals being scored. As soon as the Totals line increased (after the fourth goal) and bettors could no longer profit from at least seven goals being scored, odds notably returned to significantly more competitive levels demonstrating that bettors held no discernible confidence in more than seven goals being scored. Viewing the betting across all live markets, there are clear indications that bettors held advanced knowledge of FK Jelgava winning the match by at least seven goals, and specifically targeted precise periods of the live Totals market as well as the live AHC market in order to extract their illicit profits, based upon this prior knowledge of the match outcome”.*

10. Finally, according to the BFDS Match Report, this was the first time the Appellant was in the line-up for a football team in an *Escalated Match*.
11. Following the receipt of the BFDS Match Report, investigations regarding five Latvian football matches, including Match 1, Match 2 and Match 3, were initiated by the Fair Play and Ethics Committee of the Respondent (the “FPE Committee”), in which connection a group of three experts (the “Expert Group”) was requested to analyse video recordings of the investigated matches.
12. In its ad hoc video analyst report of 12 July 2017, the Expert Group concluded as follows regarding the Appellant:

***“3. Conclusions regarding 09 July 2017 Latvian Cup match FK Jēkabpils/JSC – FK Jelgava.***

- 3.1. *The actions of the FK Jēkabpils team captain Olegs Penkovskis during the 42’ minute of the match were highly questionable and disputable. At the time of a corner kick from the right wing of the pitch, Olegs Penkovskis was standing at the far post when the kick was made. It can be observed that the ball is coming towards Olegs Penkovskis, but despite the incoming ball, his actions are exceedingly passive. Not only does he refuse to make any attempt to jump and head the ball away, but he also does not engage in any tackling or other defensive actions that were available to him due to his position. With his passivity he gave the opposing room for manoeuvre and to build-up their offensive, which led to an outcome of an additional score on part of the opponent.*
- 3.2. *On the 76th minute, the offensive actions of FK Jēkabpils was intercepted in the middle of the pitch by FK Jelgava. FK Jelgava players started their counter-attack during which Olegs Penkovskis should have covered his central zone by coming back to the defensive area with the rest of the defenders, and to actively tackle the opposing team players. During the course of this counter-attack, Olegs Penkovskis is passive beyond measure and does not even try to get the ball from FK Jelgava players, be it even by getting a foul or getting booked. It seems that in this way the team captain impliedly motivates other players to act inertly.*
- 3.3. *This leads to the conclusion that there is high probability of the two foregoing:*
  - 3.3.1. *Breach of article 9 of Annex to Disciplinary rules of Latvian Football Federation;*
  - 3.3.2. *Breach of article 10 of Annex to Disciplinary rules of Latvian Football Federation;*
  - 3.3.3. *It is recommended to the Disciplinary Commission of the Latvian Football federation to apply Olegs Penkovskis the sanction contained in the Disciplinary rules of the Latvian football federation, i.e. 1.5. c), d), e), f).*

#### **4. Conclusions regarding 20 June 2017 2nd league match EXCONDO – FC RAITA**

- 4.1. *On the 26th minute, FK Excondo intercepted the ball in the center of the pitch in the course of an attack from FK Raita from which they proceeded with a counter-attack via the left/wing. Olegs Penkovskis (Nr. 10) shifted to the attacking zone of the opponent towards the most dangerous player of FK Excondo (Nr11) who was accumulating speed and creating distance behind the backs of the defending players of FK Raita. Even when the opponent received the ball, Olegs Penkovskis had both the time and the necessary distance to tackle the attacking player of the opposing team, and to prevent him from moving ahead or making a kick for the goal, but Olegs Penkovskis failed to do that. Due to the offensive build-up of FK Excondo and the passive actions on the part of Olegs Penkovskis, FK Excondo was able to score a goal.*
  - 4.2. *On 85th minute, after facing pressure from the forward of the opposing team, FK Raita hit the ball into the central zone of the pitch. The ball did not reach the central circle and was intercepted by the player of the opposing team in zone where Olegs Penkovskis was at the time. Instead of tackling the relevant player or moving down into the defensive zone, Olegs Penkovskis watched the opponent, spectating his actions and did not engage him. He did not show any competitive interest in proceeding against the player from which the implication can be drawn that that this was not a game versus a team for a specific result.*
  - 4.3. *On 88th minute, the opposing team started its offensive with a goal kick with a short pass. FK Raita team players had the time to get back to their defensive positions when the offense began. In this situation, this is the only reasonable option as the opposing team has more non-screened players in the offence and in midfield. However, Olegs Penkovskis did not return to the defence nor did he tackle or otherwise engage any of the opposing team in the midfield. He returned to his half of the field while jogging in a gentle pace, which led to his team members becoming outnumbered – 3 on 4 against FK Excondo which leads to FK Excondo scoring.*
  - 4.4. *This leads to the conclusions that there is high probability of the two foregoing:*
    - 4.4.1. *Breach of article 9 of Annex to Disciplinary rules of the Latvian Football Federation;*
    - 4.4.2. *Breach of article 10 of Annex to Disciplinary rules of the Latvian Football Federation;*
    - 4.4.3. *It is recommended to the Disciplinary Commission of the Latvian Football federation to choose the sanction contained in the Disciplinary rules of the Latvian football federation, i.e. 1.5. c), d), e), f.”.*
13. On the same date, the FPE Committee concluded, *inter alia*, as follows regarding the Appellant:
- “With respect to FC Jēkabpils/JSC, the Committee possesses information that on 11 July 2017 the LFF received from the UEFA the UEFA BFDS report regarding the 9 July 2017 Latvian Cup 1/8 finals match between FC Jēkabpils/JSC and FC Jelgava, indicating that, as regards the bets made, there was obvious evidence that the course of the match and the result had been affected with a view to benefit from that by using unlawful means. As indicated in the report, before the match, the persons placing bets had obtained information that FC Jēkabpils/JSC team had to lose the match with at least a seven-goal difference. In addition, it has been stated in the UEFA BFDS report that unreasonably many bets had been placed on the loss of the match*

by FC Jēkabpils/JSC with a six-goal difference and the fact that at least seven goals would be scored during the match. It is worth noting that the report indicates that the large number of bets before the match could not be explained only by the power of proportion of the teams, because it was essential to take into account both the period, during which the majority of bets had been placed, and the time when the bets had been placed. In this case, the amount of the bets and their fluctuations clearly indicated that some individuals had had information before the match both on the number of goals to be scored during the match and on the result of the match.

Having reviewed the referee report on the 20 June 2017 match between EXCONDO and FC RAITA dated 21 June 2017, where the referee had stated that according to his opinion the players of FC RAITA had not observed the principles of fair play, the LFF DMC establishes that in the above match the players of FC RAITA had performed activities, which manifested as deliberate errors in defence to potentially ensure a particular result of the match.

In the light of the above, the Committee considered it necessary to clarify the views of experts also in relation to the match between EXCONDO and FC RAITA. As it may be concluded from the expert opinion, there were several episodes in the match (19 in total), in which the players of FC RAITA had performed suspicious activities most probably aimed at achieving a particular result. According to the opinion of the LFF DMC, it is essential to note that the following previously mentioned players were registered in the composition of FC RAITA and participated in the match - A., who has been mentioned in the expert report concerning 12 (of 19) suspicious episodes of the match, e.g., on the 59<sup>th</sup> and 82<sup>nd</sup> minute, when the opponent team scored goals, S., who performed actions, which manifested as deliberate errors on the 59<sup>th</sup> and 82<sup>nd</sup> minute of the match, as well as O.Penkovskis, who performed actions, which manifested as deliberate errors on the 26<sup>th</sup>, 85<sup>th</sup>, 88<sup>th</sup> minute of the match.

[...].

Considering all of the above conditions, documents, as well as the analysis of the matches of the competitions organised by the LFF performed by video experts, the Committee unanimously decides:

- pursuant to Article 5.2 of the Committee Regulation, to recommend the LFF DMC to expel FC Jēkabpils/JSC and FC Ogre from the 1<sup>st</sup> League Championship and to disqualify A., D., O.Penkovskis, S. for a period of 3 years, as well as I. for a period of 3 years, and to continue the investigations related to these teams and the team players, as well as to disqualify FC RAITA from the LFF competitions”.

14. On 14 July 2017, the Disciplinary Commission of the Respondent (the “LFF DC”) decided in its Protocol 2017/16 (the “DC Decision”), *inter alia*, as follows:

**“1. Regarding the future participation of FK Jēkabpils/JSC, FK Ogre and FC Raita in competitions organized by the LFF**

Having reviewed the following documents:

- the July 12 protocol of the meeting of the LFF Committee for Fair Play and Ethics (hereinafter – Committee);

- *The June 21 referee's report concerning suspicious actions by the FC RAITA players during the June 20 EXCONDO – FC RAITA match;*
- *the July 10 statement by a player of FK Ogre concerning the actions of FK Ogre players and head coach with the aim to manipulate match results;*
- *the July 10 delegate's report concerning the players' actions during the July 9 Latvian Cup match FK Jēkabpils/JSC – FK Jelgava;*
- *the July 11 UEFA BFDS report concerning the July 9 Latvian Cup match FK Jēkabpils/JSC – FK Jelgava;*
- *the July 12 report of the experts retained by the Commission and the video recordings concerning the June 18, 2017 komanda.lv First League match Preiļu BJSS – FK Ogre, the June 25, 2017 Latvian Cup match RTU FC/Skonto Academy – FK Ogre and the July 9, 2017 FK Jēkabpils/JSC – FK Jelgava match and the June 20, 2017 Second League EXCONDO – FC RAITA match;*

*The LFF DC finds:*

**1)** *After reviewing the contents of the protocol of the Committee meeting and the recommendations of the Committee, the LFF DC finds that, in the process of supervising the matches in competitions organized by the LFF as regards the alleged involvement of clubs, related persons and players in actions aimed at manipulating match results, the Committee has acquired a set of information, documents, statements and evidence that has contributed to the commencement of investigation and fact-finding against First League football clubs FK Jēkabpils/JSC and FK Ogre, as well as a Second League football club FC RAITA;*

### ***FK Jēkabpils/JSC***

**2)** *The LFF DC finds that it has been noted in the July 10 delegate's report by the match delegate that the players of Jēkabpils/JSC, through their actions, helped the opposing team's players to score in the 42nd, 67th and 78th minutes by deliberately giving away possession, making mistakes, passing the ball to the opposing players, and not interfering with their opponents' approaching their team's goal. In the view of LFF DC, these actions by the players during the July 9 Latvian Cup 1/8 final match FK Jēkabpils/JSC – FK Jelgava were performed with the aim to achieve a specific result in that match.*

*[...]*

**4)** *The LFF DC takes into account the fact that the Committee has retained an expert group that analyzed the videos of matches from competitions organized by the LFF in order to analyze the actions by the players and provide a report to the Committee concerning possible actions by the players that are contrary to the Fair Play principles in any particular match. The aforementioned match of the Latvian Cup was submitted for video analysis to these experts, and the report drawn up after watching the video also points to the fact that the following players – A. (65th and 78th minute), Mr. Oļegs Peņkovskis (42th and 76th minute), S. (42nd minute, 64th minute and 78th minute) – have performed actions that are subject to liability pursuant to Article 9 of the Annex to LFF Disciplinary Regulations.*

**5)** *In the view of the LFF DC, it shall be taken into account that the aforementioned UEFA BFDS report particularly emphasizes and analyzes the alleged involvement of a FK Jēkabpils/JSC player, A., in actions*



*with the aim to influence the result of the match. The report by UEFA BFDS states that A. demonstrated the worst defensive performance during the attacks by FK Jelgava. As an example, UEFA refers to the sixth goal of FK Jelgava, as well as the attack of FK Jelgava a few minutes later, when FK Jelgava scored with the goal scorer in the offside position, when A. hardly acted at all to interfere with the opposing players scoring a goal. In the meeting, the LFF DC also watched the recording of May 6 First League match FK Ogre – FK Jēkabpils/JSC and found that the players of FK Jēkabpils/JSC in certain situations committed intentional defensive mistakes in order to achieve a large number of goals and the intended result. It also has been taken into account that, in the next round of First League, the match between FK Jēkabpils/JSC and FK Progress/AFA Olaine ended with a 2:1 victory to FK Jēkabpils/JSC despite the fact that the FK Jēkabpils/JSC roster included 10 players from the previous match against FK Ogre.*

[...]

### **FC RAITA**

**12)** *After reviewing the June 21 referee report concerning the June 20 EXCONDO – FC RAITA match where the referee has indicated that, in his opinion, FC RAITA players have not observed the Fair Play principles, the LFF DC finds that FC RAITA players have performed actions in that game which amounted to deliberate defensive errors, in order to possibly ensure a specific result of the match;*

**13)** *In light of the circumstances mentioned in paragraph 12, the Committee considered it necessary to also request an expert opinion concerning the match referred to in paragraph 12. It can be inferred from the expert report that there are several situations (19 in total) where FC RAITA players have performed suspicious actions which are likely to have had the aim to achieve a specific result. In the view of the LFF DC, it is important to take into account the fact that the aforementioned players – A., who has been mentioned by the experts in connection with 12 suspicious match situations, e.g. in the 59th and 82nd minute when the opposing team scored a goal, S., who performed actions which amounted to deliberate defensive errors in the 59th and 82nd minute of the match, and Mr. Oļegs Penkovskis, who performed actions which amounted to deliberate defensive errors in the 26th, 85th and 88th minute of the match – are included in the roster of FC RAITA and participated in this match, and*

**14)** *On June 12, FC RAITA withdrew from the Latvian Second League, but the LFF DC considers it important to take into account the aforementioned facts and consider applying sanctions to the football club.*

*In the light of the aforementioned facts, the LFF DC finds there is sufficient information, documentation and evidence on the whole to conclude that the football clubs of FK Jēkabpils/JSC, FK Ogre and FC RAITA, the players A., D., Mr. O Penkovskis and S., and the head coach of FK Ogre, I., have flagrantly violated the rules of sport ethics, and thereby unanimously decide:*

[...].

**5.** *To suspend Mr. Oļegs Penkovskis (DOB: October 31, 1984) for 36 (thirty six) months and apply a disqualification from all football-related activities, which includes participating in the competitions of LFF, LTFA and others as delegated to the relevant organisation by the LFF, and being present in the locker rooms or technical zone or enter the stadiums (Article 1.5 points c), d), e), f) of the D.R, Article 9 of the Annex to the D.R., Article 2 of the Latvian Football Code of Conduct); [...].”*

15. On 27 July 2017, the Appellant filed an appeal against the DC Decision before the Appeals Commission of the LFF (the “LFF AC”), requesting it to cancel the sanction imposed on him.
16. In support of his claim, the Appellant submitted, *inter alia*, that he did not agree with the DC Decision, since neither the delegate’s report from Match 1, nor the delegate’s report from Match 2 had indicated that it was the Appellant who had performed any alleged deliberate actions in order to manipulate the games. Furthermore, the activities of the FPE Committee should not have any effect, since the legal basis for its existence had expired in April 2016. In addition, the LFF had applied its own regulations erroneously, and the LFF Code of Ethics does not contain any legal basis for the imposition of penal sanctions for any alleged violation of the said code. Finally, the Appellant argued that he did not manipulate any of the matches and that the results of the matches in question reflected the actual strength ratio between the teams.
17. The LFF AC, after having confirmed its competence, concluded that it had no reasons to doubt the conclusions by the Expert Group in its ad hoc video analyst report of 12 July 2017, the conclusions by the match delegate and the conclusions by the UEFA BFDS. Furthermore, the LFF AC found that the LFF DC had not applied its own regulations erroneously and that it had a sufficient legal basis for imposing the sanctions on the Appellant.
18. In addition, the LFF AC attached special significance to the opinion of the Expert Group of Match 2 and Match 3, where the Expert Group came to the conclusion that the Appellant had performed activities incompatible with the principle of fair play and had caused reasonable suspicion about the possible deliberate influencing of the results of the matches. The evidence of the matter, in conjunction with the essence and circumstances of the case, allowed the LFF AC to conclude that the Appellant had been involved in manipulation with the results of sports games.
19. Finally, the LFF AC emphasised that the sanctions for the manipulation with the results of sports games should be adequate, i.e. serving not only a punitive function, but also as a preventive measure both for the person to be sanctioned and for other persons to prevent them from engaging in such activities in the future.
20. On 21 August 2017, the LFF AC issued its decision (the “Decision”) stating, *inter alia*, as follows:

*“Consequently, the Contested Decision in the appealed part is legitimate and shall be left unchanged and the Applicant’s appellate complaint shall be rejected, On the strength of the above, based on Articles 5, 26 of the AC Regulations, the AC decides:*

*to reject the appeal of Mr. Oļegs Peņkovskis, personal code 311084-11170, in full;*

*to rule that the July 14, 2017 decision of the LFF Disciplinary Commission (protocol No. 2017/16) insofar as it suspends Mr. Oļegs Peņkovskis, personal code 311084-11170, for 36 (thirty six) months and applies a disqualification from all football-related activities, which includes participating in the competitions of LFF, LTF A and others as delegated to the relevant organisation by the LFF and being present in the locker rooms or technical zone or enter the stadiums, is lawful and shall remain unamended;*

*to confirm the July 14, 2017 decision of the LFF Disciplinary Commission (protocol No. 2017/16) insofar as it suspends Mr. Oļegs Penkovskis, personal code 311084-11170, for 36 (thirty six) months and applies a disqualification from all football-related activities, which includes participating in the competitions of LFF, LTF A and others as delegated to the relevant organisation by the LFF. and being present in the locker rooms or technical zone or enter the stadiums.*

*The Decision enters into force immediately and cannot be appealed”.*

### **III. SUMMARY OF THE ARBITRAL PROCEEDINGS BEFORE THE CAS**

21. On 20 September 2017, the Appellant filed his Statement of Appeal in accordance with Articles R47 and R48 of the CAS Code of Sports-related Arbitration (the “CAS Code”) against the Decision rendered by the Appeals Commission of the LFF on 21 August 2017.
22. On 29 September 2017, the Appellant filed his Appeal Brief in accordance with Article R51 of the CAS Code.
23. By letter dated 24 November 2017, in accordance with Article R54 of the CAS Code, the Parties were informed by the CAS Court Office that Mr Lars Hilliger, attorney-at-law in Copenhagen, Denmark, had been appointed as Sole Arbitrator to resolve the dispute at hand.
24. On 18 December 2017, the Respondent filed its Answer in accordance with Article R55 of the CAS Code.
25. By letter of 27 December 2017, the Appellant requested a second round of written submissions and requested that the file be supplemented with additional evidence.
26. By letter of 3 January 2018, the Parties were informed that the Sole Arbitrator, based on the circumstances of the case, had decided that the Appellant’s request for a second round of written submissions was granted.
27. On 17 January 2018, the Appellant filed his Reply.
28. In his Appeal Brief and in his Reply, the Appellant requested that the following evidence be obtained:
  - from the LFF: The video recording and the analysis of the UEFA BDFS report, concerning the FK Jekabpils/JS-FC Jelgava match on July 9, 2017, the expert analysis and recommendations concerning the FC RAITA – EXCONDO match;
  - from the UEFA: The UEFA BDFS reports that have been provided to the LLF over a certain period of time (established at the Court’s discretion) and from the LFF, the information about the practice concerning the reports received;

- The appointment of an independent expert or a group of experts to provide its analysis concerning the actions of the [Appellant] in the matches FC RAITA – EXCONDO (26<sup>th</sup>, 85<sup>th</sup> and 88<sup>th</sup> minutes) and FK Jekabpils/JS- FC Jelgava (42<sup>nd</sup> and 76<sup>th</sup> minutes).
29. On 7 February 2018, the Respondent filed its Rejoinder.
30. By letter of 12 March 2018, the CAS Court Office informed the Parties that, pursuant to Article R44.2 of the CAS Code, the Sole Arbitrator had decided to hold a hearing in this matter. Furthermore, the Respondent was invited to comment on the Appellant's request in his Reply for production of documents and for the appointment of an independent expert.
31. By letter from the CAS Court Office of 22 March 2018, the Parties were informed as follows:

*“On behalf of the Sole Arbitrator, who has considered the Appellant’s procedural requests and the Respondent’s submissions on these issues, the parties are advised as follows:*

1. Requests for production of documents

*The Sole Arbitrator notes that the analysis of the UEFA BFDS report concerning the FK Jekabpils/JSC v. FK Jelgava match as well as the expert analysis and recommendations concerning that match and the FC Raita v. Excondo match have already been filed by the Respondent under Exhibits 3 and 4. In its email of 13 March 2018, the Respondent further provided the video recording of the 9 July match between FK Jekabpils/JSC and FK Jelgava.*

*The Respondent shall further produce by **29 March 2018** the statement of the FC Ogre player. The Sole Arbitrator notes that this statement was part of the Respondent’s file and is referred to in the first instance decision issued by the LFF Disciplinary Commission on 14 July 2017.*

*The Appellant’s request for production of all UEFA BFDS reports that have been provided to the LFF over a certain period of time as well as the information about the Respondent’s practice in dealing with these reports are denied. The Sole Arbitrator notes that the Appellant will have the opportunity to question the Respondent’s representatives and witnesses on this issue at the hearing.*

2. Request for the appointment of an independent expert or group of experts

*On behalf of the Sole Arbitrator, the Appellant’s request for the appointment of an independent expert or group of expert is denied. The Sole Arbitrator notes that pursuant to Article R51 para. 2 and R55 of the Code of Sports-related Arbitration, it is for the parties to submit with their written submissions the names of any expert(s) they intend to call. The Sole Arbitrator does not consider it necessary to appoint and hear an expert to supplement the submissions of the parties.*

3. Request for the exclusion of the Sportradar Integrity Services report of December 2017 (the “Sportradar report”)

*The Appellant’s request for the exclusion of the Sportradar report is denied. The Sole Arbitrator holds that this report was not available to the Respondent before the challenged decision was rendered and thus could not have been filed in the first instance proceedings. Furthermore, it is understood that the Appellant’s objection is*

*based on the fact that the Sportradar report would be irrelevant. The Appellant will have the opportunity to comment on the relevancy of this exhibit at the hearing”.*

32. By e-mail of 28 March 2018, the Respondent requested permission to change the witness at the hearing from the intended witness, Mr Constantin Negraru of Sportradar, to Mr Thomas Mace, Sportradar Director of Global Operations.
33. Invited to comment on Respondent’s request, the Appellant stated, by e-mail of 4 April 2018, that he would leave the decision to the discretion of the Sole Arbitrator; however, he pointed out that pursuant to Article R44.2 of the CAS Code, parties may only call such witnesses and experts which they have specified in their written submissions.
34. On 5 April 2018, the Parties were informed that the Sole Arbitrator had granted the request for substitution of the witness, noting that both gentlemen are Sportradar employees and that Mr Thomas Mace would testify on the same issues as those which would have been discussed by Mr Constantin Negraru.
35. By e-mail of 6 April 2018, the Respondent submitted a copy of the FK Ogre player’s statement requested by the Appellant.
36. By letter of 9 April 2018, the Parties were informed that the FK Ogre player’s statement filed by the Respondent was admitted to the case file and that the Appellant would have the opportunity to comment on this statement during the hearing.
37. On 16 April 2018, the Appellant and the Respondent both duly signed and returned the Order of Procedure.
38. On 25 April 2018, a hearing was held in Lausanne, Switzerland.
39. In addition to the Sole Arbitrator and Ms Delphine Deschenaux-Rochat, counsel to the CAS, the following persons attended the hearing:
  - For the Appellant: Mr Raitis Tiltiņš, attorney-at-law in Riga, Latvia
  - For the Respondent: Mr Pāvēls Tjuševs, attorney-at-law in Riga, Latvia

The Appellant did not attend the hearing.

40. Mr Thomas Mace, Sportradar Director of Global Operations and Mr Graham Peaker, UEFA Intelligence Coordinator were heard as witnesses via Skype. They both gave testimony duly invited by the Sole Arbitrator to tell the truth subject to the sanctions of perjury under Swiss law. The Parties and the Sole Arbitrator had the opportunity to examine and cross-examine the witnesses and the Appellant.
41. At the outset of the hearing, the Parties confirmed that they had no objections to the constitution of the Panel.

42. The Parties were afforded ample opportunity to present their case, submit their arguments and answer the questions posed by the Sole Arbitrator. After the Parties' final submissions, the Sole Arbitrator closed the hearing and reserved his final award. The Sole Arbitrator took into account in his subsequent deliberations all the evidence and arguments presented by the Parties although they may have not been expressly summarised in the present Award.
43. Upon the closure of the hearing, the Parties expressly stated that they had no objections in respect of their right to be heard and to have been treated equally and fairly in these arbitration proceedings.

#### **IV. THE PARTIES' REQUESTS FOR RELIEF AND POSITIONS**

44. The following outline of the Parties' requests for relief and positions is illustrative only and does not necessarily comprise every contention put forward by the Parties. The Sole Arbitrator, however, has carefully considered all the submissions and evidence filed by the Parties with the CAS, even if there is no specific reference to those submissions or evidence in the following summary.

##### **A. The Appellant**

45. In his Appeal Brief and in his second written submission, the Appellant requested the following from the CAS:

1. *To declare the actions of the [LFF] unlawful and repeal the [DC Decision] and the Decision.*
2. *[...].*
3. *[...].*
4. *[...].*
5. *[...] to declare that non-material damage has been caused and to recover from the [LFF] a compensation in the amount of EUR 15 000 for non-material damage in favour of the [Appellant].*
6. *[...] to recover the full costs of arbitration from the [LFF] (all fees, translation expenses and postal charges)".*

46. In support of his requests for relief, the Appellant submitted as follows:
  - a) The FPE Committee and the LFF DC violated the provisions of the LFF regulations when adopting the DC Decision.
  - b) Pursuant to the LFF Disciplinary Regulations, the decisive documents for the LFF DC to review in order to decide whether a match has been manipulated or not are the match sheet and the report of the match inspectors and/or delegate.

- c) The LFF Disciplinary Regulations do not provide the referee and the match delegate with the power to decide whether the players of a particular match have observed the principles of fair play during the match.
- d) The power of observance of the fair play principles in fact falls within the competence of the FPE Committee.
- e) However, the FPE Committee was an extraordinary committee approved by the board of the LFF in order to examine matters concerning match result fixing, financial speculation and betting as well as other serious violations of sports ethics in competitions organised by the LFF, but the FPE Committee was only confirmed to act within the period from 30 April 2015 until 29 April 2016.
- f) As the board of LFF never extended the approval of the FPE Committee, the functioning of the FPE Committee after 29 April 2016 is without legal basis.
- g) Also pursuant to the LFF Disciplinary Regulations, the duty of the LFF DC is to review any material related to any alleged manipulated matches, however, the LFF DC never received the statement of the FK Ogre player and the referees' and delegates' reports for the purpose of further investigations.
- h) Furthermore, the LFF DC did not review the alleged violations of the LFF Disciplinary rules in accordance with the applicable regulations (the LFF rules concerning match result fixing, financial speculation and betting), and further it did not collect additional information, nor did it provide the Appellant with the opportunity to provide such additional information.
- i) As such, the entire investigation was wrongly simplified, and the Appellant was denied his rights pursuant to the LFF Disciplinary Regulation and the LFF rules concerning match result fixing, financial speculation and betting, including but not limited to the right to be heard, the right to request additional information and the right to submit his own evidence.
- j) Furthermore, the regulations of the LFF do not provide the legal basis for any sanctions arising from any (alleged) violation of the Latvian Football Code of Conduct.
- k) Nevertheless, the LFF AC did not address all the procedural arguments and thus decided not to repeal the DC Decision.
- l) With regard to the alleged manipulation of the three matches, the only evidence confirming that the results have been manipulated is the BFDS Match Report regarding Match 3.
- m) However, the BFDS Match Report does not analyse the actions of the Appellant, nor does it in any way conclude that the Appellant was involved in the alleged manipulation of the said match.

- n) Furthermore, the BFDS Match Report can only be considered valuable evidence if corroborated by further valid evidence to the same effect, which is not the case in the dispute at hand.
- o) The Appellant was never involved in any manipulation of any of the three matches and was never involved in any actions which constitute a breach of the principles of fair play.
- p) The results of the three matches were the results of the actual strength and general condition of the teams in question at the time of the matches.
- q) Just as the actions of the Appellant were the result of the sporting situations of each particular match and were under no circumstances the result of deliberate defensive mistakes made by the Appellant.
- r) The burden of proof showing the Appellant's alleged involvement in any manipulation of any of the three matches lies with the Respondent and has in no way whatsoever been discharged by the Respondent.
- s) The Respondent has no objective evidence to prove that the Appellant was involved in any match manipulation or any other infringement of the regulations of the LFF, and the LFF had therefore no grounds for applying the sanctions provided for in the regulations.
- t) In any case, the sanction imposed on the Appellant is not proportionate to the alleged offence.
- u) As the Appellant's reputation has been severely damaged as a result of the DC Decision and the Decision, which was published in the mass media in Latvia, and as a result of the resources spent by the Appellant during the litigation process, the Appellant should be entitled to receive an amount of compensation for the non-material damage caused by the Respondent.
- v) Such amount of compensation should be proportionate to the embarrassment, discomfort and stress caused over the period of several months.

## **B. The Respondent**

47. In its Answer, the Respondent requested the CAS to issue an award:

- “1. *Dismissing Appellant's prayers for relief.*
- 2. *Confirming the Decision under appeal.*
- 3. *Ordering the Appellant to pay a significant contribution towards the legal fees and other expenses incurred by LFF in connection with these proceedings”.*

48. In support of its requests for relief, the Respondent submitted as follows:



- a) The regulations of the LFF do not provide for any express standard of proof in match-fixing cases.
- b) In line with its consistent jurisprudence regarding match-fixing cases, the CAS should also in this case apply the standard of comfortable satisfaction having in mind that *“corruption is, by its nature, concealed as the parties involved will seek to use evasive means to ensure that they leave no trail of their wrongdoings”* and *“the paramount importance of fighting corruption”*.
- c) The basis on which the Appellant was sanctioned was availability of sufficient data confirmed by expert evidence regarding the ambiguous conduct of the Appellant on the pitch which is confirmed by video recordings.
- d) Internal evidence established that the Appellant played an active role in the match-fixing activity, which is supported by, *inter alia*, a report from video experts investigating the relevant matches.
- e) The LFF investigations were made by a team of competent and impartial internal experts, who came to the conclusion that actions of the Appellant were deliberate and led to intentional defensive mistakes.
- f) To back up the LFF investigations, the Respondent obtained a report from Sportradar, which confirmed that a number of individuals (most likely) involved in match-fixing were a part of the Jekabpils team during the time when the Appellant was the captain of the said team, therefore being one of the most influential members of the squad.
- g) The conduct of the Appellant is incompatible with the rules and regulations of the LFF, and the Appellant was sanctioned accordingly.
- h) The sanction imposed on the Appellant is proportionate to the conduct of the Appellant.
- i) In any case, the CAS must only amend the sanction imposed by the LFF judicial body if the CAS finds that the said body exceeded its margin of discretion and if the sanction is to be considered as evidently and grossly disproportionate to the offence, which is not the case in this situation.
- j) With regard to the alleged lack of legal basis for the FPE Committee, it must be stressed that the DC Decision was rendered by the LFF DC, which is a legal institution under the auspices of the LFF.
- k) The advisory opinion that the LFF DC received by the FPE Committee and which was based on the ad hoc video report from the Expert Group was of a non-binding nature.
- l) The disciplinary rules of the LFF provide that in the event of an intentional or unintentional breach of the rules by a player, supported by evidence (such as LFF official persons, match delegates, audio and video recordings), the disciplinary case is subject to a review by the LFF DC as a first instance body and by the LFF AC as a second instance body.

- m) The LFF complied with its own rules and procedures during the entire process.
- n) With regard to the alleged lack of procedural fairness, the CAS has the full power to review the fact and the law, which means, *inter alia*, that even a violation of the principles of due process or of the right to be heard in the prior proceedings before the prior instances of the regulatory body, may be cured by CAS.
- o) In the event that the CAS should uphold the Appellant's appeal, the Appellant's request for non-material damages should in any case be rejected.
- p) First of all, the Appellant has not substantiated the criteria used to arrive at the requested amount of damages, which amount is purely speculative and uncertain.
- q) Furthermore, it is up to the Appellant to discharge the burden of proof to show that the Appellant's reputation was negatively affected as a result of the Respondent's behaviour, which burden the Appellant has not discharged.
- r) In addition, the Appellant has failed to establish a causal relationship between the conduct of the Respondent and the alleged damaged reputation.
- s) Finally, in any case, to grant compensation for non-material damage in this particular case would not be in line with the criteria listed in the CAS jurisprudence.

## V. CAS JURISDICTION AND ADMISSIBILITY OF THE APPEAL

- 49. Article R47 of the CAS Code states as follows: "*An appeal against the decision of a federation, association or sports-related body may be filed with the CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body*".
- 50. With respect to the Decision, the jurisdiction of the CAS derives from Article 49 of the Statutes of the Latvian Football Federation (the "LFF Statutes") that, *inter alia*, determines as follows:
  - "1. *Any dispute arising from or related to the application of FIFA, UEFA and LFF Statutes or regulations shall be submitted to the exclusive jurisdiction of FIFA, UEFA and LFF. Members, players, officials and match and/or player's agents shall not take any dispute to ordinary courts unless mandatory prohibitory legal acts of Latvian law provides otherwise.*
  - 2. *LFF shall have jurisdiction over national disputes, i.e. disputes between parties belonging to LFF. FIFA and UEFA shall have jurisdiction on international disputes, i.e. disputes where at least one party belongs to an Association other than LFF.*
  - 3. *Any dispute of national dimension may only be referred in the last instance to the CAS, which will settle the dispute to the exclusion of any ordinary court unless mandatory or prohibitory legal acts of Latvian law provides otherwise. [...]*".

51. In addition, neither the Appellant nor the Respondent objected to the jurisdiction of the CAS, which was furthermore confirmed by the Parties signing the Order of Procedure.
52. The grounds of the Decision were notified to the Appellant on 1 September 2017, and the Appellant's Statement of Appeal was lodged on 20 September 2017, *i.e.* within the statutory time limit of 21 days set forth in Article R49 of the CAS Code, which is not disputed. Furthermore, the Statement of Appeal and the Appeal Brief complied with all the requirements of Articles R48 and R51 of the CAS Code.
53. It follows that the CAS has jurisdiction to decide on the Appeal and that the Appeal is admissible.

## VI. APPLICABLE LAW

54. Article R58 of the CAS Code states as follows: *"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision"*.
55. The Parties agree that the applicable regulations in these proceedings for the purpose of Article R58 of the CAS Code are the rules and regulations of the LFF, since the present appeal is directed against a decision issued by the LFF applying the rules and regulations of the same.
56. Based on the above, and with reference to the Parties' submissions, the Sole Arbitrator is satisfied to accept the application of the LFF Regulations and, additionally, Latvian law.

## VII. MERITS

57. Initially, the Sole Arbitrator notes that pursuant to the DC Decision and the Decision, the Appellant is suspended and disqualified from all football-related activities, *"[...] which includes participating in the competitions of LFF, LTFA and others as delegated to the relevant organisation by the LFF, and being present in the locker rooms or technical zone or enter the stadiums. (Article 1.5 points c), d), e), f) of the D.R., Article 9 of the Annex to the D.R., Article 2 of the Latvian Football Code of Conduct); [...]"*.
58. Article 1.5 of the LFF Disciplinary Regulations states as follows:  
*"The following disciplinary measures may be imposed on individuals: [...]"*
  - a) *warning;*
  - b) *fine;*
  - c) *disqualification;*
  - d) *prohibition to be present in the locker room, technical area and attend a press conference;*

- e) *prohibition to enter the stadium;*
- f) *prohibition to participate in any activities associated with football;*
- g) *withdrawal of awards”.*

59. Article 9 of the Annex to the LFF Disciplinary Regulations states as follows:

*“A player or an official person, who falsifies documents or performs an action that is incompatible with the ethics of the sport, shall be disqualified for a period from 12 (twelve) months to a lifetime disqualification”.*

60. Article 2 of the Latvian Football Code of Conduct states as follows:

*“Players, coaches, official persons of teams, club presidents, referees, inspectors, and delegates, the LFF President, LFF management board members and the LFF members undertake: [...]*

- 2) *To fully defend and respect the principles of fair game to turn against the unfair influencing of matches for profit purposes, corruption, cheating, bullying, doping, fake fouls or injuries; [...].”.*

61. The disciplinary proceedings against the Appellant and the resulting sanction imposed ensue from the Appellant’s conduct in the following three matches:

- **“Match 1”**: On 6 May 2017, the match FK Ogre v. Jekabpils in the Latvian first division ended with a 9-2 win for FK Ogre. The Appellant played the match for the Jekabpils team.
- **“Match 2”**: On 20 June 2017, the match Raita v. EXCONDO in the Latvian second division ended with a 5-1 win for EXCONDO. The Appellant played the match for the Raita team.
- **“Match 3”**: On 9 July 2017, the match Jekabpils v. FK Jelgave in the Latvian football cup ended with a 8-0 win for FK Jelgave, which team is playing in the Virsliga, the best football league in Latvia. The Appellant played the match for the Jekabpils team.

62. In relation to this, a dispute over a number of issues has been raised by the Parties. In essence, the Appellant submits that he was never involved in any manipulation of any of the three football matches, nor did he in any other way breach the principle of fair play. The Respondent never documented such alleged breach by the Appellant. Furthermore, the Appellant submits that the sanction imposed on him lacks a legal basis, just as the LFF in the proceedings in the first instance failed to comply with its own rules and regulations.

63. Thus, the main issues to be resolved by the Sole Arbitrator are:

- A) Based on the evidence available in this case, is the Appellant to be found guilty of involvement in manipulation of one or more of the three football matches in question or in any other breach of the principle of fair play?

- B) In the event that question A) is answered in the affirmative, did the Respondent comply with its own rules and regulations during the process, and does the imposed sanction have the necessary legal basis?
- C) In the event that both questions A) and B) are answered in the affirmative, is the sanction imposed on the Appellant disproportionate to the Appellant's breach?
- D) In the event that the Appellant is not found guilty of involvement in manipulation of one or more of the three football matches in question or in any other breach of the principle of fair play, is the Appellant entitled to any non-material damages and, in the affirmative, in what amount?

**A. Based on the evidence available in this case, is the Appellant to be found guilty of involvement in manipulation of one or more of the three football matches in question or in any other breach of the principle of fair play?**

**a. *Applicable standard of proof***

- 64. Initially, the Sole Arbitrator notes that it is not disputed by the Parties that the burden of proof regarding the Appellant's alleged involvement in match manipulation and/or any other breach of the principles of fair play lies with the LFF and that the standard of proof is the one of comfortable satisfaction. This is in line with the CAS jurisprudence, which has constantly upheld this standard of proof in match-fixing cases defined as being greater than a mere balance of probability, but less than proof beyond a reasonable doubt (CAS 2016/A/4650).
- 65. Furthermore, the Sole Arbitrator agrees that in the application of this standard of proof in match-fixing cases, one should bear in mind "*the seriousness of the allegation which is made*" and that any corruption and manipulation most likely is "*by its nature, concealed as the parties involved will seek to use the evasive means to ensure that they leave no trail of their wrongdoings*" (CAS 2010/A/2172).
- 66. To comply with this burden and standard of proof, the Sole Arbitrator notes that the LFF relies on four types of evidence to justify the Decision: a) the match delegate's report regarding Match 3; b) the BFDS Report regarding Match 3 and the Sportradar Report regarding the two football clubs Jekabpils and FK Ogre (the "Sportradar Report"); c) the video recordings and the Expert Group's ad hoc video analyst report; and finally, d) the statement of the FK Ogre player K..

**b. *The match delegate's report regarding Match 3***

- 67. In his report regarding the Match 3, the official match delegate stated the following regarding several incidents which occurred during the match:

*"According to my opinion, the players of [Jakabpils] through their activities helped the opponent team players to score goals on the 42<sup>nd</sup> min, 67<sup>th</sup> min, 78<sup>th</sup> min. (deliberately lost the ball, made deliberate errors, made passes to the opponents, did not prevent the opponents from coming close to their own team's goal)".*

68. The observation made by the match delegate was not adequately substantiated nor specified any further during the hearing, for example by a witness statement by the match delegate.

**c. *The BFDS Report regarding Match 3 and the Sportradar Report regarding the football clubs Jekabpils and FK Ogre***

69. Based on the submissions and evidence filed by the Parties and the witness statements from Mr Thomas Mace, Sportradar, and Mr Graham Peaker, the Sole Arbitrator initially notes that the role of the BFDS is to highlight irregular betting movements, both pre-match and in-game in the core of betting markets by monitoring major European and Asian bookmakers. The monitoring of the betting markets covers all UEFA competition matches (appr. 2,000 matches per season) and matches of the top two divisions and cup competitions of UEFA's member associations (appr. 30,000 matches per season).

70. The monitoring uses sophisticated algorithms and mathematical models to compare calculated odds with actual bookmakers' odds to determine whether the odds in a specific minute or time period are irregular. Calculated odds are a mathematical representation of the true probability of an occurrence without the external effect of money and opinion. In effect, this shows what should be happening to the odds instead of what is actual happening,

71. If a match displays irregular betting patterns the match is "escalated" and a report generated. Such reports include detailed information from the monitored betting operations together with match specific information, for example the current form of the teams involved, on-field actions, player data and information regarding the match officials as well as motivational factors (promotion/relegation needs or potential qualification for an UEFA competition the following season). The reports contain a textual analysis and conclusion of the observations made by the specialists as well as graphical representations of movements of the betting market.

72. According to the information received from Sportradar, it was possible to bet on Match 1 and Match 2 with approximately 50 registered bookmakers monitored by Sportradar. Sportradar's analysis of the betting data regarding these two matches did not display any irregular betting patterns and, thus, neither of these two matches were escalated and further analysed or investigated by Sportradar.

73. With regard to Match 3, it was possible to bet on this match with more than 500 bookmakers across Europe and Asia. Of the more than 50 matches monitored by Sportradar on the same date, Match 3 was the only match which displayed such irregular betting leading to the "escalation" of the match.

74. Based on the betting data and the subsequent analysis of the match specific information, the BFDS Match Report concluded, *inter alia*, as follows:

- *Suspicious live betting for FK Jekabpils/JSC to lose the match by at least six and seven goals, indicating that an attempt was made to unduly influence the course or result of this match with a view to gaining corrupt betting profits.*

- *Suspicious live betting for at least seven goals to be scored in total, indicating that an attempt was made to unduly influence the course or result of this match with a view to gaining corrupt betting profits.*
  - *There is a clear and overwhelming betting evidence that the course or result of this match was unduly influenced with a view to gaining corrupt betting profits. The betting evidence ultimately indicates that bettors held prior knowledge of FK Jekabpils/JSC losing the match by at least seven goals.*
75. Based on the information and subsequent analysis, Mr Thomas Mace supported the conclusions of the BFDS Match Report, according to which there was overwhelming evidence that Match 3 had been manipulated for betting purposes. Mr Mace further stated that the threshold for such conclusions by the Sportradar is extremely high.
  76. With regard to the alleged involvement of the Appellant in the manipulation for betting purposes of Match 3, both Mr Thomas Mace and Mr Graham Peaker underlined that there were no indications or evidence in the betting information gathered by Sportradar that indicated or documented the Appellant's involvement in such manipulation.
  77. It was further stated that history shows that match manipulation of football matches "always involves somebody on the pitch", however, it is up to the national associations to investigate further in order to detect who are responsible for and involved in such manipulation.
  78. Furthermore, the Sole Arbitrator notes that according to other information also contained in the BFDS Match Report, this match was the first escalated match in which the Appellant participated.
  79. Based on a detailed examination of the BFDS, the Sole Arbitrator finds that the information and conclusions derived from the BFDS are valuable evidence that can be used to conclude that a match was manipulated for betting purposes.
  80. In this context, the Sole Arbitrator agrees with, *inter alia*, the Panel in CAS 2016/A/4650, who emphasised that the analytical data obtained must subsequently be interpreted by experts/analysts before conclusions are drawn as to whether a match has been manipulated for betting purposes or not. *"The conclusion that the statistical information cannot be explained by normal circumstances does not necessarily entail that it must hence be concluded that the results are to be explained by match-fixing. In order to come to the conclusion that a match is fixed, the analytical information needs to be supported by other, different and external elements pointing in the same direction, i.e. a differentiation must be made between the so-called quantitative information, and a qualitative analysis of the quantitative information, which is also needed"*.
  81. The Sole Arbitrator further notes that the Appellant has not ruled out the possibility of concluding, on the basis of the BFDS Match Report, that Match 3 was manipulated for betting purposes.
  82. Based on that, the Sole Arbitrator finds that it may be taken into account that Match 3 was in fact manipulated for betting purposes.

83. However, the Sole Arbitrator stresses that the circumstance that a match is considered manipulated for betting purposes is only the first step in deciding whether a certain player or a certain club with comfortable satisfaction is to be considered directly or indirectly involved in such match manipulation.
84. The BFDS Match Report is therefore not in itself, and without further documentation or evidence, sufficient to establish a link between the match manipulation and the Appellant and/or a breach of the principles of fair play committed by the Appellant.
85. With regard to Sportradar Report regarding the football clubs Jekabpils and FK Ogre, the Sole Arbitrator initially notes, that, after the receipt of the BFDS Match Report and the DC Decision was rendered the Sportradar's Intelligence and Investigation Services were tasked by the LFF *"to provide an investigative report into football clubs [Jekabpils] and FK Ogre and several individuals [including the Appellant] representing these football teams"*.
86. The Sportradar Report mentions various suspicious circumstances and connections in relation to a number of players other than the Appellant, which circumstances the Sole Arbitrator finds of no relevance to this case.
87. With regard to the Appellant, the only comments made in the Sportradar Report are regarding the fact that the Appellant acted as the captain of his teams and that *"Previous match-fixing cases known to Intelligence and Investigation Services have showed that, due to their influence within the squad, team-captains are often targeted by match-fixers or play a crucial role in executing the match-manipulation plan"*.
88. However, the Sportradar Report does not in any concrete way link the Appellant to any other circumstances documenting or indicating that the Appellant should in fact have been involved in any match manipulation and/or any other breach of the principles of fair play.
89. Furthermore, and for the sake of good order, the Sole Arbitrator notes that the Sportradar Report states as follows: *"The interpretations and conclusions in this report are made on the balance of probabilities on information available at the time of preparation"*, whereas the standard of proof to be used by the Sole Arbitrator in his assessment of the case is the one of comfortable satisfaction.

***d. The video recordings and the Expert Group's ad hoc video analyst report***

90. Following the BFDS Match Report, the FPE Committee requested the Expert Group to analyse video recordings of, *inter alia*, Match 2 and Match 3.
91. With regard to Match 2, the Expert Group concludes in the Ad Hoc video analyst report, in essence, regarding two incidents during the game that the actions of the Appellant *"were highly questionable and disputable"*, *"passive beyond measure"* and that he *"impliedly motivates other players to act inertly"*.
92. With regard to Match 3, the Expert Group found, *inter alia*, that the Appellant on three occasions failed to engage adequately in the defensive tasks, which in two situations led to the scoring of goals by the opposing team.



93. The Sole Arbitrator and the Appellant have had access to such video recordings during these proceedings, and an extract of the video recordings from Match 3 was shown during the hearing with additional oral comments from the Respondent.
94. The Sole Arbitrator initially notes that he has no valid grounds for doubting the expertise or independence of the members of the Expert Group, which the Appellant has not argued either.
95. However, the Sole Arbitrator notes that the Respondent, during the hearing, was not able to explain the specific content and extent of the Expert Group's task. For instance, the Respondent was incapable of explaining whether it had previously been pointed out to the Expert Group whether focus should be directed specifically towards certain teams or towards particular players, nor was the Respondent capable of clarifying whether all the games in question were watched in their entirety or of specifying the information the Expert Group had received before the review.

***e. Statement of the FK Ogre Player***

96. In his written statement of 10 July 2017 to the LFF regarding his own team, the FK Ogre player K. also stated, *inter alia*, as follows:

*“Likewise, I would like to indicate that [Match 3] was very suspicious. I believe that the players of [Jekabpils] had carried out deliberate actions that contributed to the fact the [FK Ogre] scored several easy goals”.*

97. Initially, the Sole Arbitrator notes that this is a very general and overall personal assessment, which does not in any way appear to be substantiated by additional information or details.
98. Furthermore, the Sole Arbitrator notes that the Appellant is not mentioned personally and directly in connection with the alleged “*deliberate actions*”, and the Sole Arbitrator also notes that the Respondent has failed to present the Sole Arbitrator with an explanation of the background to the statement made by K.

***f. The Appellant's involvement in manipulation of matches or in any other breach of the principle of fair play***

99. Thus, based on the above, the Sole Arbitrator initially finds that it is up to the Respondent to discharge the burden of proof to establish that the Appellant was in fact involved in manipulation of one or more of the three football games in question or in any other breach of the principle of fair play.
100. In doing so, the Sole Arbitrator adheres to the principle established by CAS jurisprudence that “*in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue, in other words, the party which asserts facts to support its rights has the burden of establishing them (...). The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some fact and persuade the deciding body, it must actively substantiate its allegations*

*with convincing evidence*” (e.g. CAS 2003/A/506, para. 54; CAS 2009/A/1810 & 1811, para. 46 and CAS 2009/A/1975, para. 71ff).

101. As already mentioned under para. 7.26 above, the Sole Arbitrator finds that based on information and conclusions derived from the BFDS Match Report regarding Match 3, it is safe to conclude that Match 3 was manipulated for betting purposes.
102. The same is not true of Match 1 and Match 2 where the analysis by Sportradar of the betting data did not display any irregular betting patterns, which leads to the conclusion that none of these matches were escalated and further analysed by Sportradar.
103. The Sole Arbitrator notes that betting purposes are not the only possible motives for match manipulation and/or breach of the principle of fair play, which can also be caused by e.g. sporting reasons (e.g. in order not to be relegated to a lower division) or for other financial purposes. However, the Appellant did not submit any evidence that other such motives might apply with regard to Match 1 and Match 2.
104. The question at this point is whether it may properly be assumed that the Appellant was involved in the manipulation of Match 3 and/or in other breach of the principles of fair play.
105. With regard to the Sportradar Report, the Sole Arbitrator finds that the contents of this report can in no way whatsoever be attributed any considerable evidential value to substantiate the alleged wrongdoings by the Appellant.
106. The Sole Arbitrator basically does not disagree with the conclusions of the report that a team captain is typically among the most influential players on a team and, therefore, may be interesting for match fixers to approach, nor does the Sole Arbitrator dispute that captains of other teams have previously been involved in other match-fixing cases.
107. However, this does not in itself provide a sufficient basis for assuming, without the production of further evidence in support thereof, that the captain of a team participating in a manipulated match is automatically, as a matter of course, involved in this manipulation or in any other way breaches the principles of fair play.
108. With regard to the statement of the FK Ogre player K., the Sole Arbitrator finds that the contents of the statement cannot be attributed any considerable evidential value to substantiate the alleged wrongdoings by the Appellant. It is thus merely a very general and overall personal assessment, which neither points specifically to the Appellant, nor in any other way specifies or substantiates such assessment. In addition, the Respondent has failed to explain the background to K.’s statement.
109. In these circumstances, it is therefore crucial whether it is possible, on the basis of the Appellant’s conduct on the pitch during the three matches in question, to conclude that the Appellant was involved in manipulation and/or in any other way breached the principles of fair play.

110. The Sole Arbitrator notes that the match delegate in his report regarding Match 3 states according to his opinion the players of Jekabpils did help the opponent team players “*to score goals in the 42<sup>nd</sup> min, 67<sup>th</sup> min, 78<sup>th</sup> min (deliberately lost the ball, made deliberate errors, made passes to the opponents, did not prevent the opponents from coming close to their own team’s goal)*”).
111. This assessment is in accordance with the Expert Group’s assessment as regards the Appellant’s conduct in the 42<sup>nd</sup> minute, just as the Expert Group notes the Appellant’s conduct in the 76<sup>th</sup> minute of the same match.
112. Moreover, the Expert Group refers to the Appellant’s conduct in the 26<sup>th</sup> minute, 85<sup>th</sup> minute and 88<sup>th</sup> minute of Match 2 as types of conduct that are not in line with the principles of fair play.
113. As already mentioned above (para. 7.36), the Sole Arbitrator has no valid grounds for doubting the expertise or independence of the members of the Expert Group.
114. On the other hand, the Sole Arbitrator finds it regrettable that the Respondent was incapable of explaining to the Sole Arbitrator whether it had previously been pointed out to the Expert Group whether focus should be directed specifically towards certain teams or towards particular players, nor was the Respondent capable of clarifying whether all the games in question were watched in their entirety or of specifying the information the Expert Group had received before the review.
115. The Sole Arbitrator notes in this context that in cases such as the one before us which concern individual “match situations”, a definite step-by-step guide showing how a player should act in each situation usually cannot be assumed to be available. Besides, a player’s specific action in each individual situation will usually to a large extent reflect the relevant player’s talent, physical condition, fighting spirit and numerous other factors. Accordingly, two different players might act differently in the same situation without necessarily involving a breach of the principles of fair play or any other form of foul play.
116. The Sole Arbitrator has had an opportunity to watch video recordings of, *inter alia*, the disputed match situations in question, and the Sole Arbitrator has also compared these match situations with the Expert Group’s comments in this regard.
117. The Sole Arbitrator notes in this connection that it cannot be ruled out that the Appellant, or another and more talented/stronger player than the Appellant, in one or more of the situations concerned, might have acted differently and probably more efficiently than was the case here.
118. The Sole Arbitrator does not find, however, that it can be established with comfortable satisfaction that the conduct of the Appellant in any of the situations was the result of any unsportsmanlike considerations, or that the conduct of the Appellant in any of the situations was so strikingly poor or passive beyond measure that his conduct must be assumed to be linked to other considerations which are incompatible with the principles of fair play.

119. Based on that, the Sole Arbitrator finds that the Respondent failed to prove that, as a result of the Appellant's conduct during the match, a link may be assumed to exist between the Appellant's conduct on the field during Match 3 and the circumstance that this match is considered manipulated for betting purposes.
  120. Similarly, the Sole Arbitrator finds that the Respondent failed to prove that the Appellant, based on the Appellant's conduct during Match 1 and Match 2, was in any way in breach of the principles of fair play.
  121. Thus, the Sole Arbitrator finds that the Respondent has not adequately discharged the burden of proof to establish with comfortable satisfaction that the Appellant was involved in manipulation of one or more of the three football games in question or in any other breach of the principle of fair play.
  122. Given these circumstances, there was no basis for the sanction imposed on the Appellant, which is therefore set aside.
- B. In the event that question A) is answered in the affirmative, did the Respondent comply with its own rules and regulations during the process, and does the imposed sanction have the necessary legal basis?**
123. Since question A was not answered in the affirmative, the Sole Arbitrator finds no reason to deal with this part of the Appellant's submission and thus answer his question.
- C. In the event that both question A) and B) are answered in the affirmative, is the sanction imposed on the Appellant disproportionate to the Appellant's breach?**
124. Already since question A was not answered in the affirmative, the Sole Arbitrator finds no reason to deal with this part of the Appellant's submission and thus answer this question.
- D. In the event that the Appellant is not found guilty of involvement in manipulation of one or more of the three football matches in question or in any other breach of the principle of fair play, is the Appellant entitled to any non-material damages and, in the affirmative, in what amount?**
125. In support of his claim for non-material damages, the Appellant submits, *inter alia*, that his reputation has suffered severe damage because of the DC Decision and the Decision, which were both published in the media.
  126. Furthermore, the severe damage to his reputation has caused the Appellant severe personal distress, which should be compensated by the Respondent's payment of compensation for non-material damage.

127. The Respondent, on the other hand, submits, *inter alia*, that the Appellant failed to discharge the burden of proof to show that he is entitled to any compensation and that his reputation was negatively affected as a result of the Respondent's conduct.
128. Initially, the Sole Arbitrator notes that this dispute, as already mentioned in para. 5.3 above, must be decided on the application of the LFF Regulations and, additionally, Latvian law.
129. The Sole Arbitrator notes that the Appellant has failed to establish the legal basis for his claim based on these rules and regulations.
130. Furthermore, the Sole Arbitrator finds that the Appellant has failed to submit any evidence to prove that, and to what extent, his reputation and good name were affected as a result of the conduct of the LFF.
131. Already based on that, the Sole Arbitrator finds that the Appellant's claim for compensation for non-material damage should be dismissed.

#### **VIII. SUMMARY**

132. Based on the foregoing and after taking into consideration all evidence produced and all arguments made, the Sole Arbitrator finds that the Respondent has not adequately discharged the burden of proof to establish with comfortable satisfaction that Appellant was involved in manipulation of one or more of the three football games in question or in any other breach of the principle of fair play.
133. However, as the Appellant failed to establish the legal basis for his claim for compensation for non-material damage and failed to submit any evidence to prove that, and to what extent, his reputation and good name were affected as a result of the conduct of the LFF's, the said claim for compensation for non-material damage is dismissed.
134. The Appeal filed against the Decision is therefore partially upheld.

## ON THESE GROUNDS

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

1. The appeal filed by Olegs Penkovskis on 20 September 2017 against the decision rendered by the Appeals Commission of the Latvian Football Federation on 21 August 2017 is partially upheld.
2. The Decision rendered by the Appeals Commission of the Latvian Football Federation is set aside.
- (...)
5. All further and other requests for relief are dismissed.