



Arbitration CAS 2007/A/1217 Feyenoord Rotterdam v. Union of European Football Associations (UEFA), award of 20 April 2007

Panel: Mr Martin Schimke (Germany), President; Mr Peter Leaver QC (United Kingdom); Prof. Luigi Fumagalli (Italy)

Football

Violent behaviour of supporters

Role of disciplinary law

Definition of “supporter”

Distinction between “official” and “unofficial” supporters

Strict liability of the club for the conduct of its supporters

Proportionality of the sanction

- 1. Disciplinary law implemented in the regulations and directives of an organisation is essentially a tool which allows to create order within the organisation and to assert statutory standards of conduct through sanctions imposed by specific bodies and to ensure their appropriate execution.**
- 2. The term “supporter” is not defined in UEFA’s regulations. In particular, the term is not linked to race, nationality or the place of residence of the individual, nor is it linked to a contract which an individual has concluded with a national association or a club in purchasing a match ticket.**
- 3. There is no UEFA provision that makes a distinction between “official” and “unofficial” supporters of a team. Nor could such a provision easily be drafted. UEFA could not be satisfied that its Disciplinary Regulations would ensure the responsibility of clubs for their supporters if such a distinction were made. The only way to ensure that responsibility is to leave the word “supporters” undefined so that clubs know that the Disciplinary Regulations apply to, and they are responsible for, any individual whose behaviour would lead a reasonable and objective observer to conclude that he or she was a supporter of that club. The behaviour of individuals and their location in the stadium and its vicinity are important criteria for determining which team or club they support. That is particularly so in matches organised by UEFA, when the sale of tickets is regulated.**
- 4. Art. 6 para. 1 of UEFA’s Disciplinary Regulations sets up the principle of strict liability of the member associations and the clubs for the conduct of their players, officials, members, supporters and any other person exercising a function at a match at a request of the association or the club. This rule leaves absolutely no room for manoeuvre as far as its application is concerned. UEFA member associations and football clubs are responsible, even if they are not at fault, for the improper conduct of their supporters.**

Therefore, any mitigating circumstances raised by a member association or a club, such as the fact that it established a special away ticketing-system, the fact that it warned the other member association or the other club of the risks related to the free sale of tickets, or the fact that the police decided not to arrest the potential troublemakers but to let them in the football stadium, is of no help.

- 5. In relation to proportionality, CAS's jurisprudence makes it clear that the sanction imposed must not be evidently and grossly disproportionate to the offence. Among all the sanctions listed in Art. 14 of UEFA's Disciplinary Regulations, only the disqualification appears as able to fulfil the objective of eradicating hooliganism. It means that there will not be any further act of hooliganism coming from the member association's or the club's supporters during the season. As such, it appears fit for purpose.**

On 30 November 2006 AS Nancy-Lorraine ("AS Nancy") played Feyenoord Rotterdam N.V. ("Feyenoord" or "the Appellant") in the group phase of UEFA ("UEFA" or "the Respondent") Cup 2006/07. In the course of the preparation of the match, a Feyenoord delegation, together with Dutch police visited AS Nancy on 2 November 2006. They spoke with representatives of Nancy's local authorities and the club itself.

At this stage, 1'030 tickets were allocated to Feyenoord that were all sold. Feyenoord requested for more tickets. On 21 November 2006, AS Nancy granted to the Appellant 250 extra tickets.

In a letter dated 27 November 2006 addressed to AS Nancy, Feyenoord informed the French club that they expected a huge amount of people, approximately 3000 to 4000 individuals to travel to Nancy without any ticket. Additionally the Appellant mentioned that it was aware of 400 persons that could possibly be linked to Feyenoord and who had purchased tickets for other sections than the official visitor, outside the Feyenoord away ticketing system. In relation to this group of supporters, the Appellant blamed the free sales system going on at the Nancy stadium where supporters could buy tickets without any restrictions. Such methods of sale affected the effectiveness and efficiency of Feyenoord's established special away ticketing-system that was specifically designed to exclude known troublemakers to enter the Stadium at a given match. For this reason the Appellant considered that it could not be held responsible for any damages that could occur as result of such methods.

On 28 November 2006, AS Nancy acknowledged that 300 to 350 tickets had been sold to Dutch supporters. It added that such information was known since 20 November 2006 and the sales points were, at that time, immediately closed.

Considering the information provided by the Appellant, AS Nancy implemented some further changes in the course of the preparation of the match:

- Implementation of a pre-checking of tickets with the police at the stadium entrances with any supporter identified as belonging to Feyenoord directed towards the visitors' enclosure;

- 100 additional stewards on top of the usual 300, bringing the total to 400;
- A police force of between 250 and 300;
- Corner 3 (sectors 16, 17 and 18) completely isolated from the rest of the stadium to ensure the safety of the supporters who purchased their ticket from the Dutch club (barriers have been added and seats removed to create a no man's land);
- Entrance 3 exclusively reserved for Feyenoord supporters.

Many supporters travelled from Holland to Nancy on that day in order to attend the match. Shortly before the match started, the French police had to intervene in the city centre of Nancy because of problems caused by Dutch supporters. Those supporters had to be pushed away by the police from the city centre towards the stadium. A portion of these supporters already held a ticket for the match.

Once riots started in front of the stadium, the French police decided to open the ticket office for the remaining fans that did not hold a ticket and let the trouble makers into the stadium. The decision was motivated by the fact that the stadium was secured enough to host such supporters and it would be easier to canalise them in the arena rather than in the surroundings of the stadium. Those supporters were placed in the sectors 14 and 15, which originally were to be kept empty in order to isolate Feyenoord's fans. As the decision to let those supporters in was taken rather quickly by the police, due to the fact that the ongoing riots had to be solved swiftly, the head of the police did not consult the Appellant's representatives and/or the UEFA match delegate on the spot.

After the first goal scored by Nancy (22nd minute), Feyenoord supporters placed in sector 14 started breaking the separation wall between the sector 13 and 14, and some fans of the visiting team managed to enter the adjacent sector 13. This resulted in panicky reactions of local supporters placed in sector 13, who left their seats to avoid disturbances.

Following the intervention of the police, the visiting supporters were moved back into their sector 14, but the police remained in sector 13 in order to monitor the situation. Feyenoord supporters then started throwing seats against the police, as well as the crowd placed in sector 13 and further provoked the police until the end of the first half. The disturbance continued at the half-time interval, and into the second-half. In addition, during the 2nd half Feyenoord supporters in sector 18 threw further seats onto the field of play and at stewards.

In the 79th minute, the police intervened with teargas to disperse the crowd. Given the impact of the teargas on players and officials, the referee interrupted the match for about 34 minutes.

On 7 December 2006, the UEFA Control & Disciplinary Body decided to inflict a fine of CHF 200,000.- on Feyenoord. Moreover, the panel ordered the next two home matches of Feyenoord in a UEFA club competition to be played behind closed doors. Nevertheless, this order was deferred for a probationary period of three years.

On 13 December 2006, UEFA appealed against the Control & Disciplinary Body's decision of 7 December 2006 requesting for a tougher sanction.

On 11 January 2007, Feyenoord filed a cross-appeal against the decision rendered by the Control & Disciplinary Body and submitted as primary request the annulment of the challenged decision and the acquittal of Feyenoord.

A hearing was held in Nyon on 19 January 2007 before the UEFA Appeals Body.

On 25 January 2007, the UEFA Appeals Body ruled:

- *The appeal of UEFA is partially upheld. As a result, Feyenoord are disqualified from the current UEFA Cup competition 2006/07 and fined with CHF 100,000.-*
- *The cross appeal of Feyenoord is rejected.*
- *Feyenoord are ordered to contact AS Nancy Lorraine as regards to the settlement of the damages caused by Dutch supporters.*
- *The Disciplinary Inspector is mandated to conduct an investigation on the circumstances leading to the entry of Dutch supporters to the stadium against the advice of Feyenoord. The report of this investigation shall be submitted to UEFA by the end of March 2007 at the latest.*
- *The costs of the proceedings amounting to CHF 10,000.- are to be paid as follows: CHF 2,000.- by UEFA, and CHF 8,000.- by Feyenoord under deduction of the appeal's fee.*

On 26 January 2007, the UEFA Appeals Body notified the decision to the parties.

A statement of appeal was filed before the Court of Arbitration for Sport ("CAS") on 26 January 2007 by the Appellant pursuant to the Code of Sports-related Arbitration (the "Code") to challenge the Appealed Decision. A hearing was held in Lausanne on 8 February 2007.

LAW

Competence of the CAS

1. The competence and/or jurisdiction of the CAS to act as an appeal body which is not disputed by the parties derives from Article R47 of the Code which provides that:

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

and on Article 62 para. 1 of the UEFA Statutes.

2. Moreover, the jurisdiction of the CAS is explicitly recognised by the parties in their briefs.

Applicable law

3. Article R58 of the Code provides:

“The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in absence of such choice, according to the law of the country in which the federation, association or sports body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

4. The “*applicable regulations*” in this case are the UEFA rules.

5. Further, Article 63 para. 2 of the UEFA Statutes provides as follows:

“Moreover, proceedings before the CAS shall take place in accordance with the Code of Sports-related Arbitration of the CAS”.

6. The parties have not expressly or impliedly agreed on a choice of law applicable to these proceedings before the CAS. Therefore, the rules and regulations of UEFA shall apply primarily, and Swiss law, as UEFA is domiciled in Switzerland, shall apply subsidiarily.

Admissibility

7. The Appeal is admissible for the following reasons:

8. The UEFA Appeals Body decision was served to the parties on 26 January 2007.

9. The Appellant’s statement of appeal was filed on 26 January 2007, namely within the 10 days time limit set by Article 63 of the UEFA Statutes.

10. In the case, the Appellant has met the deadline set by the UEFA Statutes.

11. Besides, the appeal complies with all other requirements of Article R47 of the Code.

Examination of the contested decision

A. The UEFA

12. As a legal entity domiciled in Switzerland, UEFA is subject to Swiss law and, in particular, Article 60 et seq. of the Swiss Civil Code. Those Articles allow an extremely wide margin of autonomy in terms of the way the life of the association is structured (*see* CAS 2005/C/976 & 986, para. 123 and 142 with reference to Swiss law). UEFA’s Statutes, regulations and directives are an expression of this autonomy and therefore of a civil law nature in terms of their basic structure.

13. Disciplinary law implemented in its regulations and directives is essentially a tool which allows the UEFA to create order within the organisation and to assert statutory standards of conduct through sanctions imposed by specific bodies and to ensure their appropriate execution.
14. According to Article 2 of the UEFA Statutes, the purpose of UEFA is to promote football in Europe in a spirit of peace, understanding and fair play, without any discrimination as to politics, gender, religion or race. By Article 7 of the UEFA Statutes, members of UEFA are duty bound to respect the principles of loyalty, integrity and sportsmanship in accordance with the principles of fair play, and they undertake to comply with UEFA's statutes, regulations and decisions. It is undisputed that the Appellant is subject to the UEFA rules as stated in the UEFA Appeals Body decision (*see* para. 2b)
15. Article 52 of the UEFA Statutes provides:
"Disciplinary measures may be imposed for unsportsmanlike conduct, violations of the Laws of the Game, and contravention of UEFA's Statutes, regulations, decisions and directives as shall be in force from time to time".
16. Article 6 of the Disciplinary Regulations provides:
"Member associations and clubs are responsible for the conduct of their players, officials, members, supporters and any other persons exercising a function at a match at the request of the association or club.
The host association or club is responsible for order and security both inside and around the stadium before, during and after the match. It is liable for incidents of any kind, and can be rendered subject to disciplinary measures and bound to observe directives".
[Articles 3.08 and 3.09 of the Competition Regulations for the UEFA CUP 2007 express the same principles, containing almost the same wording].
17. The first paragraph of Article 6 makes it clear that the Appellant is held to strict liability for the behaviour of its supporters. The term "supporter" is not defined. In particular, the Panel notes that it is not linked to race, nationality or the place of residence of the individual, nor is it linked to a contract which an individual has concluded with a national association or a club in purchasing a match ticket. The Panel has no doubt that it is UEFA's deliberate, and wise, policy not to attempt to provide a definition for "supporter".

As the distinction between "official" and "unofficial" supporter was fundamental to Feyenoord's appeal, during the hearing the representatives of Feyenoord were asked by the Panel how they would draft a provision that did make that distinction. The Panel was not surprised that they were unable to provide any definition. There is no UEFA provision that makes a distinction between "official" and "unofficial" supporters of a team. Nor could such a provision easily be drafted. UEFA could not be satisfied that its Disciplinary Regulations would ensure the responsibility of clubs for their supporters if such a distinction were made. The only way to ensure that responsibility is to leave the word "supporters" undefined so that clubs know that the Disciplinary Regulations apply to, and they are responsible for, any individual whose behaviour would lead a reasonable and objective observer to conclude that he or she was a supporter of that club. The behaviour of individuals and their location in the stadium and its

vicinity are important criteria for determining which team or club they support. That is particularly so in matches organised by UEFA, when the sale of tickets is regulated.

18. This construction of the word “supporter” is supported by the UEFA case law (Football Federation of Bosnia and Herzegovina v/ UEFA, UEFA Appeals Body, 23 May 2003) and by the CAS (CAS 2002/A/423).
19. In this latter decision, the CAS came to the conclusion that Article 6 of the Disciplinary Regulations is perfectly valid, in particular in light of Article 20 and Article 163 of the Swiss Obligations Code.
20. The CAS recognised the legality of Article 6, making a clear distinction between the first and the second paragraph of this rule.
21. In relation to the first paragraph, the decision stated:

“Under the terms of the first paragraph, member associations and clubs are responsible for the conduct of their players, officials, members, supporters and any other persons exercising a function at a match at the request of the association of club. According to this provision, UEFA members and clubs are responsible for any breach of the UEFA regulations committed by any of those persons. There is therefore no doubt that, under this rule, member associations and clubs bear strict liability for the actions of third parties, who are nonetheless specifically identified.

This rule leaves absolutely no room for manoeuvre as far as its application is concerned. UEFA member associations and football clubs are responsible, even if they are not at fault, for the improper conduct of their supporters, including racist acts, which expressly breach the Disciplinary Regulations. Clubs are automatically held responsible once such an act has been established.

The object of this rule is very clearly to ensure that clubs that host football matches shoulder the responsibility for their supporters’ conduct, which must comply with UEFA’s objectives. It should be noted that UEFA has no direct disciplinary authority over a club’s supporters, but only over European football associations and clubs. The latter are responsible for conforming to the standards and spirit of the UEFA regulations. If clubs were able to extricate themselves from any responsibility by claiming that they had taken all measures they could reasonably be expected to take to prevent any breach of the UEFA rules, and if supporters still manage to commit such an act, there would be no way of penalising that behaviour, even though it constituted a fault in itself. UEFA’s rules of conduct would therefore be nothing more than vague obligations, since they would be devoid of any sanctions. By penalising a club for the behaviour of its supporters, it is in fact the latter who are targeted and who, as supporters, will be liable to pay the penalty imposed on their club. This is the only way in which UEFA has any chance of achieving its objectives. Without such an indirect sanction, UEFA would be literally powerless to deal with supporters’ misconduct if a club refused to take responsibility for such behaviour.

Article 6 para. 1 of the Disciplinary Regulations, under which clubs assume strict liability for their supporters’ actions, therefore has a preventive and deterrent effect. Its objective is not to punish the club as such, which may have done nothing wrong, but to ensure that the club assumes responsibility for offences committed by its supporters.

The strict liability provided by Article 6 para. 1 of the Disciplinary Regulations can therefore not be deemed contrary to Article 20 of the CO, particularly since Article 72 para. 1 of the CC allows associations to expel their members without giving their reasons for doing so. It would therefore seem paradoxical if an association were able, through its statutes, to expel its members without having to show that they had committed some kind of

violation, whilst only being allowed to sanction its members if it could prove that they had breached their obligations”.

22. On the second paragraph, the decision provides:

“The second paragraph of Article 6 of the Disciplinary Regulations is worded differently to the first. It stipulates that the host association or club is responsible for order and security both inside and around the stadium before, during and after the match. It is liable for incidents of any kind, and can be rendered subject to disciplinary measures and bound to observe directives.

A purely literal interpretation of this rule suggests that this is no longer a question of strict liability. Although this provision does impose a duty of care and diligence, requiring clubs and associations to do their utmost to guarantee order and security in and around the stadium when a match takes place, the simple fact that the incident occurs does not automatically mean that the host association or club should be penalised. The body responsible for dealing with such incidents is given a free hand to penalise the national association or club concerned in accordance with the circumstances. It would be outrageous if an association or club could be sanctioned even though it had committed no fault in relation to the organisation and maintenance of order and security at the match in question”.

23. The distinction between the first and the second paragraph is confirmed in Article 17 of the Disciplinary Regulations which provides that, subject to Article 6 paragraph 1, no disciplinary measures may be imposed in cases where the party charged bears no fault or negligence.
24. The present case concerns the first paragraph of Article 6 of the Disciplinary Regulations. The principle of strict liability is therefore applicable.
25. It appears to the Panel that both “official” and “unofficial” supporters of Feyenoord caused trouble before and during the match. For the reasons stated above, the distinction made by the Appellant is not a legitimate distinction. As has been pointed out, the definition of a supporter is not linked to a nationality, a place of residence or the fact that he purchased a ticket out of his club’s ticketing service.
26. It was demonstrated to the Panel’s satisfaction that the supporters inside sector 14 and 15 were Feyenoord’s supporters. The Appellant must therefore be held responsible for the trouble caused by these people. The question whether supporters from sector 14 and 15 mingled with people from sector 16, 17 and 18 is of no relevance as all supporters in sectors 14 to 18 must be considered as Feyenoord’s supporters in the sense of Article 6 of the Disciplinary Regulations.
27. The fact that Feyenoord did much to prevent disturbances such as establishing special away ticketing-systems or warning AS Nancy of the risks related to the free sale of tickets is of no help as the strict liability rule provided with Article 6 para. 1 of the Disciplinary Regulations shall apply.
28. The second paragraph of Article 6 of the Disciplinary Regulations and the possibility of shifting the burden of proof is not applicable in the present case as the Appellant is not the host association and was not involved in the organisation and maintenance of order and security at the match in question.

29. The Appellant claims further that the ticket sales were not strictly controlled contrary to art. 14.1 of the UEFA Safety and Security Regulations as a result of which it was possible for troublemakers to enter the stadium. Moreover, the police should have consulted its representatives when it was decided to open the ticket office just before the match.
30. Here as well, the fact that the ticket sales were not strictly controlled is not relevant in the case of the Appellant. It may have an effect only on the sanction AS Nancy shall face according to Article 6 para. 2 of the Disciplinary Regulations.
31. The same is applicable for the decision of the police not to arrest people but to let them in the football stadium after opening the ticket office just before the match contrary to the UEFA Regulations that provides access is forbidden to known or potential troublemakers, or persons who are under the influence of alcohol or drugs (art. 33.2 lit. c).
32. As only the first paragraph of Article 6 is applicable, the mitigating circumstances raised by the Appellant must be rejected. Due to the strict liability rule the Club is responsible for its supporter's behaviour.

B. *The sanction*

33. According to Article 14 of the Disciplinary Regulations, the following disciplinary measures may be imposed against member associations and clubs in accordance with Article 53 of the Statutes:
 - a) warning;
 - b) reprimand;
 - c) fine;
 - d) annulment of the result of a match;
 - e) order that a match be replayed;
 - f) deduction of points;
 - g) awarding a match by default;
 - h) playing of a match behind closed doors;
 - j) stadium closure;
 - k) disqualification from competitions in progress and/or exclusion from future competitions;
 - l) withdrawal of a title or award;
 - m) withdrawal of a licence.
34. The UEFA Appeals Body decided that the Appellant shall be disqualified from the current UEFA Cup competition 2006/07 and fined with CHF 100,000.-.

35. In its appeal, Feyenoord takes the position that the circumstances surrounding the match and its preparation should at least be considered as mitigating circumstances that should lead to a normal and lower sanction than the sanctions imposed.
36. In relation to proportionality, CAS's jurisprudence makes it clear that the sanction imposed must not be evidently and grossly disproportionate to the offence (*see* CAS 2004/A/690, para. 86; CAS 2005/A/830, para. 10.26; CAS 2005/C/976 & 986, para. 143).
37. The UEFA Appeals Body considered that as such breaking separating walls in a stadium with the intent to enter an adjacent sector occupied by supporters of the opposing team, as well as throwing projectiles on individuals is a serious offence.
38. In relation to the sanction, Article 18 of the Disciplinary Regulations provides that recidivism counts as an aggravating circumstance. Fourteen disciplinary cases (twelve of them "supporter related") in five years can be seen in the Appellant's records.
39. The sanction appears to be harsh for the club as it is disqualified from the UEFA Cup which is one of the most important competitions for a European football team. Additionally, the Panel was made aware that such disqualification involves important economic loss in relation to broadcasting fees and the ticket that will not be sold for the coming matches.
40. On the other hand, no evidence has been established that the aforementioned economic loss will have anything other than a temporary economic impact on a club of Feyenoord's stature. The sanction in question also does not result in a complete ban of its commercial activities. Rather, the Appellant is able to carry out its professional sport activities on national level and may qualify for the European Cup competitions of the upcoming season.
41. In addition, hooliganism needs to be eradicated from sport. It has nothing to do with football, and the UEFA, as other football associations, has consistently fought against this phenomenon. The Panel is of the opinion that clubs showing constant disorder in relation to hooliganism deserve severe sanctions.
42. Any other sanction listed in Article 14 appears as not able to fulfil the objective of eradicating hooliganism. The match behind close door would sanction to opposite team rather than Feyenoord supporters. The disqualification means that there will not be any further act of hooliganism coming from the Appellant's supporters during this season. As such the sanction decided by the UEFA appears fit for purpose.
43. The same applies to the fine imposed. There is no justification for a reduction of the fine.
44. In view of the above, the disqualification imposed by the UEFA Appeals Body appears to the Panel as capable of fulfilling the objective of eradicating hooliganism in football. Furthermore, the Panel considers that the fine of CHF 100,000.- is proportionate to the offence committed.
45. For these reasons, the decision appealed shall be confirmed.

The Court of Arbitration for Sport rules that:

1. The Appeal filed by Feyenoord Rotterdam on 26 January 2007 is dismissed.
2. The decision of the UEFA Appeals Body of 25 January 2007 is confirmed.

(...)