



Arbitration CAS 2022/A/9078 ŠK Slovan Bratislava v. Union Européenne de Football Association (UEFA), award of 24 August 2022 (operative part of 10 August 2022)

Panel: Prof. Ulrich Haas (Germany), Sole Arbitrator

Football

Disciplinary sanction against a club imposed by UEFA

Jurisdiction of the UEFA Appeals Body

Procedural flaws & CAS de novo power of review

Interpretation of Article 14 of the UEFA Disciplinary Regulations

Display of a flag with a Nazi symbol

Proportionality of cumulative sanctions

Lighting fireworks and throwing objects

- 1. Article 34 of the UEFA Statutes allows the UEFA Appeals Body to act as a first instance body, under exceptional and urgent circumstances. Even then, it is entitled to refer the case to the chairman, instead of a panel of three members, if it deems it appropriate, especially when the legal situation at stake is clear.**
- 2. A party cannot complain about the short deadlines imposed by UEFA disciplinary bodies, when it itself consented to the time schedule, did not request any extension of the deadlines or stay of the sanctions, and filed well-researched submissions. This is a different matter when an observer's report cited in the appealed decision was not made available during the first instance proceedings, at least when the facts to which it refers are disputed and are not otherwise attested. This failure constitutes a breach of the right to be heard, which may, however, be healed by the CAS' *de novo* power of review.**
- 3. Article 14 of the UEFA Disciplinary Regulations aims to sanction football clubs whose supporters offend human dignity in any way. The question of whether a certain behaviour meets the requirements of this provision must be determined in the light of the objective circumstances of the case and the so-called "reasonable onlooker" test. Such test does not refer to an average person of a particular constituency, but to a reasonable person who assesses - *ex post* - the facts presented to him in the light of all available and obtainable information.**
- 4. The display of the flag that represented the German national socialist party until 1935 is an insult to human dignity and must be strongly opposed. It is a substitute for the use of Nazi symbols, and its disguised message makes it even more pernicious. The fact that it was not always sanctioned by UEFA in the past, and even permitted by state judgements in relation to freedom of assembly and/or expression, does not change this finding.**
- 5. In such a case, the imposition of a fine, together with the closure of a stadium sector during the next competition match and a suspended ban on selling tickets to away**

supporters is proportionate when the convicted club is in a situation of recidivism.

6. **The penalties provided for lighting of fireworks and throwing objects may also be adapted to the circumstances, notwithstanding the standardised nature of UEFA’s sanctions catalogue. In this context, personal injury is an aggravating factor.**

I. THE PARTIES

1. ŠK Slovan Bratislava (the “Appellant” or the “Club”) is a professional football club affiliated to the Slovakian Football Association (“SFA”) that in turn is affiliated to the Union des Associations Européennes de Football. The Appellant was the champion of Slovakia in the 2021/2022 season.
2. Union des Associations Européennes de Football (the “Respondent” or “UEFA”) is the continental football federation governing the sport of football in Europe. It is the organizer of the UEFA Champions League and the UEFA Europa League.
3. The Appellant and the Respondent are jointly referred to as the “Parties”.

II. FACTUAL BACKGROUND

5. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the Parties. This background information is given for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.

A. Background Facts

6. The dispute revolves around a match played by the Appellant against Ferencvárosi TC (“Ferencvárosi”) at the 2022/2023 UEFA Europa Champions League second qualifying round (1st leg) on 20 July 2022 (the “Match”). The Appellant won the match.
7. The report of the UEFA Match Delegate states the following in relation to the Match:

“Security incidents affecting the match (away team) - pitch invasion, throwing of objects, laser pointer

In minute 81, following the Slovan Bratislava first goal scoring, minimum 15 plastic cups with liquid were thrown in Sector E. The plastic cups were blocked by the netting. Sector E was exclusively occupied by Slovan Bratislava supporters.

Use of pyrotechnics (away team)

1/ In minute 4, one (1) pyrotechnic device was fired from sector E in the direction of the main stand west. The pyrotechnic device was blocked by the netting but some mini fire pieces reached the main stand slightly injuring one local supporter at his left arm. He was medically treated by medical services. Sector E was exclusively occupied by Slovan Bratislava supporters.

2/ In minute 4, six (6) Bengal lights and minimum two (2) stobe lights were ignited in Sector E. The pyros were allowed to burn out in the stand. Sector E was exclusively occupied by Slovan Bratislava supporters. As from that moment, massive riot police deployment was observed within sector E.

3/ In minute 63, minimum eight (8) Bengal lights and minimum two (2) strobe lights were ignited in Sector E. The pyros were allowed to burn out in the stand. Sector E was exclusively occupied by Slovan Bratislava supporters.

4/ In minute 81, following the Slovan Bratislava first goal scoring, three (3) Bengal lights and minimum three (3) strobe lights were ignited in Sector E. The pyros were allowed to burn out in the stand. Sector E was exclusively occupied by Slovan Bratislava supporters.

5/ In minute 90+5, two (2) stobe lights were ignited in sector E. The pyros were allowed to burn out in the stand. Sector E was exclusively occupied by Slovan Bratislava supporters. Discriminatory behaviour (away team) - banners, chanting, etc.

Both UEFA Match Delegate and UEFA Security Officer observed a far-right flag/banner in Sector E throughout the match (War flag of Germany under National-Socialism) Sector E was exclusively occupied by Slovan Bratislava supporters”.

8. The report of the UEFA Security Officer notes the following in relation to the Match:

“Were there any incidents during the match phase? Yes

Minute 4, 6 bengal lights in visiting sector and 2 strobe lights and 1 firework thrown from sector E towards the local fans in main tribune (sector VVK). The netting has stopped the missile, but small fire pieces reached the local fans, injuring slightly one in his left arm, that person was treated by the Medical Service, after that came back to his seat [...].

Minute 63, 8 bengal lights and 2 strobe lights in visiting sector E. [...]

Minute 81, after the Slovan goal, 3 bengal lights in visiting sector (Sector E) and strobe lights 3 minimum, plastic cups with liquid minimum 15 thrown impacting the netting. [...]

Minute 90+5, 2 strobe light in visiting sector (E)

Permanently a flag has been displayed in the railing of the upper mouth hole in the visiting sector (1.5m by 1 m aprox.) and that one during the last minutes has been taking by a visiting spectator showing the flag in a more visible way. The flag is similar to the War flag of Germany under National- Socialism with purple colors and the letters in the cross 'FAK' ”.

9. The Football Against Racism in Europe (“FARE”) observer noted the following incidents in relation to the Match:

“[...] A flag based on the Reichskriegsflagge was displayed by Slovan Bratislava away fans located in sector E.

-The flag was displayed in a sector with approximately 500 away fans and was on display throughout the whole duration of the game.

-The flag displayed in the Slovan Bratislava away sector was a flag from Austria Wien supporters who have a strong friendship with Slovan Bratislava fans. The flag has been on display by Austria Wien fans on previous cases including domestic matches [...].

The Reichskriegsflagge was the war flag of Germany under National- Socialism. The war flag was used by the German army during National Socialism between 1933 and 1945. Football fans often replace the original colours with the colours of their club [...].”

10. The flag that the above reports refer to looks as follows (hereinafter referred to as the “Flag”):



B. The Proceedings before UEFA

- 12¹. By letter of 21 July 2022, UEFA informed the Club that it opened disciplinary proceedings for potential violations of Articles 14, 16(2)(b) and (c) of the UEFA Disciplinary Regulations (“DR”). The letter enclosed the reports of the UEFA match officials, a picture of the Flag and a video showing Appellant’s fans igniting bengals and fireworks. The letter also invited the Appellant to file its statement within a deadline of 6 days as of receipt of this letter.
13. After the disciplinary proceedings were opened, UEFA received a report from the FARE observer.
14. On 26 July 2022, the Chairman of the UEFA Control, Ethics and Disciplinary Body sent a letter to the Chairman of the UEFA Appeals Body (“UEFA AB”) that reads as follows:

“On 20 July 2022, during the 2022/23 UEFA Champions League second qualifying round, 1st leg match between Ferencvárosi TC and ŠK Slovan Bratislava (the “Club”), a potential violation of Article 14 of the

¹ [Numbering of paragraphs as in original award, with no 11 missing].

UEFA Disciplinary Regulations was reported. Following the disciplinary proceedings that have been opened against the Club on 21 July 2022 and bearing in mind the urgent need for the Club to know as soon as possible the outcome of these proceedings, I would like to inform you that I have decided to refer these proceedings directly to the UEFA Appeals Body for a decision, in accordance with Article 29(3) DR”.

15. On 27 July 2022, the Appellant submitted its statement in the disciplinary proceedings.
16. On 28 July 2022, the UEFA AB informed the Club that it would meet on the same day to decide the present matter.
17. On the same day, the UEFA AB issued its decision in the matter (“Appealed Decision”). The operative part of the Appealed Decision reads as follows:

“1. To fine ŠK Slovan Bratislava €40,000 and to order the partial closure of the ŠK Slovan Bratislava stadium (i.e. the entire sector C), during the next one (1) UEFA competition match in which ŠK Slovan Bratislava would play as host club, for the racist behaviour of its supporters.

2. To order ŠK Slovan Bratislava to implement the following directive at the next UEFA competition match it plays as host club: to display a banner in the sectors to be closed with the wording “#NoToRacism”, with the UEFA logo on it.

3. To ban ŠK Slovan Bratislava from selling tickets to its away supporters for the next one (1) UEFA competition match, for the racist behaviour of its supporters. The ban from selling tickets is subject to a probationary period of two (2) years, starting from the date of the present decision.

4. To fine ŠK Slovan Bratislava €25,000 for throwing of objects.

5. To fine ŠK Slovan Bratislava €13,000 for lighting of fireworks.

6. The above fines in the total amount of €78,000 must be paid into the bank account indicated below within 90 days of communication of this decision”.

18. On 1 August 2022, the Appellant requested the grounds of the Appealed Decision. The latter were notified to the Appellant on 3 August 2022. The main reasoning exposed in the Appealed Decision reads as follows:

“15. The Appeals Body considers that this case concerns the Club’s responsibility for the misbehaviour of its supporters with regards to the alleged lighting of fireworks, throwing of objects and racist behaviour pursuant to the DR. [...]

18. First, the Appeals Body recalls the official reports of the UEFA Match Delegate and UEFA Security Officer which mentions that the Club’s supporters ignited many pyrotechnic devices, throwing one of them as well as other objects. Particularly according to these reports, 26 fireworks were lit, as well as 15 plastic cups and one firework were thrown by the Club’s supporters.

19. Moreover, the UEFA Match Delegate, the Security Officer and the FARE observer present at the Match

reported that a far-right flag banner/flag was displayed by the Club's supporters throughout the entire Match. [...]

22. [...] the Appeals Body notes that the flag/banner was displayed in the away sector of the stadium, as reported in the UEFA official reports and the FARE report, and it was hung by supporters with a blue t-shirt with the wording 'Slovan on tour'. Therefore, the Appeals Body concludes that the individuals who displayed the banner/flag were Club's supporters.

23. [...] The Appeals Body notes that the Club has not challenged the accuracy of the any of the reports of the incident and, hence the facts as described in the official reports are deemed to be accurate in accordance with Article 45 DR.

24. [...] having established the facts, the Appeals Body shall analyse whether the action of displaying such a banner is discriminatory or not. In this respect, the Appeals Body refers to the well-established jurisprudence of CAS which establishes that "[t]he test of whether or not there has been an insult qualifying for sanctions under Article 14 UEFA DR, is the perception of the reasonable onlooker. It is in that sense objective not subjective" (CAS 2013/A/3324 & 3369 GNK Dinamo v. UEFA, para. 9.13).

[...] the Appeals Body observes that the Club's supporters displayed a clearly identifiable far right flag based on the Reichskriegsflagge during the Match [...] In this respect, the Appeals Body recalls that that the war flag being evoked was of Germany under National-Socialism. Consequently, the Appeals Body concludes that the flag displayed is racist in nature and emphasises that this type of behaviour has no place in football stadiums.

27. Considering the above, the Appeals Body concludes that from the perception of the reasonable onlooker, there is no doubt that the flag displayed by the Club's supporters was in breach of Article 14 DR and, therefore, in application of the principle of strict liability, as established in Articles 8 and 14(1) DR, the Appellant must be held responsible for the misconduct of its supporters. [...]

33. Considering that there are no mitigating circumstances applicable in the present case, the Appeals Body decides to apply Article 6(5) and Annex A(I) DR, which provides standard sanctions for lighting of fireworks (under "[l]ighting of fireworks"). In the present case, the Appeals Body decides that the standard fine of €500 is applicable for each firework lit, as provided for in Annex A(I), which amounts to a total of €13,000 for the 26 pyrotechnic devices ignited. Therefore, a total fine of €13,000 is the appropriate sanction for lighting of fireworks in the present case. [...]

36. When determining the sanction, the UEFA disciplinary bodies usually consider the level of danger of the item thrown. Fireworks are considered to be particularly dangerous objects and the UEFA disciplinary bodies routinely imposes a fine of €3,000 for the first object particularly dangerous object thrown. For those objects which are less dangerous, the UEFA disciplinary bodies routinely impose a fine of €1,500 for the first object thrown, €750 for the second object thrown and €500 for each additional object thrown. Where there is a previous record, the UEFA disciplinary bodies routinely increase the initial fine by 50% and adds €750 for each additional offence as from the third. Following this method, the fine would be €18,125.

37. However, as mentioned above, the Appeals Body recalls that according to the official reports of the UEFA Match Delegate and the UEFA Security Officer, one local supporter was injured by the firework thrown, which

shall be considered as aggravating circumstance.

38. Considering the above, the Appeals Body deems appropriate to deviate from the method usually followed by the UEFA disciplinary bodies and considers appropriate to fine the Club €25,000 for the throwing of objects.

39. Regarding the racist behaviour of the Club's supporters, the Appeals Body takes into account the seriousness of the offence committed as well as the Club's previous record, noting that the Club has been punished on two previous occasions for violating Article 14 DR during the past three years (cf. Article 25(1)(d) DR), which counts as an aggravating circumstance (cf. Article 25(2) DR).

40. The Appeals Body recalls that the flag was hung during the Match. On the other hand, the Appeals Body cannot determine any factor that may be considered as a mitigating or further aggravating circumstance in the present case.

41. Having established the above, the Appeals Body notes that Article 14(2) DR establishes a standard sanction for this misbehaviour and states that 'If one or more of a [...] club's supporters engage in the behaviour described in paragraph 1, the [...] club responsible incurs a minimum of a partial stadium closure and a fine.'

42. In view of the abovementioned circumstances of this case, and considering the wording of Article 14(2) DR, the Appeals Body deems it appropriate to fine the Club €40,000 and to order the partial closure of the Club stadium (i.e. the entire sector C), during the next one (1) UEFA competition match in which Club would play as host club, for the racist behaviour of its supporters.

43. Additionally, in order to tackle such racist behaviour by its supporters and to send a further signal that such behaviour will not be tolerated, in accordance with Article 14(5) DR, the Appeals Body decides to order the Club to implement the following directive in the next (1) UEFA competition match which the club shall play as the host club: to display a banner with the wording '#NoToRacism', with the UEFA logo on it.

44. Moreover, considering that the misbehaviour of the Club's supporters occurred in an away match, that this is the third offence of the Club within the last three years for the violation of Article 14 DR and that there are not mitigating circumstances that justify a lenient sanction, the Appeals Body deems appropriate to ban the Club from selling tickets to its away supporters for the next one (1) UEFA competition match, for the racist behaviour of its supporters.

45. However, in order to provide the Club's supporters a new opportunity to consistently act in a non-discriminatory manner in compliance with UEFA's rules and regulations, the Appeals Body decides that the ban from selling tickets is subject to a probationary period of two (2) years as from the date of the present decision".

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

27. On 3 August 2022, the Appellant filed a Statement of Appeal against the Appealed Decision with the Court of Arbitration for Sport (the "CAS") in accordance with Articles R47 et seq. of the Code of Sports-related Arbitration (the "Code"). The Appellant also

- a) requested the CAS to expedite the proceedings in order to deliver the operative part of the award by 10 August 2022, without to hold a hearing;
 - b) proposed a procedural calendar;
 - c) proposed that the case be submitted to a sole arbitrator and suggested the names of three CAS arbitrators.
28. On 4 August 2022, UEFA confirmed that it had no objection to the expedited procedural calendar proposed by the Appellant. In the same letter and in a further communication dated 5 August 2022, UEFA confirmed its agreement with the appointment of any of the CAS Members proposed by the Appellant
29. Also on 4 August 2022, the CAS Court Office acknowledged receipt of the above correspondence and confirmed the procedural calendar agreed to by the Parties, which provided, *inter alia*, that the present dispute should be decided based on the Parties' submissions only, without a hearing to be held, and the operative part of the Arbitral Award to be notified to the Parties by 10 August 2022.
30. Further on 4 August 2022, the Appellant sent a request for Document Production ("RDP") to UEFA that reads as follows:

"I note that the Appealed Decision refers to an alleged FARE observer report. I have asked Mr. Cho to check and double-check all correspondence from UEFA on the matter; however, he could not find such a report. UEFA seems to have omitted to provide the alleged FARE observer report to SK Slovan. Please refer me to the relevant correspondence if I am wrong.

Otherwise, I kindly ask you to provide me with the alleged FARE observer report so I can address it in the Appeal Brief.

Furthermore, as part of the discovery process, I respectfully ask UEFA to provide me with:

Any email exchanged between UEFA (or FARE) and the UEFA Match Delegate and/or the UEFA Security Officer before and during the away match in question containing indications (e.g., pictures, videos) of prohibited flags previously used by SK Slovan Bratislava fans and to inform me whether such information was shared with my client before or during the away match in question.

To inquire whether the FARE observer has prepared the entire alleged FARE observer report or just parts of it. In the latter case, I would be grateful if the FARE observer could specify the parts written and who has drafted the rest of the FARE observer report. The practice in other cases has already shown that the FARE observers do not make the entire report, but the FARE main office completes the reports (e.g., CAS 2019/A/6547; CAS 2016/A/4780). I have the right to know if this was the case here; all the more, we have agreed to waive a hearing. ...

I would be grateful to receive the requested information and alleged FARE observer report by August 6 at noon CET so I can address them in the Appeal Brief".

31. In response to the Appellant's RDP, UEFA – on 5 August 2022 – replied as follows:

“Following the point you raised, a further check was conducted this morning on the file and, regrettably it was identified that an error had indeed occurred.

At the time that the disciplinary proceedings were opened on 21 July 2022 based on the UEFA official reports no FARE Report had yet been received. This was received by UEFA later that day and it was an oversight that it was not immediately forwarded to the club. The FARE Report is attached for your complete information.

Whilst we apologise for this inconvenient, please be informed that both the UEFA match delegate and the UEFA security officer identified themselves the banner and its racist / discriminatory nature and duly recorded it in their official reports, i.e. without the incident needing to be brought to their attention by the FARE observer.

Accordingly, UEFA considers that the balance of the documentary production requests contained in your email do not need to be addressed”.

32. On 6 August 2022, the Appellant filed its Appeal Brief, as per the expedited schedule agreed by the Parties.
33. On 8 August 2022, the CAS Court Office informed the Parties that the Deputy Division President, among the CAS Members proposed by the Appellant and accepted by the Respondent, appointed Prof. Ulrich Haas as Sole Arbitrator in this matter.
34. On 9 August 2022, the Parties confirmed not having any challenge against the Appointment of Prof. Ulrich Haas. Accordingly, the CAS Court Office advised the Parties that the Panel appointed to decide the dispute was constituted as follows:
- Sole Arbitrator: Prof. Ulrich Haas, Professor in Hamburg, Germany.
35. On 9 August 2022, the Respondent filed its Answer, as per the expedited schedule agreed by the Parties.
36. On the same day, the CAS Court Office issued an Order of Procedure (“OoP”) and invited the Parties to return a signed copy thereof by 10 August 2022, 11:00 CEST. In addition, the CAS Court Office confirmed that, as requested and agreed by the Parties, the Sole Arbitrator would have decided the present matter based on the Parties’ submission only, without holding a hearing.
37. On 10 August 2022, both the Appellant and the Respondent returned a signed copy of the OoP.
38. Still on 10 August 2022, the Sole Arbitrator issued the operative part of the Award. The CAS Court Office advised the Parties that the full Award with grounds will be notified to the Parties in due course.

IV. PARTIES' POSITIONS AND RESPECTIVE PRAYERS OF RELIEF

65. This section of the award does not contain an exhaustive list of the Parties' contentions, its aim being to provide a summary of the substance of the Parties' main arguments. In considering and deciding upon the Parties' claims in this award, the Sole Arbitrator has accounted for and carefully considered all of the submissions made and evidence adduced by the Parties, including allegations and arguments not mentioned in this section of the award or in the discussion of the claims below.

A. The Position of the Appellant

66. In its Statement of Appeal, the Appellant sought the following relief:

"1. Annul points 1 and 3 of the operative part of the UEFA Appeals Body chair's decision in case no. 35790.

2. Order UEFA to bear all costs incurred with the present procedure.

Order UEFA to pay the Appellant a contribution towards its legal fees and other costs in an amount to be determined at the Sole Arbitrator's discretion".

67. In its Appeal Brief, the Appellant requested as follows:

"1. Render the entire UEFA Appeals Body chair decision null for being issued by an incompetent organ within UEFA and refer the case back to UEFA.

Alternatively, if the above under item no. 1 is rejected

2. Annul points 1, 2, and 3 of the operative part of the UEFA Appeals Body chair decision.

3. Revise points 4 and 5 of the operative part of the UEFA Appeals Body chair decision to provide as follows:

4. ŠK Slovan Bratislava is fined EUR 18,125 for throwing objects.

5. ŠK Slovan Bratislava is fined with EUR 6,000 and EUR 13,000 for fireworks.

Alternatively, if the above under item no. 2 is rejected

4. Revise point 1 of the operative part of the UEFA Appeals Body chair decision to provide as follows:

ŠK Slovan Bratislava is fined between EUR 7,500 and EUR 15,000 and is ordered to partially close ŠK Slovan Bratislava stadium, consisting of 500 seats in sector C (e.g. Sector C206), during the next UEFA competition match in which ŠK Slovan Bratislava will play as the host club on August 11, 2022.

5. Confirm point 2 of the operative part of the UEFA Appeals Body chair decision.

6. Annul point 3 of the operative part of the UEFA Appeals Body decision.

More alternatively

7. Take any other decision that the Sole Arbitrator deems fair and just.

In any event

8. Revise point 6 of the operative part of the UEFA Appeals Body decision by reducing the total amount to be paid as a fine by the Appellant to UEFA according to the Sole Arbitrator's decision on the previous requests for relief.

9. Order UEFA to pay all costs incurred with the present procedure.

10. Order UEFA to pay the Appellant a contribution towards its legal and other costs for two counsels in an amount to be determined at the Sole Arbitrator's discretion".

68. In support of the above prayers for relief the Appellant submits as follows:

- a) The Appealed Decision was reached through an irregular and suspect procedure:
 - The procedure breached the Appellant's right to be heard, since the Appealed Decision heavily relied on the FARE Observer report, which was not provided to the Appellant before the Appealed Decision was rendered. This was acknowledged by UEFA in its letter of 5 August 2022 as an "error".
 - The chair of the UEFA AB had no competence *ratione materiae* to decide the dispute. The Appellant submits that if one reads Article 34 of the UEFA Statutes in conjunction with Articles 29(3) and 30(2) - 30(4) DR it follows that the Chairman of the UEA AB is only entitled to decide the dispute (sitting alone) in cases referred to him "on appeal". However, in cases referred to the UEFA AB by the Chairman of the Control, Ethics and Disciplinary Body, the UEFA AB must decide in the presence of a minimum of three members.
 - The Appellant finds that UEFA has "*impermissibly stretched Article 34 of the UEFA Statutes and Article 30 DR to mean what they want to mean by skipping a literal interpretation and moving directly to a purposive interpretation in violation of the subsidiarily applicable Swiss law*". Since an incompetent organ issued the Appealed Decision, the latter must be qualified as "null".
- b) The Appellant is of the view that pursuant to its requests for relief, the Sole Arbitrator is "*prevented from examining the lawfulness of the Decision issues by the Appeals Body chair*" and that "*deciding otherwise would constitute a ruling ultra petita*".
- c) The German war flag ("Reichskriegsflagge") referred to in the reports of the match officials and the FARE observer was used in Germany from 1848 until 1945 in eight different designs. The last version of the "Reichskriegsflagge" was used in the Third Reich between 1935 and 1945 and looks as follows:



- d) The test whether or not Article 14 DR has been violated is the “*perception of the reasonable onlooker*”. The test according to the Appellant is an objective and not a subjective one. When applying the test one must take into account “*all factors that might be relevant to a reasonable onlooker’s impression of whether or not the act was racist*” and “*the impression of one, while it may be relevant, is not solely determinative*”. The decisive test is “*whether the act was more likely than not to be objectively perceived as racist in the context of the match*”. The Appellant refers to CAS jurisprudence, in particular to CAS 2013/A/3224&3369 and CAS 2015/A/4256.
- e) The Appellant is of the view that the test was misapplied by the Chairman of the UEFA AB. In order for accepting a violation of Article 14 DR two conditions must be cumulatively fulfilled, i.e.
- a large number of reasonable spectators or viewers must have considered the Flag racist and
 - must have concluded that the people who displayed it were promoting Nazi ideas.
- f) Some of the version of the Reichskriegsflagge before 1935 looked as follows:



(1892-1903)(1903-1919)(1921/22-1933)

According to German case law the mere display of versions of the Reichskriegsflagge before 1935 is neither a violation of public safety nor of the public order. Instead, there must be – in addition – other accompanying intimidating circumstances justifying the assumption of a racist or discriminatory character. The Appellant refers insofar to (recent) decisions of the Administrative Court of Bremen and the Higher Bremen Administrative Court.

- g) The Appellant submits that in the case the Flag would entirely resemble the Reichskriegsflagge used by the Third Reich between 1935 and 1945, the case would be clear. The display of such a flag would be racist and discriminatory in character and violate Article 14 DR. However, in the case at hand the situation is different. The Appellant

submits that:

- The Flag resembles the Reichskriegsflagge used in Germany before 1935 (more particularly between 1867 and 1919). Consequently, the Flag *“has nothing to do with the Nazis”*. Therefore, there needs to be other accompanying racist and discriminatory circumstances justifying the application of Article 14 DR. The Appealed Decision, thus, ignores the actual history of the Flag. It does not explain why the Flag is deemed *“closer to prohibited Reichskriegsflagge used in the Third Reich ... with the swastika instead of the Imperial War-Flag used between 1867 and 1921, which is not prohibited and has nothing to do with the Nazis”*.
 - It does not suffice – according to the Appellant – that *“a bunch of trained observers sent to the match to observe explicitly for racist or discriminative behaviour understood this as inciting intimidation, discrimination, and violence against others”*.
 - In the Appellant’s view there are no accompanying intimidating or discriminatory circumstances in the case at hand, since the Flag was *“displayed in the context of a football match, not a Nazi or Ku Klux Klan event. The Flag was surrounded by football fans supporting the Appellant all dressed up in blue t-shirts (not in black), without visible Nazi tattoos, not making Nazi salutes or similar gestures, not chanting racist or discriminative slogans, and not showing combinations of numbers ... and letters ... as secret symbols in support of National Socialism”*.
 - Furthermore, the Chairman of the UEFA AB failed to examine *“how many reasonable spectators or viewers have considered the Flag racist and have concluded that the people who displayed it were promoting Nazi ideas”*.
- h) Looking at the seriousness of the charge brought forward against it, the Appellant urges the Sole Arbitrator to apply a high threshold when it comes to the standard of proof. According to the Appellant, UEFA has not submitted any evidence regarding the meaning of the Flag in the context of the Match. Furthermore, the Appellant notes that according to Article 45 DR only facts are presumed to be correct and not the (legal) assessment of the facts by the UEFA Officials. Furthermore, the FARE Observer report does not even enjoy a presumption of accuracy according to UEFA’s rules and regulations. The Appellant, however, accepts the fact that the Flag was displayed and that the Flag belongs to the Austria-Wien supporters, who have a strong friendship with the Appellant’s fans. However, the Appellant submits that the interpretation of the UEFA March Officials and of the FARE Observer that the Flag is discriminatory and racist does *“not enjoy any presumption of accuracy”* and is wrong.
- i) The Appellant is of the view that the Flag itself does not intend to convey a discriminatory and racist message.
- In support of this, the Appellant has submitted a statement of (an unknown) Austria-Wien supporter explaining the Flag’s history.

- Neither the home-team security nor the Hungarian police deemed the Flag to be prohibited.
 - The Flag has been displayed in previous UEFA matches without any problems. The Appellant notes that *“the only time it was a problem was in the match with PAOK because there was also xenophobic chanting as accompanying racist circumstances, which makes that case materially different from the matter at stake”*. Since UEFA has not intervened in all other cases it is now *“prevented by principles of good faith and venire contra factum proprium to change its position overnight and sanction the Appellant for the same conduct”*.
 - The objective view of the reasonable onlooker cannot be substituted with the opinion of “trained observers” like the UEFA Match Delegate, the UEFA Security Officer, and the FARE Observer.
 - In case of doubt, the Sole Arbitrator must apply the principle *in dubio pro reo* and conclude that there was no breach of Article 14 DR.
- j) The Appellant is also of the view that the sanctions imposed are grossly disproportionate:
- The Sole Arbitrator can review the sanction imposed by UEFA. There is no threshold that needs to be met in order to interfere with UEFA’s decision.
 - The Appellant submits that the context of the Match must be considered in the case at hand. According to the Appellant the *“Hungarian side heavily politicized the two games against Ferencvaros”*. It was, therefore, inevitable for incidents to arise. Appellant’s Ultras were insulted and there were provocations, such as an anti-Slovakia banner and the attack on the team bus.
 - In addition, the possibilities of the Appellant to apply security measures were limited, since this was an away match. The Appellant notes that the home team seriously breached the security provisions by allowing fans to carry 26 fireworks into the stadium. The Appellant cannot be held responsible for this.
 - With respect to the lighting of fireworks the Appellant notes that this was its first offense. This is a mitigating factor and, therefore, the respective fine should be reduced to EUR 6,500 based on Article 23(3) DR.
 - With respect to the throwing of objects the Appellant admits that it has been sanctioned twice before in the past two years. The Appellant also accepts that a local supporter has been injured by the fireworks thrown. However, the Appellant submits that most of the objects thrown were harmless plastic cups. The Appellant is trying to track down the supporter that injured the fan from the other team to get an in-person apology. It will also *“do everything in its power to ensure that this accident remains an isolated event”*. Thus, the fine for this incident should be reduced to EUR 18,125 based on Article 23(3) DR.

- It is true that that the Appellant has been sanctioned twice for racist behaviour in the past three years. However, UEFA only in extremely rare cases has imposed a (suspended) ban on selling tickets to away supporters in addition to a partial stadium closure and a fine. Furthermore, the closure relates to the entire sector C of the Appellant's stadium for the next host match on 11 August 2022. This sector holds 5,089 seats. The closure of the whole sector C is unproportionate, since the Flag was displayed at the Match in a sector with approximately 500 away fans. Thus, the partial stadium closure – in order to be proportionate – should be limited to 500 seats. Sector C206 in the Appellant's stadium has exactly 500 seats and consequently, the stadium closure should be restricted to that specific sector.
- There is no explanation in the Appealed Decision why a fine in the amount of EUR 40,000 was imposed on the Appellant. In previous cases the UEFA AB issued fines – in comparable cases – varying from EUR 10,000 to EUR 25,000. Furthermore, the Appellant submits that the Flag was rather small (1.5m by 1m approx.) and was hardly visible. To fine such action with EUR 40,000 is unproportionate, in particular considering that Ferencvárosi was only fined with EUR 15,000 for displaying a huge xenophobic banner in a sector with thousands of fans accompanied by xenophobic chants. In addition, the stadium closure imposed on Ferencvárosi was limited to 1,000 seats. Consequently, the Appellant requests that the fine of EUR 40,000 be reduced to between EUR 7,000 to 15,000.

B. The Position of the Respondent

69. In its Answer, the Respondent sought the following relief:

“(a) Rejecting the appeal in full;

(b) Confirming in full the decision rendered by the UEFA Appeals Body on 28 July 2022;

(c) The Parties shall bear their own legal fees and other expenses incurred with these proceedings”.

70. In support of the above prayers for relief the Respondent submits as follows:

- a) The Respondent does not object to CAS jurisdiction and acknowledges that the dispute is governed by the UEFA's Statutes, rules and regulations, in particular the DR and, additionally, Swiss law.
- b) The Respondent submits that no procedural flaws occurred at the first instance before the Chairman of the UEFA AB:
 - The disciplinary proceedings against the Appellant were opened on the basis of the reports issued by the UEFA Match Officials. At that point in time UEFA was not yet in possession of the FARE Observer report.

- The Appellant did not dispute the charges in its response dated 27 July 2022. Furthermore, it received the FARE Observer report after the issuance of the Appealed Decision and, consequently could address its contents in the CAS Proceedings.
 - Procedural flaws are healed in *de novo* proceedings before the CAS. The Appellant does not explain why the Sole Arbitrator should depart from this constant jurisprudence.
 - Also, the Appealed Decision predominantly relied of the official UEFA reports (which benefit from the presumption of accuracy in accordance with Article 45 DR).
 - The Chairman of the UEFA AB was competent to issue the Appealed Decision. The jurisdiction of the Chairman was not contested by the Appellant in the first instance proceedings.
 - The Chairman's competence follows from an interpretation of Articles 29(3) and 30 DR in conjunction with Article 34 of the UEFA Statutes. It would be non-sensical to construe the DR such that the Chairman would be competent to decide "*urgent cases*" within the meaning of Article 30(3) DR alone, but not "*particularly urgent cases*" according to Article 30(4) DR. What is foreseen in "*urgent cases*" must also apply *a fortiori* for "*particularly urgent cases*".
- c) The Flag is based on the Reichskriegsflagge used by the German army in the Third Reich. It is widely understood as being directly connected to Nazi ideology and is of a racist nature:
- The Appellant has not contested the racist nature of the Flag in the first instance proceedings.
 - The Appellant has been sanctioned before for the use of the Flag in a 2019 match against PAOK.
 - The display of the Flag has already caused consternation when it was displayed in a derby in Vienna in 2019.
 - The Reichskriegsflagge is so notorious that it features in FARE's publicly available "Global Guide to discriminatory practices in football".
 - The Appellant has misapplied the "objective onlooker test". The Respondent refers to CAS 2019/A/6547 in which the panel held that the "*adjudicative body stands in the shoes of that hallowed but also hypothetical figure 'the reasonable onlooker' who must for this purpose be taken to be well informed and acquainted with legal and historical knowledge and with the totality of the circumstances*".
 - There is ample evidence in the public domain that the Flag is understood as directly connected to Nazi ideology.

- d) The fact that the same Flag was displayed in other matches, but not prosecuted does not help the Appellant:
- Disciplinary proceedings were not opened, because officials failed to detect the Flag.
 - Also, the sanction issued against the Appellant for displaying the Flag at the match against PAOK in 2019 was more severe than the sanction in this case.
- e) The sanction imposed is proportionate and reasonable:
- the fact that the breaches of the relevant rules occurred in an away match is no mitigating circumstance.
 - However, what needs to be taken into account are previous infractions, i.e. recidivism. As for the racist behaviour, the Respondent notes that the Club had two previous records.
 - Because of recidivism there is also no room to limit the partial stadium closure to 500 seats. There is no unequal treatment when comparing the sanction imposed against the Appellant with the one imposed on Ferencvárosi. The latter had no previous records for Article 14 DR. Consequently, the Appellant's arguments must fail.
 - There were also good reasons to increase the fine imposed on the club because one pyrotechnic thrown by the supporters of the Appellant harmed a home supporter who needed to receive medical treatment.

V. JURISDICTION

100. Article R47 of the Code provides as follows:

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

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

“Any decision taken by a UEFA organ may be disputed exclusively before the CAS in its capacity as an appeals arbitration body, to the exclusion of any ordinary court or any other court of arbitration”.

102. In view of the above, the Sole Arbitrator finds that the Panel is competent to decide the dispute at hand. The Sole Arbitrator notes that the jurisdiction of the CAS has not been disputed by the Parties. Furthermore, the CAS jurisdiction is confirmed by the OoP duly signed by all the Parties.

VI. ADMISSIBILITY

103. Article R49 of the Code provides as follows:

“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late”.

104. The Appealed Decision constitutes a “decision” within the meaning of Articles R47 and R49 of the Code. As for the deadline to file an appeal Article 62(3) of the UEFA Statutes provides as follows:

“The time limit for appeal to the CAS shall be ten days from the receipt of the decision in question”.

105. The Appealed Decision was notified to the Appellant on 3 August 2022. The Appellant filed its Statement of Appeal with the CAS on the same day. Consequently, the appeal was filed in time.

VI. OTHER PROCEDURAL ISSUES

106. The Sole Arbitrator notes that the Appellant amended its prayers of relief in its Appeal Brief. The Sole Arbitrator – in conformity with constant CAS jurisprudence – finds that, in principle, amendments of the original prayers of relief by the Appellant are possible after the filing of the Statement of Appeal until the filing of the Appeal Brief, because this does not affect the procedural position of the Respondent.

VII. APPLICABLE LAW

107. Article R58 of the Code provides 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

108. The Sole Arbitrator notes that Article 5 DR provides as follows:

“The disciplinary bodies base their decisions:

- a. primarily on UEFA’s Statutes, regulations, directives and decisions, and the Laws of the Game; and*
- b. subsidiarily on Swiss law and any other law that the competent disciplinary body deems applicable”.*

109. The above provision is first and foremost addressed to the “disciplinary bodies” of UEFA and

not to the CAS. Whether the provision also applies before CAS can be left unanswered, because Article R58 of the Code refers to the relevant UEFA rules and regulations (more particularly the DR), since UEFA has issued the Appealed Decision. In addition, considering that UEFA is domiciled in Switzerland, the Sole Arbitrator will subsidiarily apply Swiss law should the necessity arise to fill gaps in the various regulations of UEFA. In any way, the Sole Arbitrator notes that the applicability of the DR in the case at hand is not disputed between the Parties.

VII. MANDATE OF THE SOLE ARBITRATOR

110. According to Art. R57 of the Code, the Sole Arbitrator has full power to review the facts and the law of the case. Furthermore, the Panel may issue a new decision which replaces the decision challenged or may annul the decision and refer the case back to the previous instance.

VIII. MERITS

111. The Sole Arbitrator notes that the facts in this case are undisputed. It is agreed between the Parties that the Flag was displayed by supporters of Austria-Wien who have a close relationship with the Appellant's supporters, that the Flag was displayed in a sector holding ca 500 of the Appellant's supporters and that the Flag was shown for the whole duration of the Match. It is equally undisputed that the Flag is about 1.5 m x 1m in size. What is disputed between the Parties are the legal consequences that derive from these facts. The legal questions at stake in these proceedings can be grouped into the following issues:

- (i) Was the Appealed Decision based on an irregular procedure?
- (ii) What is the test in order to determine whether supporters of a club have violated Article 14(1) of the DR?
- (iii) Does the display of the Flag meet the above test under (ii)?
- (iv) What consequences derive from the fact that the Flag has been previously displayed at other UEFA matches without UEFA prosecuting these cases?
- (v) Is the sanction imposed on the Appellant proportionate?

A. Was the Appealed Decision based on an irregular procedure?

i. The Competence of the Chairman ratio materiae

112. Article 34(3) of the UEFA Statutes provides as follows:

“The Appeals Body shall have jurisdiction to hear appeals against decisions of the Control, Ethics and Disciplinary Body pursuant to the Disciplinary Regulations in force from time to time. These regulations may

provide that a case be referred directly to the Appeals Body in urgent circumstances, in particular regarding the admission to, or exclusion from, UEFA competitions”.

113. It follows from the above provision that – in certain cases – the UEFA AB may act not as a second, but as a first instance tribunal. For more detailed information, Article 34(3) of the UEFA Statutes refers to the DR. Articles 29(3) and Article 30(4) DR pick up on the empowerment contained in Article 34(3) of the UEFA Statutes and provide as follows:

“Article 29(3)

The Control, Ethics and Disciplinary Body has jurisdiction to rule on disciplinary and ethical issues and all other matters which fall within its competence under UEFA’s Statutes and regulations. In particularly urgent cases (especially those relating to admission to, or exclusion from, UEFA competitions), the chairman may refer the case directly to the Appeals Body for a decision”.

“Article 30(4)

The Appeals Body has jurisdiction to hear appeals against decisions by the Control, Ethics and Disciplinary Body and to rule on particularly urgent cases referred to it directly by the chairman of the Control, Ethics and Disciplinary Body”.

114. When looking at the composition of the UEFA AB, Article 34(2) of the UEFA Statutes provides as follows:

“The Appeals Body shall, as a rule, reach decisions in the presence of three of its members. The UEFA Disciplinary Regulations may provide for exceptions and, in particular, empower the Chairman, or one of the Vice-Chairmen or a member acting as ad hoc Chairman, sitting alone, to take a decision on appeals which are obviously inadmissible, founded or unfounded”.

115. The Appellant submits that the possibility to empower the Chairman of the UEFA AB according to the above provision is limited to the instances, in which the UEFA AB is called upon to decide the dispute “on appeals”. Thus, in cases in which the UEFA AB decides the dispute as a first instance tribunal, Article 34(2) UEFA Statutes is not applicable and the UEFA AB must decide in the presence of three members.
116. The Sole Arbitrator is not prepared to follow this. It is true that Article 34(1) and (2) UEFA Statutes address the general case, i.e. that the UEFA AB acts as an appeals body. It is important to note, however, that these provisions deal with the composition of the UEFA AB. Consequently, also in case the Chairman or an ad hoc Chairman “sitting alone” decide the dispute, the decision will still be one of the UEFA AB.
117. Article 34(3) of the UEFA Statutes provides for an exception to the rule that the UEFA AB necessarily acts as a 2nd instance body. According thereto the UEFA AB may – in exceptional cases – act as a first instance. This exception is enshrined in the last paragraph of Article 34 of the Statutes, i.e. after the general rule contained in the first two paragraphs. The article does not contain any special provisions as to the composition of the UEFA AB in case it acts as a first

instance body. Absent any *lex specialis*, it is only natural to fall back on the first two paragraphs, more particularly to Article 34(2) UEFA Statutes that in turn refers to the DR. Accordingly, it follows from a systematical construction of the provisions that the first two paragraphs of Article 34 UEFA Statutes are applicable also in case the UEFA AB decides as a first instance body. Consequently, also in case the UEFA AB is called upon to decide the dispute as a first instance body, the UEFA AB may refer the case – under the circumstances specified in the DR – to the (ad hoc) Chairman. There is no reason to assume that the UEFA AB acting as a first instance panel must always decide in the presence of three of its members. Deciding otherwise would impose a higher threshold with respect to the composition of the UEFA AB in cases that are “particularly urgent” compared to cases that are simply “urgent”. This is, however, nonsensical.

118. The above view is also corroborated when looking at Article 30(2) and (3) of the DR, which read as follows:

“(2) As a rule, the Appeals Body reaches decisions in the presence of three of its members. The chairman may enlarge the quorum to a maximum of seven members if he considers it necessary.

(3) The chairman of the Appeals Body, one of its vice-chairmen or one of its members acting as ad hoc chairman may take a decision as a judge sitting alone:

a. in urgent or protest cases; ...”.

119. These provisions refer to “decisions” being taken by the UEFA AB. Their application is not limited to decisions taken on “appeals”. Consequently, the Sole Arbitrator dismisses the Appellant’s objection as to the incompetence of the UEFA AB’s Chairman *ratione materiae*.

ii. The tight timeline

120. The Appellant submits that the Appealed Decision was issued “so close to the next host game on August 11 as to make it impossible or very difficult for the Appellant to file a complete and well-founded appeal to succeed at CAS”. The Sole Arbitrator accepts that the timeline was (very) tight. The Match was played on 20 July 2022 and the disciplinary proceedings were opened by UEFA a day later. The Appealed Decision was then notified to the Appellant on 3 August 2022. The Appeal Brief to the CAS was filed by the Appellant on 6 August 2022. The Sole Arbitrator notes that the time schedule was agreed upon by the Parties, that no extension of the deadline was requested and no submission filed to stay the disciplinary measures imposed by UEFA. The Sole Arbitrator further notes that despite the time pressure on the Appellant the latter was nevertheless able to submit a well-researched and comprehensive Appeal Brief addressing all issues of the case. Furthermore, the Sole Arbitrator notes that the Appellant was not disadvantaged vis-à-vis the Respondent. The Appellant had – essentially – three days to file the Appeal Brief (from 3 to 6 August) and the Respondent had equally three days to file its Answer (from 6 August until 9 August). To conclude, the Sole Arbitrator finds that the timeline in these proceedings was challenging. Considering, however, that both sides have been treated equally, that they both agreed to the calendar and that both Parties are represented by experienced counsels /

representatives who are used to expedited proceedings before the CAS, the Sole Arbitrator does not accept that the Parties' procedural rights were violated.

iii. The right to be heard

121. The Appellant submits that its right to be heard has been violated, because the Appeals Body based its decision – *inter alia* – on the FARE Observer report, which was not made available to the Appellant before the first instance proceeding. The Sole Arbitrator finds that this – in fact – constitutes a violation of the Appellant's right to be heard, since the right to be heard requires that a party be able to comment on all circumstances submitted by the counterparty (cf. KuKo-ZPO/OBERHAMMER/WEBER, 3rd ed. 2021, Art. 53 no. 5). Furthermore, the right to be heard requires that the parties be heard on an equal footing (cf. KuKo-ZPO/OBERHAMMER/WEBER, 3rd ed. 2021, Art. 53 no. 5). The report of the FARE Observer may not have been the only document on which the UEFA AB based its conclusion. However, it was an aspect for the UEFA AB and it is referred to in the Appealed Decision. Whether this is enough to accept that there was a breach of the Appellant's right to be heard, appears questionable, since the facts referred to in the FARE Observer report are not in dispute between the Parties and do not deviate from the facts described to in the other reports.

122. Even if one were to assume that there was a breach of the Appellant's right to be heard, the Sole Arbitrator sees no reason to set aside the Appealed Decision. The Sole Arbitrator notes that according to the constant jurisprudence of the CAS violations of the right to be heard at a previous instance may be healed in case of *de novo* hearing at the second instance. Procedural violations that occurred in the first instance fade to the periphery in *de novo* appeals proceedings, i.e., they are cured and need no longer be addressed before the CAS (see CAS 2013/A/3262; CAS 2011/A/2594; CAS 2018/A/5853). As the panel in CAS 1998/A/208 (at paras 5.3 et seq.) rightly stated,

"[t]he virtue of an appeal system which allows for a full rehearing before an appellate body is that issues of the fairness or otherwise of the hearing before the tribunal of first instance fade to the periphery ... The Panel therefore finds it unnecessary to consider the charge made by the Appellants as to FINA's violation of due process".

123. Since this procedure before the CAS is *de novo*, it follows from the above that the Appellant's objection must be dismissed.

B. What is the test to be applied in the context of Article 14(1) of the DR?

124. Article 14(1) DR reads as follows:

"Any person under the scope of Article 3 who insults the human dignity of a person or group of persons on whatever grounds, including skin colour, race, religion, ethnic origin, gender or sexual orientation, incurs a suspension lasting at least ten matches or a specified period of time, or any other appropriate sanction".

125. Whether a certain behaviour fulfills the requirements of the above provision needs to be determined in light of the so-called reasonable onlooker test. CAS panels have repeatedly

applied this test. In CAS 2013/A/3324 & 3369, the panel described the test as follows (no. 9.12 et seq):

“Viewed against that background, Article 14 UEFA DR has two elements which must be satisfied before sanctions can be imposed:

- 1. There must be an insult to the human dignity of either a person or a group of persons;*
- 2. The insult must be on grounds of, inter-alia, race or ethnic origin.*

Furthermore, the insult can be conveyed by whatever means, which would include chanting; it is, however, the Panel’s view that it is not necessary for an offence to be committed under Article 14 UEFA DR to prove that the person charged intended to insult; it is sufficient that he or she did insult. The precondition of intention is significantly not prescribed by the Article. ...

In the Panel’s view the test of whether or not there has been an insult qualifying for sanctions under Article 14 UEFA DR, is the perception of the reasonable onlooker. It is in that sense objective not subjective.

Further, as a senior English judge, Lord Steyn, once said “in the law, context is everything” [Daly v Secretary of State for Home Department 2001 2 AC 532 (28)] so to determine whether words, chants gestures or other behaviour constitute racial insults all the circumstances must be considered; who is saying what to (or about) whom, when, what, how and against what background”.

126. In CAS 2015/A/4256, the panel held as follows:

“There is a now a significant line of CAS cases which have established the test for a violation of Article 14.1 DR as an objective one:

‘The Panel finds these cases relevant insofar as they establish a common thread to the effect that the assessment of whether an individual is supporter of a team is based on the perception of the ‘reasonable and objective observer’ (CAS 2015/A/3874, para. 193).

‘In the Panel’s view the test of whether or not there has been an insult qualifying for sanctions under Article 14 UEFA DR, is the perception of the reasonable onlooker. It is in that sense objective and not subjective’ (CAS 2013.A/3324 and 3369, para. 9.13).

‘The Panel adheres to the considerations of the panel in CAS 2007/A/1217 and thus finds that the main issue here is to assess whether the perpetrators that launched the fireworks from outside the stadium (influencing the smooth running of the match) are to be considered supporters of the Club in the eyes of a reasonable and objective observer’ (CAS 2013/A/3139, para. 67).

As a result, all factors that might be relevant to a reasonable onlooker’s impression of whether or not an act was racist should be considered, and the impression of one player (even the player towards whom the act is ostensibly directed), while it may be relevant, is not solely determinative. ...

In the Panel’s view, when considering the objective of the regulation and the campaign against racism generally,

the test to apply must surely conclude that an act violates Article 14.1 DR if an objective onlooker, wherever he or she is situated, be it in the stadium either on the pitch or in the stands, or behind a screen in any location (worldwide or indeed in outer space), could reasonably conclude that the act constitutes an insult to human dignity as envisioned by Article 14.1 DR. To find otherwise would be permissive of acts that are racist or otherwise reprehensible to some individuals on the basis that they are not to others, and that the perception of the latter should somehow prevail over that of the former. This sort of relativism was surely not intended by the drafters of the DR, whose purpose was undoubtedly to elaborate uniform standards that could be universally applicable throughout association football in Europe. ...

Under this rationale, the fact that Mr Rainville saw it fit to report the matter to Mr Turpin, and the fact that Mr Turpin concluded, in the context in which he was doing his job - a vibrant football match - that the act was of racist nature, was sufficient for the act to constitute a violation of Article 14.1 DR. Another way to state this is that if the referee's report withstands the challenge to its presumptive validity (which we have concluded it does), it is more likely than not that the findings that it contains, when they are the product of the referee's (or indeed other officials') professional judgment, are of a reasonable nature. The fact that others may also have considered the act racist, including Gervinho himself, is an additional (but not essential) indication that it can reasonably be considered as such”.

127. It follows from the above that the “reasonable and objective onlooker” is not an average fan or “normal person” watching a match. Instead – as the panel in the case 2019/A/6547 has rightly put it – the test is the assessment of a reasonable and well-informed person assessing – ex post – the facts before him or her in light of all available and obtainable information. The pertinent parts of the CAS award, to which the Sole Arbitrator fully subscribes, read as follows (no. 160 et seq.):

“In the Panel’s further view, the exercise for any adjudicative body confronted with a charge brought under Article 14 DR is to identify, as best it can with the assistance of any relevant materials including dictionaries or matters of which judicial notice can be taken, e.g. historical facts, the objective meaning of the words or symbols relied on. Any alternative approach which relies upon the subjective appreciation of actual onlookers or audience would be destructive of the principle of legal certainty, unjustifiably complicate the function of the adjudicative body and contravene the principle of equal treatment. By way of (entirely) hypothetical example, a slogan written in Arabic which unambiguously insulted Christians would be, other criteria being satisfied, a breach of Article 14 DR even if read or seen only by persons unfamiliar with Arabic. The adjudicative body stands in the shoes of that hallowed but also hypothetical figure “the reasonable onlooker” who must for this purpose be taken to be well informed and acquainted with legal and historical knowledge and with the totality of the circumstances.

The Panel respectfully declines to apply a test of the perception of “a large number of viewers” or an “average viewer”, which may in some circumstances be coincident with its own preferred test of the perception of the hypothetical reasonable and well-informed onlooker but in other circumstances, as in the hypothetical example the Panel provides above, may not. If a message whether in word, slogan, sign, drawing, painting or other art form is objectively and intrinsically racist a Club vicariously responsible for it cannot escape the consequences just because few of those who heard or saw it (as the case may be) did not, for whatever reason, understand its true meaning. A message, applying the Panel’s preferred test, either is racist or is not. A charge of a breach of Article 14 DR must be proved to the comfortable satisfaction of the adjudicatory body, which the Panel finds it is appropriate standard and, if at the end of the day any ambiguity cannot be resolved that may simply mean that

the charge is not proven. ...

The Panel would readily accept, as the Respondent itself emphases, that codes in general are meant to convey a hidden message, and are, in a context such as the present, conceived to escape sanctions since they are less recognizable than explicitly racist messages. The Panel would itself affirm that that hidden and disguised discriminatory messages are more dangerous precisely because they are more difficult to detect; accordingly, they must be strongly opposed in order to prevent undisturbed growth of message of hatred and violence in football. But application of the Panels' preferred test will not allow coded messages to escape punishment, since the well-informed reasonable onlooker and the adjudicative body, whether a CAS panel or a first instance tribunal, standing in its shoes must be taken to be equipped with all the necessary information to decode any code. The "reasonable onlooker" is not an average person of a particular constituency, but a reasonable person assessing – ex post – the facts before him or her in light of all available and obtainable information".

C. Does the display of the Flag meet the above test?

128. The Sole Arbitrator notes that the Flag itself does not contain any words or signs that could be qualified as *"insult to the human dignity of either a person or a group of persons on grounds of, inter alia, race or ethnic origin"*. Consequently, the Sole Arbitrator must turn to the entire context, in which the Flag is embedded. In doing so, the Sole Arbitrator adopts the view of the well-informed, objective and reasonable onlooker that is equipped with all the necessary information.

i. The required standard of proof

129. Before looking at all the circumstances of the case, i.e. the context in which the Flag was used, the Sole Arbitrator needs to define the applicable standard of proof. Article 24 DR defines the applicable standard of proof and reads as follows:

The standard of proof to be applied in UEFA disciplinary proceedings is the comfortable satisfaction of the competent disciplinary body.

130. Consequently, in order to accept that the Appellant has breached Article 14(1), (2) DR, the Sole Arbitrator needs to be comfortably satisfied that the context in which the Flag was displayed qualifies as an insult to the human dignity on grounds of – *inter alia* – race or ethnic origin.

ii. The Context

131. The Appellant submits that the Flag is inspired by the German Reichskriegsflagge from before 1935, but not from the Reichskriegsflagge in use after 1935. In the Appeal Brief it is stated as follows:

"Instead we hold that the Flag was based on the Imperial War Flag used between 1867 and 1921, which is not prohibited and has nothing to do with the Nazis ..."

132. The Sole Arbitrator wonders why football fans would be inspired by a flag that was used by the

German military in conflicts in the past, i.e. a flag that has a clear connotation with war readiness, violence, death and soldiering and has no link (apart from the upper left corner) to the tradition and history of the club Austria-Wien. The motives to use a Reichskriegsflagge as a template for displaying attachment and fanship with a football club appear rather obscure to begin with.

133. The Sole Arbitrator also notes with interest the statement submitted by the Appellant of an alleged fan of Austria-Wien, whose identity was not disclosed, who – contrary to the Appellant – does not admit that the Flag was inspired by the Reichskriegsflagge. Instead, the “fan” declares that the Flag was created by copying flags from Slovan fan groups. However, a quick glance is all it takes to demask such statement as purely self-serving. There is simply no similarity with the various Slovan flags. However, there is a striking and obvious similarity of the Flag with the Reichskriegsflagge in use as of 1935, when one looks at the form and the design, and more particularly at the positioning of the cross. Thus, the statement of the “fan” that *“our group rejects any connection of our flag with National Socialist ideologies and any form of hate, religious extremism and racism”* does not appear very credible from the outset.
134. The Sole Arbitrator also notes the fracture font at the lower bottom of the Flag. Of course, the Sole Arbitrator is aware that for more than 500 years, fractured scripts were the main means of expression in German literature. However, it is equally true that the general public associates this type of font with the Third Reich. This association originates in the fact that the Nazis – at least originally – propagated the fractured script as the only “true German script”. It is for this simple reason that this font is frequently used today by right-wing extremists.
135. The Sole Arbitrator is also aware that – at least in Austria and Germany – the use of Nazi emblems and signs is forbidden by law and constitutes a criminal offense. Thus, e.g., the Reichskriegsflagge of 1935 is forbidden in these countries and persons displaying or using it are prosecuted. It is also a fact, however, that the use of the pre-1935 versions of the Reichskriegsflagge regularly takes place in the context of meetings and marches of radical right-wing or neo-Nazi groups, organisations and associations. This is also acknowledged in the decision of the Higher Administrative Court (OVG: 1 B 331/20) submitted by the Appellant, where it is stated as follows:

“... die Reichs(kriegs)flagge [wird] mittlerweile von Rechtsextremen als Erkennungszeichen verwendet ... und so mittlerweile auch verstanden ...”.

Free translation: *the Reichs(war)flag [is] meanwhile used by right-wing extremists as a sign of recognition ... and is meanwhile also understood in this way*

136. The use of the Reichskriegsflagge is done for both content-related and pragmatic reasons. On the one hand, the flag can be used to express radical right-wing and Nazi sentiments, since it stands for continuity. It was in use – with modifications – until the end of the war in 1945 and, thus, also during the Nazi terror regime. On the other hand, it also fulfils a very pragmatic function, because unlike the symbols of the Nazi state, the use of the Reichskriegsflagge in the versions before 1935 is not prohibited under criminal law. This means that one can be close to the Nazi era, propagate its ideas and still not be liable to prosecution. The Reichskriegsflagge

(in the various versions between 1867-1935) is, therefore, in a fundamental sense, a substitute for the use of Nazi symbols, including first and foremost the swastika, which is prohibited under criminal law in Austria and Germany. The Reichskriegsflagge is a symbol or a code, i.e. a hidden and disguised message that is more difficult to detect, which carries, however, the same message as Nazi symbols.

137. The above facts are well-known and are also acknowledged by the public authorities – e.g. – in Germany. Thus, e.g., a Decree of the Brandenburg Ministry of the Interior of 10 June 2014 says as follows:

“Die Reichskriegsflagge ist weiterhin ein Symbol nationalsozialistischer Anschauungen und/oder von Ausländerfeindlichkeiten. Ihre Verwendung in der Öffentlichkeit stellt eine nachhaltige Beeinträchtigung der Voraussetzungen für ein geordnetes staatsbürgerliches Zusammenleben und damit eine Gefahr für die öffentliche Ordnung dar”.

Free translation: *The Reichskriegsflagge continues to be a symbol of national socialist views and/or xenophobia. Its use in public represents a lasting impairment of the conditions for orderly civic coexistence and thus a danger to public order.*

138. Furthermore, the Sole Arbitrator notes that the display of the Flag has been sanctioned by UEFA before. Its illicit nature is, thus, known in the world of football and, more particularly to the Appellant. The Parties have referred in their submissions to a decision of the UEFA AB dated 8 October 2019 involving the Appellant. In this decision the UEFA AB stated as follows:

“According to the FARE Observer’s report:

‘The most active Slovan Bratislava home supporters were concentrated in sections C102, C103. Partly: C101, C104.

The following developments were reported. All timings are CET.

20:44: Approximately 15 minutes before the kick off, Slovan Bratislava supporters in section C103 displayed a flag reading ‘Unsterblich’ styled as the German Reichskriegsflagge (war flag). The flag is commonly used by far-right groups across Europe. Far-right groups in football often replace the original colours and swastika with the colours and emblem of their club respectively.

The displayed flag belongs to a neo-Nazi group of FK Austria Wien supporters named ‘Unsterblich’. The flag is banned from FK Austria Wien home matches. ...’

The illicit nature of the banner displayed during the Match has already been analysed and confirmed by the disciplinary bodies of UEFA in previous decisions. By displaying the Reichskriegsflagge, supporters aim to spread violent, anti-Semitic and white supremacist messages. Evidently, such symbolism is completely unacceptable and has no place in football or anywhere else” (emphasis added).

139. The Respondent has also submitted evidence from the public domain that the Flag displayed by the Appellant’s supporters is directly connected to Nazi ideology. The news portal heute.at

reported on 9 December 2019 as follows:

Nazi flag in the derby! This is how Wiener Austria reacts



A slightly modified Reich war flag hung in the Austria fan sector at the 330th Vienna Derby.

140. Equally, the internet portal bonvalot.net reported on the same day as follows:

Austria must solve its Nazi problem



Image: Private. With kind approval.

BY: MICHAEL BONVALOT DECEMBER 9, 2019

Sieg-Heil slogans, monkey noises, attacks on other fans and a Reich war flag. The Vienna Derby shows the Nazi problem in the Austria fan scene. Five suggestions for a solution.

Austria simply cannot get its neo-Nazi problem under control. This became painfully visible again at the 330th big Vienna derby against local rivals Rapid. So far, the media has primarily reported on the Reichskriegsflagge in the Austria sector. But apparently there were far more problematic attacks.

The imperial war flag in the design of Austria can be assigned to the relevant known group "immortal". The symbol is used by neo-Nazis as a substitute for the banned

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141. In view of the above the Sole Arbitrator finds that the Flag and its context has historical and factual grounds for being considered objectively as evocative of allegiance to Nazi ideology and, therefore, is intrinsically of a discriminatory nature, on racial or ethnic grounds. Thus, its insulting meaning within the definition of Article 14(1) DR has been prima facie established

unless there is compelling proof to the contrary, under specific and exceptional circumstances which themselves have to be assessed with care. However, no such circumstances exist. In particular, the Sole Arbitrator finds – as previously stated – that the statement of the alleged “fan” of Austria-Wien on the historical background of the flag is totally unconvincing.

142. Consequently, it is established that the Flag is a sign or symbol glorifying Nazi and extremist right wing ideas. This is – without any doubt – an insult to the human dignity of a person or group of persons based on “grounds... [such as] *skin colour, race, religion, ethnic origin*”.

iii. The German decisions of the administrative courts

143. Contrary to the submissions of the Appellant the decision from the Administrative Court and the Higher Administrative Court of Bremen do not change the above finding. In these cases the courts had to balance the constitutional right to free expression and the right to freedom of assembly with safeguarding of the public order. In particular the Higher Administrative Court made it clear that the threshold arising from (German) constitutional law to forbid an assembly for reasons of public order and security is very high. In this sense the decision reads as follows:

“Nach der Rechtsprechung des Bundesverfassungsgerichts sind beschränkende Verfügungen zum Schutz der öffentlichen Ordnung nur insoweit verfassungsrechtlich unbedenklich, als sich die Gefahr für dieses Rechtsgut nicht aus dem Inhalt der Äußerung, sondern aus der Art und Weise der Durchführung der Versammlung ergibt (vgl. BVerfG, Beschl. v. 19.12.2007 – 1 BvR 2793/04, juris Rn. 39 m.w.N.). Beschränkungen einer öffentlichen Versammlung sind zulässig, wenn von der Art der gemeinschaftlichen Kundgabe eine Gefahr für die öffentliche Ordnung auszugehen droht, die nicht auf der bloßen Äußerung der Inhalte beruht, sondern auf besonderen, beispielsweise provokativen oder aggressiven, das Zusammenleben der Bürger konkret beeinträchtigenden Begleitumständen. Denn die Versammlungsfreiheit schützt Aufzüge, nicht aber Aufmärsche mit paramilitärischen oder in vergleichbarer Weise aggressiven und einschüchternden Begleitumständen ... Alleine das Zeigen von – nicht während der Schreckensherrschaft des Nationalsozialismus verwendeten – Reichs(kriegs)flaggen durch etwa 100 Versammlungsteilnehmer, die dem rechtsextremistischen Spektrum zuzurechnen sind, erfüllt die dargelegten hohen Anforderungen der Rechtsprechung des Bundesverfassungsgerichts nicht”.

Free translation: *According to the case law of the Federal Constitutional Court, restrictive orders to protect public order are only constitutionally unobjectionable insofar as the danger to this legal interest does not result from the content of the statement, but from the manner in which the meeting was conducted (cf. BVerfG, decision v. 19.12.2007 - 1 BvR 2793/04, juris para. 39 mwN). Restrictions on a public meeting are permissible if the type of joint announcement threatens to pose a threat to public order, which is not based on the mere expression of the content, but on special, for example provocative or aggressive, accompanying circumstances that specifically affect the coexistence of citizens. ... The use of Reich(war)flags during the reign of terror of National Socialism by around 100 participants who belong to the right-wing extremist spectrum does not meet the high requirements of the case law of the Federal Constitutional Court.*

144. In the case at hand the dispute is not about how to balance the right to free expression or to freely assemble with public security or order. In particular, this case is not about the limits of state interference with an individual’s fundamental rights arising from the constitution. Instead,

this case is about the application of private rules and regulations by a private sports organization (Art. 14 DR) vis-à-vis its affiliated members, that have consented to these provisions when participating in the respective competition. Thus, the Sole Arbitrator finds that nothing can be followed from the court decisions submitted by the Appellant in its favour.

iv. Interim conclusion

145. In view of all of the above, the Sole Arbitrator is comfortably satisfied that the displaying of the Flag by supporters of the Appellant constitutes a breach of Article 14(1) DR.

D. What consequences derive from the fact that the Flag has been previously displayed at UEFA matches?

146. The Appellant submits that UEFA is barred from sanctioning the Appellant based on the principle of *venire contra factum proprium*, because it did not prosecute displays of the Flag at European competitions in the past. The Sole Arbitrator is not prepared to follow this. The fact that individual transgressions have not been punished in the past by UEFA does not, in principle, create any trust worthy of protection that someone may continue to behave contrary to the rules in the future without fearing consequences. The situation may be different, where there is a constant and transparent practice over a significant period of time (“Vereinsübung”) not to prosecute certain violations. However, the Appellant’s submissions are not substantiated enough to accept such “Vereinsübung” in the case at hand.

E. Is the Sanction imposed proportionate?

i. The applicable legal framework

147. The relevant provisions in the DR relating to sanctions are the following:

Article 14

“(2) if one or more of a member association or club’s supporters engage in the behaviour described in paragraph 1, the member association or club responsible incurs a minimum of a partial stadium closure and a fine.

(3) If the circumstances of the case require it, the competent disciplinary body may impose any other additional appropriate disciplinary measures on the member association or club responsible, such as the playing of one or more matches behind closed doors, a stadium closure, the forfeiting of a match, the deduction of points and/or disqualification from the competition. ...”.

Article 23

“(1) The competent disciplinary body determines the type and extent of the disciplinary measures to be imposed in accordance with the objective and subjective elements of the offence, taking account of both aggravating and mitigating circumstances. ...”.

(3) Disciplinary measures can be reduced or increased by the competent disciplinary body on the basis of the circumstances of the specific case. ...”.

Article 25

“(1) Recidivism occurs if another offence of a similar nature is committed within:

...

c. two years of the previous offence if that offence was related to order and security at UEFA competition matches;

d. three years of the previous offence in all other cases.

(2) Recidivism counts as an aggravating circumstance”.

ii. *The lighting of fireworks*

148. The UEFA AB imposed a fine of EUR 13,000 on the Appellant for the lighting of fireworks. In doing so it applied the standard fine of EUR 500 for each firework contained in Article 6(5) DR in conjunction with Annex A(I) DR. Since 26 fireworks were lit, the total amount is EUR 13,000. The Appellant submits that the UEFA AB failed to take mitigating factors into account according to Article 23(1) DR. The Sole Arbitrator notes, however, that there are no mitigating factors in the case at hand. The fact that the breach occurred at an away match is neither a mitigating factor under the rules nor according to the relevant jurisprudence. Contrary to what the Appellant holds this is not contradicted by a decision of UEFA’s Control, Ethics and Disciplinary Body (“CEBD”) submitted by the Appellant. In this decision dated 3 October 2014, the CEBD held as follows (no 50 seq.):

“50. Considering the previous records of the club, as well as the fact that incidents have repeatedly been perpetrated by the PFC CSKA Moskva supporters at away matches, where the scope of action as regards to the organization of security is limited and, in the case of this particular club and its supporters, highly inefficient, the Control, Ethics and Disciplinary Body deems that other means have to be implemented in order to achieve the deterrent effect which the Club has been unable to achieve in previous matches played until now.

51. Thus, the Control, Ethics and Disciplinary Body decides that PFC CSKA Moskva is, in addition to the above, banned from selling tickets to its supporters for the next UEFA Champions League 2014/2015 group stage competition matches which the club will play as the visiting team”.

149. The CEBD did not find that an away game is a mitigating factor. Instead, it imposed an additional sanction on the club in question to deter the latter’s supporters from breaching the DR at away matches. To conclude, the Sole Arbitrator finds that the fine for the lighting of fireworks is proportionate and adequate.

iii. Throwing of objects

150. The UEFA AB imposed a fine in the amount of EUR 25,000 for throwing objects. It calculated the fine as follows:

“36. When determining the sanction, the UEFA disciplinary bodies usually consider the level of danger of the item thrown. Fireworks are considered to be particularly dangerous objects and the UEFA disciplinary bodies routinely imposes a fine of €3,000 for the first object particularly dangerous object thrown. For those objects which are less dangerous, the UEFA disciplinary bodies routinely impose a fine of €1,500 for the first object thrown, €750 for the second object thrown and €500 for each additional object thrown. Where there is a previous record, the UEFA disciplinary bodies routinely increase the initial fine by 50% and adds €750 for each additional offence as from the third. Following this method, the fine would be €18,125.

37. However, as mentioned above, the Appeals Body recalls that according to the official reports of the UEFA Match Delegate and the UEFA Security Officer, one local supporter was injured by the firework thrown, which shall be considered as aggravating circumstance.

38. Considering the above, the Appeals Body deems appropriate to deviate from the method usually follow by the UEFA disciplinary bodies and considers appropriate to fine the Club €25,000 for the throwing of objects”.

151. The Appellant submits that the UEFA AB should not have deviated from the standard sanction (EUR 18,125). The Sole Arbitrator finds that the increase based on the fact that a local supporter was injured is justified and finds the increase to be proportionate and adequate.

iv. Racist behaviour

152. The UEFA AB imposed a fine of EUR 40,000 on the Appellant for racist behaviour, a closure of sector C during the next UEFA competition match in which the Appellant plays as a host club, and a ban on the Appellant from selling tickets to its away supporters for the next UEFA competition match subject to a probationary period of two years. The Appellant submits that this cumulative combination of the disciplinary measures is unproportionate. Furthermore, the Appellant submits that the sanction is unfair when compared to the sanction imposed on Ferencvárosi for comparable infractions. Furthermore, the Appellant recalls that the Flag was small.

153. The Sole Arbitrator is of the view that the sanction imposed is proportionate. What needs to be taken account of is the fact that this is a case of recidivism, since the Appellant had been sanctioned before – *inter alia* for displaying the Flag – with a sanction based on Article 14 DR. In total this is the Appellant’s third infraction of Article 14DR within the deadline provided for in Article 25 (1) lit. d DR (i.e. three years). Article 14(2) DR provide that in case more supporters of a club engage in behaviour described in Article 14(1) DR, the respective club must be sanctioned at a minimum with a partial stadium closure. Considering the recidivist behaviour of the Appellant’s supporters the Sole Arbitrator does not think that a closure of the whole sector C of the Appellant’s stadium is excessive. The Sole Arbitrator also finds that the UEFA AB’s sanction is not inconsistent when compared with the sanction imposed on Ferencvárosi,

since – differently from the Appellant – Ferencvárosi did not have a previous record for violations under Article 14(1) DR. Consequently, no aggravating circumstances based on recidivism applied to the latter. The Sole Arbitrator has considered whether the size of the flag or the alleged provocations by supporters of Ferencvárosi should be considered as mitigating factors, but finds that this is not the case. The Nazi ideology connected to the Flag does not depend on its size and, in addition, the display of such ideology has no connection whatsoever to the alleged provocation from Ferencvárosi’s fans.

F. Summary

154. In summary, the Sole Arbitrator finds that:
- a) the Appealed Decision was issued by an organ with jurisdiction and that even if there was a breach of the Appellant’s right to be heard such violation was healed in the proceeding before the CAS;
 - b) the display of the Flag by supporters of the Appellant constitutes a violation of Article 14 DR; and that
 - c) the sanction imposed by the UEFA AB is proportionate and adequate.
155. Consequently, the Appellant’s appeal must be dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 3 August 2022 by ŠK Slovan Bratislava against the Decision of the UEFA Appeals Body passed on 28 July 2022 (Decision 35790), is dismissed.
2. The Decision of the UEFA Appeals Body passed on 28 July 2022 (Decision 35790) is upheld.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.