

**CAS 2015/A/3874 Football Association of Albania v. UEFA & Football Association of Serbia**

**ARBITRAL AWARD**

rendered by the

**COURT OF ARBITRATION FOR SPORT**

sitting in the following composition:

**President:** Mr. Massimo **Coccia**, Professor and Attorney-at-law, Rome, Italy  
**Arbitrators:** Mr. Philippe **Sands QC**, Professor and Barrister, London, England  
Dr. Martin **Schimke**, Professor and Attorney-at-law, Düsseldorf, Germany  
**Ad hoc clerk:** Mr. Francisco A. **Larios**, Attorney-at-law, Florida, USA

in the arbitration between

**Football Association of Albania**

Represented by Prof. Dr. Antonio Rigozzi, Attorney-at-law, Geneva, Switzerland

*- Appellant -*

and

**Union des Associations Européennes de Football (UEFA)**

Represented by in-house counsel Dr. Emilio García and Mr. Carlos Schneider, Nyon, Switzerland

*- Respondent -*

**Football Association of Serbia**

Represented by Dr. Marco Del Fabro and Mr. Roy Levy, Attorneys-at-law, Winterthur, Switzerland

*- Intervening Party -*

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## **I. INTRODUCTION**

1. The present case centers on incidents that occurred during a qualifying match, held in Belgrade on 14 October 2014, for the 2016 UEFA European Championship between the Serbian and Albanian national football teams, including the abandonment of said match. This appeal is brought by the Football Association of Albania (hereinafter the “Appellant” or “FAA”) against a decision of the UEFA Appeals Body dated 2 December 2014 (hereinafter the “Appealed Decision”) upholding (i) the decision of the UEFA Control, Ethics and Disciplinary Body (hereinafter also the “CEDB”) against the FAA dated 23 October 2014, which sanctioned that association with a 0:3 forfeit of the aforementioned match and with a fine of EUR 100,000, and (ii) the decision of the CEDB against the Football Association of Serbia also dated 23 October 2014, which sanctioned that association with a deduction of three points in the 2016 UEFA European Championship qualifying round, two home matches behind closed doors and a fine of EUR 100,000.

## **II. THE PARTIES**

2. The Appellant, the Football Association of Albania, is the football governing body in the Republic of Albania. It is a member of FIFA and UEFA and has its headquarters in Tirana, Albania.
3. The Respondent, the Union des Associations Européennes de Football (also referred to as “UEFA” or the “Respondent”), is the governing body of European football and one of the six continental confederations of FIFA. It has its headquarters in Nyon, Switzerland.
4. The Intervening Party, the Football Association of Serbia (also referred to as the “Intervening Party” or the “FAS”), is the football governing body in the Republic of Serbia. It is a member of FIFA and UEFA and has its headquarters in Belgrade, Serbia.

## **III. FACTUAL BACKGROUND**

5. This section of the award sets out a brief summary of the main facts, as relevant and as established on the basis of the Parties’ written submissions, the CAS file and the hearing that took place on 17 April 2015. Additional facts are set out, where material, in other parts of this award.
6. On 14 October 2014, the national teams of Serbia and Albania played each other in a qualifying match for the 2016 UEFA European Championship (hereinafter also the “Match”). The Match took place at the Partizan Stadium in Belgrade, Serbia. The

Match referee was Mr. Martin Atkinson, from the United Kingdom (hereinafter also the “Match Referee”).

7. In attendance at the Match were 25,550 spectators. Due to an agreement reached between the FAS and the FAA, no tickets were sold to Albanian supporters. As reported by the UEFA Match Delegate (Mr. Harry Been), only approximately 100 individuals linked to and invited by the FAA (representatives, staff, sponsors, family and the like) attended the Match.
8. Prior to the commencement of the Match, the director of international relations of the FAA informed the UEFA Match Delegate that its president had been hit by a piece of concrete as he stood on the sidelines in the tunnel corner of the stadium.
9. According to a report of FARE (Football Against Racism in Europe) and as confirmed by various video clips submitted by the Appellant and examined by the Panel prior to and during the hearing, shortly before kick-off, during the pre-Match ceremony when the Albanian national anthem was played, and then throughout the Match, the Serbian supporters made various chants, including “*Ubi, Ubi Shiptara*” (translated from Serbian to English as “*Kill, Kill the Albanians*”) and “*Kill and slaughter them [the Albanians] until there are none left*”.
10. In the stands, the Serbian supporters displayed various nationalistic banners containing references to Kosovo (“*Kosovo is Serbia*” and “*The Orthodox candles in Kosovo, no one ever will erase*”), as well as banners depicting Vojislav Seselj and Veljko Radenovic, political and military figures involved in the Kosovo conflict.
11. During the first half of the Match, prior to the 42<sup>nd</sup> minute, Serbian supporters were observed to engage in various other activities, including: (i) throwing a fire cracker onto the field from the section near the players’ tunnel in minute 13; (ii) burning a NATO flag in minute 14; (iii) setting off two flares, one of which was thrown onto the field and landed by the corner flag nearest to the players’ tunnel in minute 15; (iv) using a laser pointer to disturb Albanian players and influence a Serbian corner kick in minute 24; (v) throwing a number of flares and objects when the Albanian side attempted to take a corner kick in minute 35; and (vi) throwing two large lumps of rock towards the Albanian side’s technical area in minute 38. The occurrence of these incidents is not disputed by the Parties and is documented in the official reports of the Match Referee and UEFA officials.
12. It is also undisputed by the Parties and confirmed in the same reports that in minute 41 of the Match a number of unknown Serbian supporters set off and threw a number of flares, one of which landed on the field. On account of this incident, the Match Referee decided to stop play.

13. During this stoppage, a drone carrying a banner depicting the map of an area that is sometimes referred to as “Greater Albania” – an area said to comprise the territory of Albania along with various parts of Serbia, Montenegro, Macedonia and Northern Greece, as well as Kosovo, and considered to form the lost national homeland of Albanians – and which also carried several Albanian nationalistic symbols was seen to hover above the playing field. Upon spotting the drone, one of the Serbian players, Mr. Danko Lazović, alerted the Match Referee of its presence. The Match stoppage continued while the drone was still hovering over the field.
14. Eventually, the drone began descending closer to the ground, until it was observed to come within reaching distance of a Serbian player, Mr. Stefan Mitrović, who reached for the banner and began pulling the drone down by the cords from which the banner hung.
15. As soon as Mr. Mitrović grabbed the banner, two Albanian players, Mr. Andi Lila and Mr. Taulant Xhaka, were seen to approach him and to snatch the banner from his hands. At this point a greater chaos erupted across the playing field.
16. The Serbian substitute players were observed to leave their bench and run onto the field towards the commotion, and one of them was observed to headbutt Mr. Xhaka on the back of the head.
17. As this was occurring, a number of Serbian supporters invaded the field. The exact number is unclear, as the video footage submitted in these proceedings does not allow the number to be ascertained with precision. The Intervening Party acknowledges that about 15 Serbian supporters invaded the field, whereas the Appellant contends that their number was considerably higher. In the Panel’s view, based on the examination of the submitted video clips, the invaders were anyhow a significant number.
18. One of the invading Serbian supporters was observed to take hold of a plastic chair (which appertained to one of the security stewards around the field), and to then run with it to the rim of the center circle, and then use the chair to hit one of the Albanian players, Mr. Bekim Balaj, on the shoulder. This same Serbian supporter then attempted to tackle Mr. Balaj, but instead took down the Albanian captain, Mr. Lorik Cana, who had intervened, apparently to prevent an escalation of the scuffle. As they fell to the ground, a security steward was seen to run towards them and, with his fist seen to be clenched, to throw punches. Although it is disputed between the Parties whether the punches were aimed at the Albanian player or the Serbian supporter, the Panel has reached the view, on the basis of a close examination of the evidence, that the steward was trying to hit the Albanian player.
19. In other parts of the playing field the following facts were observed: (i) a Serbian supporter punched the Albanian player, Mr. Mergim Mavraj; (ii) a Serbian substitute

player punched the Albanian player, Mr. Ermir Lenjani, in the face; (iii) a Serbian substitute player punched the Albanian player, Mr. Orges Shehi; (iv) a notorious Serbian supporter, Mr. Ivan Bogdanov, accompanied by other supporters, walked calmly around the field waiving and clapping his hands to incite the crowd (Mr. Bogdanov is recognised as an individual who took center stage in, and faced criminal charges for, incidents that occurred in 2010 during the 2012 UEFA European Championship qualifier match between Italy and Serbia); and (v) a Serbian supporter reached the Albanian bench area and attacked a member of the Albanian delegation.

20. The Serbian supporters were observed to throw objects, including chairs, at the Albanian side's bench from the stands.
21. Throughout these events the Match stoppage continued. Due to the chaos and massive disorder, the Match Referee ordered, with the aim of securing the players' safety, all the players to head back into the locker rooms. At the underlying UEFA Appeals Body hearing of December 2014 (hereinafter the "UEFA Hearing") the Match Referee declared: *"The reason I took the players off the field was because of the spectators' incursion onto the pitch, and obviously the disturbances between people on the field of play. I took them off for their safety."*
22. Following the Match Referee's instructions, the Albanian players ran towards the players' tunnel in order to exit the field. As they approached the tunnel, the Serbian supporters were seen to be throwing objects towards the Albanian players, including coins, bottles and chairs. At the entrance of the players' tunnel, the Albanian players were met by two supporters who physically attacked them with violent shoves, punches and kicks.
23. One of these two Serbian supporters, after attacking the Albanian players at the entrance of the tunnel, subsequently walked to the nearest corner flag and calmly sat down beside it. No security personnel approached him. He remained there until one of the Serbian players urged him to leave the field. As the supporter stood up, one of the security stewards was observed to stand right in front of him and to wave his arms up and down as though to encourage the crowd to chant louder. After the security steward passed, instead of returning to the stands, as the Serbian player had urged him to do so, the Serbian supporter attempted to enter the players' tunnel. A security steward who was inside the players' tunnel stopped him from doing so and finally escorted him off the field.
24. According to the Appellant, many Albanian players suffered injuries as a result of the attacks of the Serbian supporters, including swells and cuts (to the ears, neck, hands and fingers) shown on pictures taken in the dressing rooms and exhibited in this arbitration. The Respondent and the Intervening Party dispute the origin of such wounds, claiming

that they could have been incurred while the Match was in play. Mr. Harry Been (the UEFA Match Delegate) and Mr. Vincent Egbers (the UEFA Security Official) both testified at the UEFA Hearing that they witnessed said injuries. The Match Referee, on the other hand, testified at the UEFA Hearing that he did not personally see them but that he was informed of them by the Albanian captain. The Panel harbours no doubt, on the basis of the evidence examined and taking into account the type of injuries at issue, that the cuts and other physical harms said to have been done to the Albanian players were a result of the events here described, and did not occur during the course of match play.

25. Once all players and officials returned to their respective dressing rooms, a crisis group meeting (hereinafter the “Crisis Meeting”) was held. It was attended by the Match Referee Mr. Martin Atkinson, the UEFA Match Delegate Mr. Harry Been, the UEFA Security Officer Mr. Vincent Egbers, the UEFA Referee Observer Mr. Lutz Michael Fröhlich, the FAS General Secretary Mr. Zoran Laković, the Serbian national team manager Mr. Aleksander Bošković, the FAA President Mr. Armand Duka, and the FAS Security Officer Mr. Milivoj Mirkov. During this time, according to the evidence before the Panel, the UEFA officials were in constant dialogue with the UEFA Match Centre in Nyon (Switzerland), and in particular with Mr. Kenny Scott, the UEFA Consultant and Security Adviser.
26. The UEFA personnel at the UEFA Match Centre apparently encouraged the UEFA officials in the Belgrade stadium to try and resume the Match. At the UEFA Hearing, the Match Referee testified “*My recollection of the phone calls [with the UEFA Match Centre] was very much that we needed to try to get the game resumed. They wanted to try to play the game. We needed to. But we had to make sure that everything was safe before we did this...once the security was ensured then yeah, we were encouraged to try to play the game.*” Similarly, Mr. Kenny Scott gave the following testimony at the UEFA Hearing: “*I said [to the UEFA Security Officer and the Match Referee] that in the opinion of those in the UEFA Match Centre, which included Mr. Marchetti [UEFA Director of Competitions], that if the match could be started again then it should be. The match should be resumed if possible. But of course, that is a decision for the referee.* Additionally, the UEFA Match Delegate, Mr. Harry Been, testified at the UEFA Hearing (when asked the opinion of the UEFA Match Centre during the Crisis Meeting) that “*the opinion of UEFA is always to continue the match. To try to continue the match, which is clear. That's why we are here. To play matches against each other. And it's up to us to judge, at the situation, local, to see what must be done. So, we just-as far as I'm concerned I just informed them about what happened.*”
27. The evidence before the Panel indicates that the UEFA officials in Belgrade were of the view that the Match should continue, once safety was ensured.

28. While the game was suspended, the FAS security officials gave assurances that extra police forces and stewards were being sent in the stadium to control the unruly supporters and increase the level of protection of the playing field.
29. In the dressing rooms, the Match Referee and the UEFA Match Delegate spoke to both team captains and asked them whether they would be prepared to continue the Match.
30. The Albanian captain, Mr. Cana, however, declared that his team was not physically and mentally prepared to restart the Match. Mr. Cana signed a declaration to this effect, which was prepared by the UEFA Match Delegate. The typed text of the declaration reads: *“I, Lorik Cana, captain of the Albanian National Team declare that my team, after what happened around the 40<sup>th</sup> minute of the first half of the match Serbia vs. Albania on 14 October 2014 my team is physically and mentally not able to restart the game. And they feel not safe at all. I told this to the referee and the delegate, in the presence of my President mr Duka”*. To this, Mr. Cana, added in handwriting prior to signing the document: *“the physical injuries of many of my players, don’t allow us to keep playing, and we were even attacked by the securities of the stadium.”*
31. Thereafter, the Match Referee decided to abandon the Match.
32. At the UEFA Hearing, the Match Referee, the UEFA Match Delegate and the UEFA Security Officer all testified about the aforementioned Crisis Meeting and the subsequent abandonment of the Match.
33. The Match Referee testified, *inter alia*, as follows:
  - FAS Counsel: *When-or is it correct to assume that you had to consult with security officials during the break in order to decide whether to go back on the pitch or not?*
  - Match Referee: *Yeah, that's true, yeah.*
  - FAS Counsel: *But the final decision was taken by you as the referee?*
  - Match Referee: *I think the final decision is between myself and the match delegate as to the final decision of the game will not continue.*
  - FAS Counsel: *And is it correct to assume that you and the UEFA delegate took the decision to continue to the match?*
  - Match Referee: *We tried to continue the game, yeah. We left as long as we possibly could to try to get the game played. Unfortunately, it didn't commence.*
  - FAS Counsel: *And then you communicated this also to the two teams?*
  - Match Referee: *Yeah.*
  - FAS Counsel: *And after you communicated that to the teams, what was the reaction of the Albanian team?*
  - Match Referee: *The Albanian team didn't want to continue the game. They*



*made it clear they didn't want to continue the game. Just one of those unfortunate things that they wouldn't continue.*

[...]

UEFA Judge Maessen: *And then the last question is, did you in any way show that you ordered both teams to restart the game?*

Match Referee: *I got both captains in, and both teams representatives into our changing room 4 with the-*

UEFA Judge Maessen: *So, two persons of each?*

Match Referee: *Two of each into the changing rooms and explained to them that once the security is safe to take them back out again we had a number of minutes to play, plus additional time, and then we would have half time. So, they were aware of this, both teams. Both countries aware of this. So, we explained that fully to them before we tried to get them to go back onto the field.*

[...]

UEFA Judge Eilers: *I would like to continue on [the question concerning whether] you gave both teams, and in particular the Albanian team and captain clear instructions on the order to continue the game. That the game must be continued. Or-this is in dispute, this is why I have to ask about this again. Did you only communicate to them that you were going to attempt to continue the game?*

Match Referee: *No, both teams were told that the game was to be played. We must go out and continue the game. There was no debate. This was, we will go out and continue the game. The Albanians refused.*

UEFA Judge Eilers: *So, there was an immediate order from you to the Albanian team, to the Albanian captain, your team must continue?*

Match Referee: *Both teams were told they must go out and continue the game once we ensured the safety.*

UEFA Judge Eilers: *So, the Serbian team followed your proposal and the Albanian team did not. Now, the Albanian team is saying that there was no clear instruction from your side to continue the match. This is an important point.*

Match Referee: *Both teams were told that they must return to the field of play and continue the game once the safety was ensured.*

[...]

FAA Counsel: *...Did you have any understanding for the position of the Albanian captain or was that nonsense to you? At the relevant time?*

Match Referee: *Do you mean in the changing room?*

FAA Counsel: *Yes.*

Match Referee: *I totally understood the captain. But to be fair, and I must state this, both captains were superb. They were really, really helpful. They tried to cooperate. They tried to work with me, and I fully understood both captains and both feelings from these.*

FAA Counsel: *Yeah, and then when he says we are not going back, do you say sorry but you have to go? That's what I think what was the question. And I'm not sure that you really answered that because your answers was yes, I ordered to resume the game, and then your words were once the safety is ensured. If that's the order you gave, it's a conditional order to the players.*

Match Referee: *Both teams, both captains were aware that they had to go back out and continue the game.*

34. Additionally, the Match Referee testified at the UEFA hearing that had he, instead of the Albanian player, been hit with a chair, he would have abandoned the match at that time.
35. The UEFA Match Delegate, Mr. Been, made the following testimony on the subject of the abandonment of the match at the UEFA hearing:

FAA Counsel: *And then you say we of course had contact with UEFA and had the intention to restart the match. That's something that I'm taking from your report...*

UEFA Match Delegate: *Yes.*

FAA Counsel: *What do you mean by intention?*

UEFA Match Delegate: *Well, we always have the intention to restart the match because the intention to be there is to play full time match. So, that's always the intention.*

UEFA Match Delegate: *Well, to be honest, the decision was not to restart the match so it was not-we didn't have to check whether the safety security was okay. The match was stopped because the Albanian players didn't want to play again. So, it was-if they would've said yes, the Albanian players, then we would have to check of course ourselves. Also, make a judgment on the security situation. We didn't come that far because the Albanian players said no.*

[...]

FAA Counsel: *...You had a direct contact with the Albanian captain during the discussion?*

UEFA Match Delegate: *Yes.*

FAA Counsel: *Yeah, did you try to convince him and his teammates to restart the match? Come on, let's go and?*

UEFA Match Delegate: *No.*

FAA Counsel: *Let's do it.*

UEFA Match Delegate: *No, no, no. What I did I was-to be honest he was quite convincing, and also the atmosphere between the two captains was very positive. It was an atmosphere of cooperation between the two. But the Albanian captain was quite clear. Said my team, my people, the players, they are hurt. They are not only physically hurt, but also emotionally hurt. They've had contact with home. They've phoned, and I'm sure, we just cannot start again. It's no question. We don't care about the point. I remember all the person said. We don't care about point or winning or losing. We just cannot start again. We are concerned about the safety of our people.*

FAA Counsel: *And when you said that he was convincing, you meant you could agree with that. I mean, it makes sense to you.*

UEFA Match Delegate: *No, it was not a matter of agreement. No, I-it was, he really meant it. And what I did was I told them, listen if one of the two teams in football doesn't want to continue it's a severe matter. You must realize that. And I told him that not only once but twice. But he was completely convinced, and I could understand that. So, there was no point in telling him come on, let's play or something like that. The man was convinced that he couldn't play. And all the people over there with his team, it was not a matter of convincing. It was completely clear situation.*

[...]

UEFA Ethics and Disciplinary Inspector: *... can [you] tell me if when you were in the dressing room with a meeting with referees, security officials, the team captains and officials, are you aware of the referee telling the captains of the team that play would continue?*

UEFA Match Delegate: *Yes, the-we discussed. Sorry. We discussed with both captains what to do, and we made clear that our intention was to continue to play. But Mr. Cana, the captain of Albania made it clear from the beginning on that there was no way that his team would continue to play.*

[...]

UEFA Judge Eilers: *But we heard from you that you didn't try and find out about the security situation immediately before resuming the ...*

UEFA Match Delegate: *Yes that's correct.*

UEFA Judge Eilers: *But how are you able to instruct players to continue playing without being sure that security was guaranteed?*

UEFA Match Delegate: *No. That's not the way it went. We discussed with the players that our intention was to continue to play. And then they refused to continue to play. If they would have said yes, then the next step would have been that we would go out and convince ourselves that the circumstances would be good enough to continue to play.*

UEFA Judge Eilers: *I imagine that I am the team captain, and I would want to know what responsibility I would assume if I try and convince my players to go out. I would have to be sure that security is guaranteed. You say security at that*

*point was not guaranteed. At that point when you asked players to continue you are saying the security had not been yet guaranteed –*

*UEFA Match Delegate: I didn't ask the players to continue, as of yet. We just had the general intention is to continue to play. And it was not a matter that the captain asked us whether the circumstances were okay. He had made a judgment of himself and he thought that-and the emotional and the physical circumstances were such that they couldn't continue to play. Even, there was no other question at stake at that very moment.*

36. The UEFA Security Officer, Mr. Vincent Egbers, testified on this subject at the UEFA Hearing as follows:

*UEFA Security Officer: I'll tell you again that the-when I came into the dressing room there were two captains, and the Albanian captain told the referee we won't go back again. We are mentally and physically not able to go back. We won't. We don't care about the points. Then he said we have to make an announcement together with the Serbian captain because we are friends and we can make a difference. We can do something about this because this is not football. That is a discussion. And he said we won't go back.*

[...]

*FAS Counsel: But again, I mean, if they had accepted to continue, the match would have been continued?*

*UEFA Security Officer: It was possible, yes.*

*FAS Counsel: It was possible to continue the match?*

*UEFA Security Officer: Yes, but it was never a real decision because the captain really told us it doesn't matter what you decide. We don't care about the points. We called our family. We are safe and want to stay safe and that's it. We're not going back in.*

37. After the Match Referee abandoned the Match, the Serbian police frisked the Albanian players and staff and conducted a search of the Albanian locker room and luggage, apparently in an attempt to find the drone's control device. No such device was found. This is confirmed by the testimony of the UEFA Match Delegate and the UEFA Security Officer at the UEFA Hearing, as well as by the Additional Delegate Report (see *infra* at para. 41), in which the UEFA Match Delegate wrote the following: *"The Serbian policy body searched the Albanian team because they thought they might have the drone in their possession. That was not very much appreciated and we had to assist to keep the Albanian team trust that everything would go in the right way. Nothing was found in possession of the Albanian squad..."*
38. On 15 October 2014, the day after the Match, several official reports in relation to the Match were filed to UEFA – one by the Match Referee, two by the UEFA Match Delegate, one by the UEFA Security Officer and one by the UEFA Referee Observer.

39. The Match Referee's report, specifically with relation to the incidents connected with the drone and the abandonment of the Match, offered the following declaration:

*“As the drone lowered down, the flag was taken hold of by a Serbian defender who was quickly approached by players from Albania... This soon escalated into a number of players becoming involved in a mass confrontation. I was aware that players and staff from both technical areas had run onto the pitch, followed by spectators and a mass confrontation situation occurred with several pockets of incidents occurring all over the pitch. I saw a spectator hit an Albanian player with a plastic chair on the field.*

*I decided to take the players off the field of play to try to protect them for their own safety. The Albanian players were subject to objects being thrown at them as they left the field towards the tunnel.*

*A meeting was held in the referees changing room with discussions between the Match Delegate Mr Harry Been, the UEFA security officer Mr Vincent Egbers and officials from the home security. The match officials and Referee observer Mr Lutz Michael Frohlich were also present in these discussions.*

*It became obvious that we would try and continue to play the remaining time due for the first half. I requested to speak to the captains of both teams with their team managers. Whilst speaking with the two captains the Albanian captain No 5 CANA informed us that they were unwilling to play again due to their physical and mental wellbeing. He stated that several players were injured from the incidents on the pitch and were physically and mentally affected by the experience. They refused to re-enter the pitch and play the game.*

*I had constant dialogue with UEFA during this time to keep the Match Centre aware of the situation.*

*All the match officials, security and the Serbian team were ready to commence the game and due to the Albanians refusing to enter the pitch and continue the match was abandoned at 2210 hours.”*

40. In the UEFA Match Delegate's first official report (hereinafter the “Delegate Report”), it was noted that (i) the FAS' security was “*Unsatisfactory*”; and (ii) the crowd behaviour of the home team was “*Unsatisfactory*”.
41. Then, in his second official report (hereinafter the “Additional Delegate Report”), which was an addendum to the Delegate Report, the UEFA Match Delegate added *inter alia*:

*“I also went [to the dressing rooms] and together with the referee, my other UEFA colleagues we had a meeting with the two captains and the two match managers. We of course had contact with UEFA and had the intention to restart the match again for the remaining 4 (+2) minutes in the first half. Serbia was willing to, the security officials agreed but the Albanian team was not ok. Even after going back to his team to discuss it, the captain of Albania,*

*Lorik Cana, declared officially that they were not able to go back on the pitch. For physical, mental and security reasons. So at 22.10 the referee decided that the match could not be restarted again... A short public announcement was made and the people left the stadium... Interesting to see is that there were around 4000 policemen active in the stadium, we had [a] full circle of riot police around the pitch and still people could invade the pitch. Worthwhile to notice is there is nobody arrested. Even not the people who entered the pitch.”*

42. The UEFA Security Officer noted in his official report, *inter alia*, that: (i) the protection of the playing area was not adequate; (ii) the behaviour of the home supporters was very bad; (iii) the brother of the prime minister of Albania had been arrested for operating the drone but that after 45 minutes he was released because he did not hold the remote control device for the drone; (iv) the performance of stadium management was poor as there was no information about the hooligans that gathered in the section of the stadium where the players’ tunnel was located; (v) FAS security stewards and the riot police tried to keep the hooligans from invading the field but were unsuccessful; and (vi) there was a lot of riot police available and many of them were sent inside the stadium but they could not protect the players and officials.
43. Finally, the UEFA Referee Observer made the following observations, *inter alia*, in his official report:

*“A meeting was held in the referees changing room with discussions between the Match Delegate Mr Harry Been, the UEFA security officer Mr Vincent Egbers and officials from the home security. I was also there. In this meeting were discussed all arguments to allow a continuation of the game. The aim was, to continue to play with the remaining time due for the first half. The referee requested to speak to the captains of both teams with their team managers. Whilst he speaking with the two captains the Albanian captain No 5 CANA informed the referee that they were unwilling to play again due to their physical and mental wellbeing. He stated that several players were injured from the incidents on the pitch and were physically and mentally affected by the experience. They refused to re-enter the pitch and play the game. I saw that all the match officials, security and the Serbian team were ready to commence the game. The [A]lbanian team was not there. Due to the Albanians refusing to enter the pitch and continue the match the referee abandoned the match at 22:10 hours.”*

#### **IV. RELEVANT REGULATIONS**

44. The following provisions of the FIFA Laws of the Game 2014/2015 (hereinafter also “LG”), the Regulations of the UEFA European Football Championship 2014-2016 (hereinafter also “CR”), the UEFA Disciplinary Regulations, Edition 2014 (hereinafter also “DR”), the UEFA Organisational Regulations, Edition 2014 (hereinafter also “OR”), and the UEFA Statutes are relevant to this case:

45. Law 5 LG (“*The referee*”) provides:

“*The authority of the referee*”

*Each match is controlled by a referee who has full authority to enforce the Laws of the Game in connection with the match to which he has been appointed.*

*Powers and duties*

*The Referee:*

- *enforces the Laws of the Game*
- *controls the match in cooperation with the assistant referees and, where applicable, with the fourth official*  
[...]
- *stops, suspends or abandons the match, at his discretion, for any infringements of the Laws*
- *stops, suspends or abandons the match because of outside interference of any kind*  
[...]
- *ensures that no unauthorised persons enter the field of play*
- *indicates the restart of the match after it has been stopped*
- *provides the appropriate authorities with a match report, which includes information on any disciplinary action taken against players and/or team officials and any other incidents that occurred before, during or after the match.*

*Decisions of the referee*

*The decisions of the referee regarding facts connected with play, including whether or not a goal is scored and the result of the match, are final.*

*The referee may only change a decision on realising that it is incorrect or, at his discretion, on the advice of an assistant referee or the fourth official, provided that he has not restarted play or terminated the match.”*

46. Article 27 paras. 01 and 02 CR (“*Refusal to play and similar cases*”) provides:

*“27.01 If an association refuses to play or is responsible for a match not taking place or not being played in full, the UEFA Control and Disciplinary Body takes a decision in the matter.*

*27.02 The UEFA Control and Disciplinary Body can validate the result as it stood at the moment when the match was abandoned if the match result was to the detriment of the association responsible for the match being abandoned.”*

47. Article 6 DR (“*Disciplinary measures*”) provides:

*“1 The following disciplinary measures may be imposed on member associations and clubs:*

- 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 (for the current and/or a future competition);*
- g) *order that a match be forfeited;*
- h) *playing of a match behind closed doors;*
- i) *full or partial stadium closure;*
- j) *playing of a match in a third country;*
- k) *withholding of revenues from a UEFA competition;*
- l) *prohibition on registering new players in UEFA competitions;*
- m) *restriction on the number of players that a club may register for participation in UEFA competitions;*
- n) *disqualification from competitions in progress and/or exclusion from future competitions;*
- o) *withdrawal of a title or award;*
- p) *withdrawal of a licence;*
- q) *community football service.*

[...]

*3 Fines must not be less than €100 or more than €1,000,000. In the case of individuals, a fine may not exceed €100,000.*

*4 The above-mentioned disciplinary measures may be combined.”*

48. Article 8 DR (“Responsibility”) provides:

*“A member association or club that is bound by a rule of conduct laid down in UEFA’s Statutes or regulations may be subject to disciplinary measures and directives if such a rule is violated as a result of the conduct of one of its members, players, officials or supporters and any other person exercising a function on behalf of the member association or club concerned, even if the member association or the club concerned can prove the absence of any fault or negligence.”*

49. Article 14 DR (“Racism, other discriminatory conduct and propaganda”) provides:

*“1 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 or ethnic origin, incurs a suspension lasting at least ten matches or a specified period of time, or any other appropriate sanction.*

*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 is punished with a minimum of a partial stadium closure.*

*3 The following disciplinary measures apply in the event of recidivism:*

- a) a second offence is punished with one match played behind closed doors and a fine of € 50,000;*
- b) any subsequent offence is punished with more than one match behind closed doors, a stadium closure, the forfeiting of a match, the deduction of points or disqualification from the competition.*



*4 If the circumstances of the case require it, the competent disciplinary body may impose additional 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 or disqualification from the competition.*

*5 If the match is suspended by the referee because of racist and/or discriminatory conduct, the match may be declared forfeit.*

[...].”

50. Article 16 para. 2 DR (“*Order and security at UEFA competition matches*”) provides:

*“2 However, all associations and clubs are liable for the following inappropriate behaviour on the part of their supporters and may be subject to disciplinary measures and directives even if they can prove the absence of any negligence in relation to the organisation of the match:*

[...]

*e) the use of gestures, words, objects or any other means to transmit any message that is not fit for a sports event, particularly messages that are of a political, ideological, religious, offensive or provocative nature;*

[...].”

51. Article 17 DR para. 1 (“*General principles*”) provides:

*“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.”*

52. Article 21 DR (“*Forfeit*”) provides:

*“1 If a match cannot take place or cannot be played in full, the member association or club responsible forfeits the match.*

[...]

*4 The consequences of a match being declared forfeit are as follows:*

*a) the team forfeiting the match is deemed to have lost 3-0 (5-0 in futsal competitions), unless the actual result is less favourable to the member association or club at fault, in which case that result stands;*

*b) if necessary, the UEFA administration amends the member association or club’s ranking in the relevant competition accordingly.*

*5 If a match is declared forfeit, offences committed during the match remain punishable.”*

53. Article 38 DR (“*Official reports*”) provides:

*“Facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided.”*

54. Article 63 OR (“*Appointment and cooperation [of UEFA Match Officers]*”) provides:

*“1. For each UEFA match, the UEFA administration appoints a match delegate and, if necessary:*

- a) a referee observer,*
- b) a stadium and security officer,*
- c) a doping control officer,*
- d) a venue director,*
- e) a media officer.*

*2. The role of the match delegate, referee observer and/or stadium and security officer may be combined.*

*3. The match delegate is senior to any other UEFA match officers appointed for the match.*

*4. All UEFA match officers are expected to cooperate with each other.”*

55. Article 63 OR (“Match delegates”) provides:

*“Match delegates:*

- a) act as UEFA’s official representative at a UEFA match;*
- b) chair the organisational meeting prior to the match;*
- c) are responsible for ensuring the orderly organisation of the match and that the competition regulations, and especially the rules for order and security inside and outside the stadium before, during and after the match, are observed;*  
*[...].”*

56. Article 65 OR (“Stadium and security officers”) provides:

*“Stadium and security officers:*

- a) monitor, assess and advise on safety and security matters for the match for which they are appointed;*  
*[...];*
- f) support the UEFA match delegates in their tasks, where appropriate;*  
*[...].”*

57. Article 62 para. 2 of the UEFA Statutes provides:

*“Only parties directly affected by a decision may appeal to the CAS.”*

## **V. DECISION OF THE CEDB AGAINST THE FAA**

58. In the Decision of the CEDB against the FAA (hereinafter referred to as the “CEDB Albania Decision”), it was held, with regard to the Appellant’s responsibility for the Match not being played in full, that:

*“...the decision to continue with the match which was taken by the referee was agreed by two other UEFA officials (i.e. the delegate and the security officer), was refused by the [FAA] impeding the match to be played in full.*

*[...]*

*...the [CEDB] deems that in cases as the one in hand in which the referee decides to restart the match after having evaluated and consulted the situation with the UEFA delegate and the UEFA security officer, who is, indeed, the expert appointed in this matter for the match, the Association shall follow his instructions merely because the match is to be presumed as complying with all the security standards. In this regards, the organization of football competition matches would be otherwise chaotic if the organiser leaves the final decision to a club or an association, see interested party [sic].*

*In light of the above... the CEDB concludes to its comfortable satisfaction that the [FAA] was responsible for the refusal to play the above mentioned match in accordance with Article 27 UEFA European Championship 2014-2016 Regulations, and shall be punished accordingly.”*

59. The CEDB further concluded that, once responsibility is established as per Article 27 EC and Article 21 DR, there is no room for the CEDB to maneuver and that the Match must be declared a forfeit against the team responsible. Given that it had found a refusal on the part of the Albanian national team to continue to play, the CEDB punished the FAA with a 0:3 forfeit.

60. With regard to the incident concerning the drone and the illicit banner the CEDB found:

*“Regarding to the responsibility of [the FAA], the [CEDB] takes this opportunity to refer to a well establish[ed] CAS jurisprudence as regards to the determination of the term “supporter”. In this regard the CAS 2007/A/1217, endorsed by the CAS 2013/A/3139 and CAS 2014/A/3324 and 3369, established that the only way to ensure the responsibility of a club or association is to leave the word “supporters” undefined so that clubs and/or associations, 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.*

[...]

*Bearing the above in mind, the [CEDB] is at least comfortabl[y] satisfied that, indeed, the drone, attaching the banner with the map of the so called “Greater Albania” and two figures, was controlled by one or several [FAA] supporter(s). Briefly, all elements conforming the above mentioned incident lead to this conclusion, being difficult to conceive that someone linked to the [FAS] would intend to use this situation in order to trigger the incidents that lead to the violent disorder, the interruption of the match and the final refusal by the [FAA] to continue with the game.*

[...]

*Consequently, such misconduct undertaken by Football Association of Albania supporters has no place in sports events and violates Article 16 (2) DR. The [FAA] shall, therefore, be held responsible and punished accordingly.”*

61. In assessing the appropriate sanction for this infringement of Article 16, para. 2 DR, the CEDB applied Article 17 DR and took into consideration:

*“- the seriousness of the offense committed, as it exceeds the boundaries of what may be expected during an UEFA competition match*

- the potential risk to the safety of those persons attending the match, and, in particular, the situation that may possibly have arisen if those controlling the drone would have had other purposes*
- the fact that the incident occurred in a stadium full of spectators*
- the fact that the incident resulted in other extremely serious incidents amongst players, staff members, supporters and security officers*
- the fact that this incident contributed to the final decision to leave the pitch*
- the fact that the incident took place in an UEFA European Championship match, which is the flagship competition of UEFA and one of the most important sports event world-wide.”*

62. The CEDB concluded that the extent of the sanction imposed had to fulfill the following two conditions: (i) it must be a punishment for the FAA and (ii) it must deter such incidents from happening again. Having regard to these points, the CEDB was tempted to sanction the FAA by ordering a match to be played behind closed doors under Article 6 para. 1(h) DR; however, it opted instead to offer the chance to the FAA to redeem itself before ordering such an extraordinary measure. Therefore, it decided that it was more appropriate to impose on the FAA a fine of EUR 100,000 for the drone and illicit banner.

## **VI. DECISION OF THE CEDB AGAINST THE FAS**

63. The relevant part of the Decision of the CEDB against the FAS (hereinafter also referred to as the “CEDB Serbia Decision”) provides as follows:

*“Regarding the nature of the above infringements [including the chants “Kill, Kill the Albanians” and “Kill Slaughter the Albanians until they are exterminated” and other illicit chants and banners], the [CEDB] cannot comply with the assertion of the complainant as it is not comfortabl[y] satisfied with the view that the above incidents have a xenophobic background. It has been comprehensively demonstrated in previous paragraphs that all the incidents occurred during the above mentioned match are based on political reasons. Therefore, the [CEDB] is not able to conclude to its comfortable satisfaction that some of the attitudes showed by the [FAS] had xenophobic connotations, at least on the basis of the complaint, the FARE report and the UEFA official reports. In this regard, the complainant fails to specify in which extent those attitudes insult the human dignity in accordance with Article 14 DR, as well as*

*it did not provide any evident that may lead the [CEDB] to deal with them on this basis”.*

64. Based on the above reasoning, the CEDB deemed the FAS to have infringed Article 16 para. 2(e) DR and not Article 14 DR. For this and a multitude of other infringements, as previously mentioned, the CEDB sanctioned the FAS with a deduction of three points in the 2016 UEFA European Championship qualifying round, two matches behind closed doors and a fine of EUR 100,000.

## **VII. DECISION OF THE UEFA APPEALS BODY**

65. On 2 December 2014, the UEFA Appeals Body adopted the decision now in appeal before the CAS. On 22 December 2014, the same body issued the grounds for its decision, summarized below, confirming the CEDB’s decision.
66. First, the UEFA Appeals Body held as inadmissible the FAA’s appeal lodged against the parts of the CEDB Serbia Decision not related to the responsibility of the Match being abandoned, reasoning as follows:

*“The Appeals Body notes that the Football Association of Albania was entitled to appeal against the [CEDB]’s decision sanctioning the [FAS] under Articles 31 and 53 DR. As the match has been declared forfeit, both teams are directly affected and should have a say in the proceedings against each other. Therefore, the appeal lodged by the [FAA] exclusively regarding the responsibility for the match being abandoned and therefore being declared forfeit is admissible. Consequently, the appeal lodged by the [FAA] against the other aspects of the decision rendered against the [FAS] is declare[d] inadmissible”.*

67. Second, the UEFA Appeals Body considered the FAA’s responsibility for the drone and illicit banner and concluded:

*“The notion of “supporter” mentioned in particular in Articles 8 and 16 of the Disciplinary Regulations is not specifically defined in the UEFA regulations. In particular, the regulations make no reference to the nationality, race, religion or place of residence of the person who “supports” a team. Neither is this notion connected to the presence in the stadium of a person linked to the team nor to the contract establish between a supporter and the national association or club when the supporter purchases a ticket. Finally, the UEFA regulations make no distinction between supporters physically present in the stadium and those outside the stadium (see the Appeals Body’s ruling of 19 January 2007 in the case Feyenoord v UEFA and CAS award 2006/A/1217). In the present case, it is therefore irrelevant whether the people responsible for displaying the forbidden banner carried by the drone were inside the stadium or not.*

*Indeed, the wording “(...) in relation to the organization of the match” in Article 16(2) of the Disciplinary Regulations does not limit the association*

*member's liability for the misconduct of its supporters to the inner bounds of the stadium where the match is being played (CAS award 2013/A/3139, p. 15). This includes any supporter misbehaviour that could affect the smooth running of the match in question. It is therefore irrelevant whether the Albanian supporters were in the stadium or not when the incident with the drone occurred.*

*On page 9 of its award 2006/A/1217, the Court of Arbitration for Sport clearly indicated that "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 behavior would lead a reasonable objective observer to conclude that he or she was a supporter of that club". In the same award, the Court of Arbitration for Sport adds that "the behavior of individuals and their location in the stadium and its vicinity are important criteria for determining which team or club they support". It is not necessary for the person who misbehaves to be inside the stadium. In the aforementioned case CAS 2013/A/3139, even though the match was being played behind closed doors and the people who launched the fireworks were approximately away from the stadium, the individuals concerned were still legally classified as supporters.*

*The message transmitted by the "Greater Albania" banner, and the attitude of the Albanian players who rushed to take it from the Serbian player Stefan Mitrović also demonstrate a close link between the banner and the Albanian supporters.*

*In view of the above the Appeals Body is comfortably satisfied that the banner carried by the drone was displayed by one or more Albanian supporters. Therefore, in accordance with Articles 8 and 16(2) of the Disciplinary Regulations, the [FAA] must be held responsible for its conduct and punished accordingly".*

68. Third, the UEFA Appeals Body addressed the abandonment of the Match. On this issue, the UEFA Appeals Body was comfortably satisfied that the Match Referee (who under Law 5 of the Laws of the Game was the only person with the power to stop, suspend or abandon the Match because of outside interference, as well as to resume the Match) communicated to the Albanian national team his decision to resume the Match, once safety was restored. Further, the UEFA Appeals Body found, "*after having analysed the testimonies of the UEFA officials,... that the [FAA] refused to restart the match, even before having assessed the safety and security conditions of the match (which was done by Vincent Egbers, UEFA security officer...).* It is clear from this disciplinary body that the Albanian Team did not want to continue the game".
69. Finally, the UEFA Appeals Body assessed the issue of sanctions and decided as follows. For its violation of Article 27 CR and 21 DR, the UEFA Appeals Body held that the FAA must forfeit the Match 0:3. As regards the drone and illicit banner, the UEFA Appeals Body decided that a fine of EUR 100,000 would be appropriate,

reasoning as follows: *“the sophisticated method used to display the illicit banner, i.e. the use of the drone, constitutes an aggravating factor that must be taken into consideration when determining the sanction, since it is extremely difficult, if not impossible, to prevent such an intrusion. In order to discourage other supporters from using similar methods, the fine of €100,000 imposed against the [FAA] by the [CEDB] appears legitimate and proportionate, as well as sending out a strong message”*.

### **VIII. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

70. On 30 December 2014, pursuant to Article R47 of the Code of Sport-related Arbitration (hereinafter the “CAS Code”) and Article 62 para. 1 of the UEFA Statutes, the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport (hereinafter the “CAS”) to challenge the Appealed Decision, taken by the UEFA Appeals Body on 2 December 2014 and notified to the Parties on 22 December 2014.
71. On 3 February 2015, following the FAS’s application to intervene in the present arbitration, the President of the CAS Appeals Arbitration Division notified its decision to allow the FAS to participate as Intervening Party in accordance with Article R41 of the CAS Code.
72. On 5 February 2015, the CAS notified the Parties of the formation of the Panel constituting of Prof. Massimo Coccia as chairman, Prof. Philippe Sands QC, designated by the Appellant, and Prof. Martin Schimke, designated by the Respondent.
73. By letter of 9 February 2015, the CAS Court Office notified the Parties that, in accordance with Article R44.3 of the CAS Code, the Panel ordered: (i) the Respondent to produce and provide the CAS with audio recordings of the hearing in the underlying UEFA procedure within three days; (ii) the Respondent to produce and provide the CAS with the complete, official video footage, including any and all available camera feeds, of the Match; (iii) the Appellant, within 14 days of receipt of the audio recordings of the hearing in the underlying UEFA procedure, to transcribe all testimonies and any other declarations rendered in that hearing on which it intended to rely, encouraging the Appellant to cooperate to that end with the Intervening Party (which had been analogously ordered in the parallel arbitration CAS 2015/A/3875). The Panel also (i) suspended the time limit for the Appellant to file its appeal brief until the 14<sup>th</sup> day after receipt of the audio recordings of the hearing in the underlying procedure and the official video footage of the Match, (ii) indicated that the Respondent’s twenty-day time limit for filing its answer would start to run upon receipt of the appeal brief, and (iii) indicated that the Intervening Party would have 20 days from receipt of the appeal brief to file its observations.

74. On 13 February 2015, having received the audio recordings of the hearing in the underlying procedure and the official video footage of the Match, the CAS lifted the suspension of the Appellant's time limit for filing its appeal brief with immediate effect. It also advised the Parties that, pursuant to Article R54 of the CAS Code, Mr. Francisco A. Larios had been appointed as *ad hoc* clerk in the case.
75. On 2 March 2015, the Appellant filed its appeal brief in accordance with Article R51 of the CAS Code.
76. On 9 March 2015, the CAS Court Office informed the Parties that a hearing would be held on 17 April 2015 in Lausanne, Switzerland, and granted the Parties until 16 March 2015 to indicate the names of all persons who would be attending the hearing.
77. On 16 March 2015, the Appellant informed the CAS that the following persons would be attending the hearing on its behalf: Prof. Antonio Rigozzi and Mr. William McAuliffe (both as counsel for the Appellant), Mr. Armand Duka (President of the FAA), and Mr. Denis Bastari (Director of International Relations of the FAA). The Appellant further stated that the following individuals would testify: Mr. Lorik Cana (Captain of the Albanian national team) and Mr. Giovanni De Biasi (Coach of the Albanian national team) as factual witnesses, and Professors Sébastien Besson and Alain Macaluso as expert witnesses.
78. On 16 March 2015, the Respondent indicated that it would be represented at the hearing by Mr. Carlos Schneider (UEFA Disciplinary Lawyer), Dr. Emilio García (UEFA's Head of Disciplinary and Integrity) and Dr. Jan Kleiner (Counsel for UEFA).
79. On 16 March 2015, the Intervening Party informed the CAS that the following individuals would be attending the hearing of 17 April 2015: Mr. Zoran Lakovic (General Secretary of the FAS), Mr. Nebojsa Ivkovic (Head of Legal of the FAS), Mr. Zoran Damjanović (Counsel for the FAS), Dr. Marco Del Fabro (Counsel of the FAS), Mr. Roy Levy (Counsel of the FAS) and Mrs. Maja Trifunović (independent interpreter). The Intervening Party further indicated that the following individuals would testify as witnesses:
  - In person: Mr. Zoran Lakovic;
  - By telephone or in person, if required: Mr. Milivoj Mirkov (Security Office of the FAS) and Mr. Zeljko Pantic (Chief of stewarding services);
  - By telephone: Mr. Stefan Mitrovic (Football player of the Serbian national team), Mr. Branislav Ivanovic (Captain of the Serbian national team), Mr. Aleksandar Boskovic (Team manager of the Serbian national team and press officer of the FAS), and Mr. Vojislav Nedeljkovic (Public announcement stadium speaker).



80. On 7 April 2015, following the Panel's decision to grant an extension of the original deadline, both the Respondent and the Intervening Party filed their response submissions.
81. On 10 April 2015, the CAS Court Office sent the Parties the Order of Procedure to be signed and returned by 14 April 2015. In addition, it invited the Intervening Party to file a witness statement for Mr. Ivanovic as a condition to having him testify at the hearing.
82. On 13 April 2015, the Appellant requested to be provided by the CAS with the submissions made by the FAS and UEFA in the case CAS 2015/A/3875 *Football Association of Serbia v. UEFA*.
83. Also on 13 April 2015, the Respondent returned its signed Order of Procedure.
84. On 14 April 2015, the Respondent and the Intervening Party both objected to the Appellant's request to be provided with the submissions in CAS 2015/A/3875 *Football Association of Serbia v. UEFA*.
85. Also on 14 April 2015, (i) the Appellant and the Intervening Party returned their signed Order of Procedure; (ii) the Appellant renounced the calling of Professor Macaluso as expert witness at the hearing; (iii) the Appellant informed the CAS Court Office that Mr. Arten Hajdari, local counsel for the Appellant, also wished to attend the hearing; (iv) the Intervening Party submitted the witness statement for the factual witness, Mr. Ivanovic; and (v) the Intervening Party renounced the calling of Mr. Mirkov, Mr. Boskovic and Mr. Nedeljkovic.
86. On 15 April 2015, the CAS Court Office informed the Parties that the Panel had decided to dismiss the Appellant's request to be provided with the submissions in CAS 2015/A/3875 *Football Association of Serbia v. UEFA*, the reasons for which would be set out in this award.
87. On 16 April 2015, a hearing was held at the CAS headquarters in Lausanne, Switzerland.
88. In attendance at the hearing were:
  - for the Appellant: Prof. Antonio Rigozzi, Mr. William McAuliffe, Mr. Armand Duka, Mr. Denis Bastari, Mr. Arten Hajdari, Mr. Dritan Shakohoxha (Administrator of the FAA) and Ms. Aldijana Sabanovic (Interpreter);
  - for the Respondent: Dr. Emilio García, Dr. Jan Kleiner and Mr. Carlos Schneider; and
  - for the Intervening Party: Dr. Marco Del Fabro, Mr. Roy Levy, Mr. Zoran Lakovic, Mr. Nebojsa Ivkovic, Mr. Zoran Damjanović and Mrs. Maja Trifunović.

89. The witnesses heard in person at the hearing were Mr. Lorik Cana, Mr. Giovanni De Biasi, and Mr. Zoran Lakovic as factual witnesses and Professor Sébastien Besson as expert witness. Mr. Zeljko Pantic and Mr. Branislav Ivanovic both testified as factual witnesses by video link.
90. At the outset of the hearing, the Respondent and the Intervening Party confirmed that they had no objections towards the constitution and composition of the Panel. The Appellant, on the other hand, expressed that there could be a “*potential*” problem with the composition of the Panel, arguing that the Panel’s decision of 15 April 2015 not to give to the Appellant and Mr. Sands QC copies of the submissions filed in the parallel case CAS 2015/A/3875 *Football Association of Serbia v. UEFA* allegedly created an imbalance within the Panel as only one fraction of the Panel – Messrs. Coccia and Schimke, who had been appointed as arbitrators also in the other case – had knowledge of the evidence and arguments submitted in that other proceeding. As such, the Appellant reserved its right to challenge the composition of the Panel. However, after the President of the Panel, speaking also on behalf of Mr. Schimke, offered assurances that the arbitrators in the present case would decide the dispute between the Parties based exclusively on the evidence and arguments submitted in the present case, counsel for the Appellant stated that he trusted the President’s indication.
91. Before the end of the hearing, in answering a question posed by the President of the Panel about the possibility, under Articles 27.01 CR and 21 DR, of the Parties having a shared responsibility for the Match not being played in full, the Parties responded as follows: (i) UEFA rejected that there could be a shared responsibility between national associations under said rules, equating the situation to the “flipping of a coin” (i.e., either the FAA or the FAS must be held responsible and, accordingly, either national association must lose the Match by a forfeit of 0:3); (ii) the Intervening Party agreed with UEFA that there could be no shared responsibility and that either the FAA or the FAS must be held to have lost the Match by 0:3 but, on the other hand, did acknowledge that there could perhaps be a shared responsibility between an association and UEFA; (iii) the Appellant tended to agree that the relevant UEFA rules seem to entail an either-or situation but acknowledged that, if the Panel were to consider that the UEFA regulations contain a *lacuna* on this matter, Swiss law would allow the Panel to fill it by devising a reasonable solution.
92. At the end of the hearing, the three Parties confirmed that the Panel had respected their right to be heard.

## **IX. OVERVIEW OF THE PARTIES' POSITIONS**

93. The following is a brief summary of the Parties' submissions and does not purport to include every contention put forth by the Parties. However, the Panel has thoroughly considered in its discussion and deliberation all of the evidence and arguments submitted by the Parties, even if no specific or detailed reference has been made to those arguments in the following outline of their positions and in the ensuing discussion.

### **IX.1 The Appellant: Football Association of Albania**

94. The Appellant submits that the Appealed Decision was erroneous because (i) the FAS must be sanctioned for the racist and discriminatory behaviour of its supporters; (ii) the FAA is not responsible for the illicit banner carried by the drone; and (iii) the FAA is not responsible for the Match not having been played in full.

#### **a) *The FAS must be sanctioned for racist and discriminatory conduct of its supporters***

95. The Appellant argues that the Appealed Decision erred in refraining from reviewing the FAA's request to have the FAS sanctioned under Article 14 DR for racist and discriminatory chants and banners (see *supra* at paras. 9 and 10) and for confirming the CEDB decision, which held that said chants and banners were only political in nature within the meaning of Article 16(e) DR.

96. The Appellant considers that its claim is admissible because it is in fact "*directly affected*" by the CEDB Serbia Decision's dismissal of the charges of Article 14 DR.

97. First, the Appellant argues that, as it is participating in the same group as the FAS in the 2016 UEFA European Championship qualifying round, any sanction imposed on the FAS for the racist and discriminatory chants directly affects the FAA's interest. The Appellant points to Article 14 para. 4 and contends that the racist and discriminatory chants could give rise to the imposition of aggravated sanctions, including the playing of one or more matches behind closed doors, a stadium closure, the forfeiture of a match, the deduction of points or the disqualification from the competition, the latter three which directly affect the legal position of the FAA.

98. Second, the Appellant contends that irrespective of any additional sanction that may be imposed for the racist and discriminatory chants under Article 14 DR, the Appellant is directly affected (i) by any decision which purports to determine whether the FAA has been a "*victim*" of racism or other disciplinary conduct under Article 14 DR; and (ii) in its capacity as the party that brought the complaint which ultimately led way to the initiation of Article 14 DR charges against the FAS. The Appellant is adamant that the purpose of Article 14 DR is to protect individuals that are victims of racial abuse.

99. Third, the Appellant asserts that *“it would be counterintuitive to allow the charged federation, club or person to escape any judicial review of their acquittal simply by the combined effect of (i) the UEFA Appeals Body declaring an appeal by a third party inadmissible and (ii) UEFA refraining from appealing the acquittal. If the Panel were to accept this proposition, then UEFA would be allowed to ‘bury’ any complaint of violation of Article 14 DR.”*
100. Finally, the Appellant maintains that since the UEFA Appeals Body decided to hear the FAA’s appeals against the CEDB Albania and CEDB Serbia Decisions jointly, it is not possible to separate the charges based on Article 14 DR from the rest of the case. In this respect the Appellant states that *“from a procedural point of view... the consolidation of both appeals in a single proceedings (and decision) means that, in view of CAS’ de novo power of review, the FAA has the right to submit all limbs of the decision under appeal to the Panel’s large de novo scope of review, including all factual and legal elements of all charges against FAS”*.
101. At the hearing, the Appellant expressed its disaccord with the Respondent and Intervening Party’s suggestion that the Appellant should have intervened in CAS 2015/A/3875 *Football Association of Serbia v. UEFA* to challenge the CEDB Serbia Decision’s dismissal of the Article 14 DR charges. Such a route, in its opinion, would have been inappropriate considering that an intervening party may only support the position of one of the parties in a dispute but cannot bring its own prayers for relief.
102. The Appellant then asserts that the CEDB erred in considering the chants and banners as being only political in nature. On this point, the Appellant argues:
- the chants of *“kill the Albanians”* and *“kill and slaughter them [the Albanians] until none are left”* clearly *“insult the human dignity of a person or group of persons”* within the meaning of Article 14 DR. The Appellant stresses that *“it is and should be self-evident that an explicit incitation to murder and extermination of an ethnic group constitutes and insult to human dignity”*.
  - The chant and banners of *“Kosovo is Serbia”* is also racist and discriminatory within the meaning of Article 14 DR, once contextualized. The Appellant makes reference to the fact that in the relatively recent Balkan wars Serbian forces were sent to ethnically *“cleanse”* Kosovo of ethnic Albanians. In the Appellant’s view *“any person of Albanian ethnicity is insulted in his or her human dignity by such reference to a dark episode of European history during which a significant geographical area was violently ‘cleansed’ of its Albanian population.”* The Appellant adds that, in any case, any doubt as to whether this chant was racist in nature is eliminated when one considers that the same individuals who chanted it were also chanting for the Albanians to be killed and exterminated.

- The same considerations apply to the posters of Vojislav Seslj and Veljko Radenovic, political and military figures who are considered to have been involved in the so-called ethnic cleansing of Albanians in Kosovo.
- The burning of the NATO flag, in the same context, *“is equally inflammatory toward the Albanian people as a NATO bombing campaign was needed to stop the ethnic cleansing.... Under these circumstances, burning the NATO flag constitutes an additional provocation that objectively insults the human dignity of any ethnic Albanian.”*

103. The Appellant considers it to be evident that the chants calling for killing and exterminating the Albanians are racist and discriminatory in nature and fall squarely within Article 14 DR. As for the other chants and banners mentioned above, the Appellant also considers them as independent breaches of Article 14 DR, and at the very minimum, as exacerbating the other incidents that would amount to a breach of Article 14 DR, meaning that they should be taken into account in determining the applicable sanction.
104. As for the applicable sanction, the Appellant refers to Article 14 para. 4 DR where it stipulates that if the circumstances of the case require it, the disciplinary body may impose additional measures such as the playing of one or more matches behind closed doors, a stadium closure, the forfeiting of a match, the deduction of points or the disqualification from the competition. The Appellant indicates that it leaves to the Panel the determination of what sanction is appropriate in light of the circumstances. However, in light of the fact that the present arbitration is governed by Article 176 *et seq.* of the Swiss Private International Law Act (hereinafter the “PILA”), the Appellant explicitly requests the Panel to sanction the FAS with a disqualification from the competition, which, as the highest sanction and in view of Article 190(2)(c) PILA, gives the Panel full discretion to determine the appropriate sanction. That said, the Appellant maintains that, in the event the Respondent is not sanctioned with a match forfeiture for being responsible under Article 21 DR for the Match not being played in full, the minimum sanction that should be imposed under Article 14 para. 4 DR should be a match forfeiture.
105. It should be noted that at the hearing the Appellant pointed out, with the assistance of its interpreter, that on the video footage areas of the Match in which the Serbian supporters chanted *“Kill, Kill Shiptar”* (Shiptar being a racial slur for Albanian) and *“Kill and slaughter the Albanians until there are none left”*. The Intervening Party’s interpreter did not dispute this translation.
106. In support of its position on this issue, the Appellant submitted an expert report written by Prof. Sébastien Besson. It also called Prof. Besson as an expert witness at the CAS hearing of 17 April 2015. Prof. Besson submitted, *inter alia*, that the FAA is directly

affected by the decision to release the FAS from Article 14 DR charges of racism and thus can appeal that decision because the FAA and its players, as the addressees of the racist and discriminatory chants, were the victims of said chants. This conclusion, he declared, is further reinforced by the fact that one of the sanctions that the CAS could apply for a breach of Article 14 DR is the forfeiture of the Match, which would clearly affect the FAA in a direct way, not only in its legal position (in particular as the victim) but also in its sporting and financial position. Mr. Besson submitted that, in any case, any issue concerning the Appellant's entitlement to appeal is now moot because the Appellant indisputably has the right to appeal the Appealed Decision before the CAS and the CAS has the power to review all factual and legal issues addressed therein, including the Article 14 DR charges against the FAS. Finally, Mr. Besson submits that the chants "*Kill, Kill, the Albanians*" and "*Kill them all until none are left*" cannot be classified as merely political and it would be incompatible with public policy within the meaning of Article 190(2)(e) PILA to classify them as such.

107. The Appellant also submitted an expert report written by Prof. Alain Macaluso, who concluded on this issue that the chants and banners fulfilled the objective criteria of the offense of racial discrimination as referred to and penalized in article 261<sup>bis</sup> of the Swiss Penal Code (CP) and that the fact that said chants are allegedly politically motivated does not constitute an exculpatory factor.

**b) *The FAA is not responsible for the drone and illicit banner***

108. The Appellant claims that the approach taken by the UEFA Appeals Body to find that it was conformably satisfied that the drone carrying the illicit banner was controlled by an Albanian supporter(s) is misconceived as:

- (i) there is no evidence whatsoever to support that finding. The Appellant claims it is entirely possible the drone could have been controlled by an individual without any link to the Appellant (for instance, Serbian hooligans attempting to create a situation of violence); and
- (ii) the UEFA regulations do not contain any presumption allowing for the identification of the offender simply based on the nature of the offense.

109. The Appellant believes that the three decisions concerning the notion of a "*supporter*" on which the UEFA Appeals Body relies are distinguishable and irrelevant:

- In CAS 2007/A/1217, the Panel determined that "*the behavior of individuals and their location in the stadium and its vicinity are important criteria for determining which team or club they support*"; in the present case, however, there were no Albanian supporters in the stadium or anywhere in the vicinity of the stadium and so the CAS precedent is irrelevant.

- In CAS 2013/A/3139 there was no doubt that the flares that were parachuted into a match being played behind closed doors from outside the stadium were sent by the home supporters (accepted by the club in question and the official present at that match); in the present case, it is unclear and not established who was the operator of the drone.
  - CAS 2014/A/3324 and 3369 merely restates the principle of strict liability for supporters in a situation where the supporters are physically present in the stadium and were clearly identifiable as being home supporters.
110. The Appellant concludes: *“The principle of strict liability and the rule that supporters must be attributed to a team according to their behaviour and location cannot operate to attribute the operation of the drone to the FAA in a situation where no supporter, whose actions and location could have been analysed, was ever identified. Even if there was such a presumption in the regulations, such a presumption could not operate in a case where no Albanian fan was in the stadium, the police searched the Albanian delegation for the drone’s operating device and found nothing, and there is no evidence that Albanian fans were in the vicinity of the stadium. Finally, attributing the operation of the drone to Albanian supporters under circumstances “would be at odds with Swiss law as there is no minimum connection between the FAA and the unknown individuals who operated the drone”.*
111. At the hearing, the Appellant confirmed that, in its opinion, strict liability cannot extend to an unknown individual, given that in such a situation there is a missing link between the banner and the individual. This gap, according to the Appellant, cannot be filled by yet another presumption. The Appellant objected to the Intervening Party’s claim that there was sufficient evidence to establish that one Ismael Morinaj operated the drone. In its view, the social media posts submitted by the Intervening Party are insufficient to establish a meaningful link between Mr. Morinaj and the FAA.
112. Next, the Appellant maintains that, in the event the Panel holds it responsible for the illicit banner carried by the drone, the EUR 100,000 fine that UEFA imposed must be considered as evidently and grossly disproportionate and should therefore be reduced accordingly.
113. In support, the Appellant argues that the fact the illicit banner was displayed through a *“sophisticated method”* (i.e. the drone) and that the use of such method makes it *“difficult if not impossible, to prevent”* the offense cannot be considered an aggravating factor.
114. Additionally, the Appellant believes it is *“intrinsically wrong to use disciplinary proceedings to make an example out of the FAA’s punishment, in particular since there is no evidence that the drone was actually operated by an Albanian fan... a sanction*

*imposed... to discourage other supporters from using similar methods... is clearly disproportionate”.*

115. As to proportionality, the Appellant argues that the fine is excessive. The Appellant compares the EUR 100,000 fine with the fines UEFA imposed in the 2013/2014 UEFA Champions League match between Arsenal and Bayern Munich in March 2014 – EUR 10,000 for a banner reading “*Say no to racism say yes to Kosovo*” – and in the 2012/2013 UEFA Champions League match between Valletta FC and FK Partizan on 17 July 2012 – EUR 7,500 for four Serbian supporters climbing the stadium walls, invading the stadium and showing a political banner, causing an interruption of the match for two minutes.

116. Prof. Besson, the expert witness called by the Appellant, submitted on this issue that (i) the concept of “*supporter*” requires a minimum connection between the association and the person having committed the offense; (ii) some presumptions are acceptable but must be based on reasonable and objective criteria (for instance, individuals seated in a designated area of the stadium can be deemed to be a supporter of a particular team) and are rebuttable; and (iii) failing such a minimum connection means that the individual cannot be characterized as a “*supporter*” for the purposes of disciplinary sanctions against the association. Prof. Besson concludes that the drone and the banner cannot be attributed to the Appellant under Article 8 and 16 para. 1 DR since, in the absence of any other elements, the mere fact that a banner is depicting a sign that supports one team is manifestly not sufficient to presume that the banner has been made by a “*supporter*” of that team. Holding otherwise would result in an arbitrary decision and dangerous precedent as “*it would become an easy game to harm any team by operating a drone from a distance with symbols or signs supporting that same team*”.

**c) *The FAA is not responsible for the Match not being played in full***

117. The Appellant maintains that, in the event that the Panel does not impose the forfeiture of the Match on the FAS based on Article 14 DR, the FAS should be considered responsible for the Match not being played in full under Article 27 CR, and, thus, to have lost the Match 0:3 pursuant to Article 21 DR. According to the Appellant, the FAA is not responsible for the Match not being played in full because (i) the Albanian side was not told that it was safe to re-enter the field and did not receive a clear order that they had to resume the Match; (ii) the word “*responsible*” cannot be interpreted in such an over-simplistic manner; (iii) even if under the Panel’s interpretation of Article 21 DR the FAA was “*responsible*” for the Match not being played in full, its refusal to re-enter the field is justifiable based on the doctrine of *état de nécessité*; and (iv) the FAA was not at fault.

118. As to the first point, the Appellant submits that:



- there is no evidence that the Albanian's side safety was guaranteed and that, accordingly, their refusal to re-enter the field was no longer justified. In support of this contention, the Appellant specifically points to the facts that (i) none of the contemporaneous official reports indicate that safety was restored; (ii) nobody testified at the UEFA Appeals Body hearing of 2 December 2014 that the Albanian players were told safety was restored. To the Appellant, what actually happened is that *"the Match Referee, who was asked by UEFA Match Control Centre to try to continue the Match 'once the security was ensured', asked the captains whether they would agree to play on 'once the security is safe to take them back out again' and was quite happy to abandon the game once he was informed by the Albanian side that they were not prepared to resume the Match"*. The Appellant asserts that (i) *"the UEFA Match centre did not ask to continue the match without ensuring that the safety had been restored. Indeed the order was to "try" to play "once" it is safe"* and (ii) *"the UEFA representatives did not tell the Albanian players that it was safe to re-enter the pitch"* and the Match Referee did not order them to do so. The Appellant further asserts: *"While it is easy, now, to explain this absence of any guarantee regarding the security by arguing that the Albanian players said that they would play under no circumstance, the fact remains that nobody from UEFA's side positively took the responsibility to guarantee to the Albanian players that, despite the fact that they had just been savagely assaulted, it was sure for them to re-enter the pitch"*. The Appellant concludes that, as such, the Albanian side, irrespective of whether they cared about the possibility of losing the Match 3:0, cannot be considered responsible for the Match not being played in full. To hold the FAA responsible would be to punish it *"for having assumed the responsibility of making the only responsible decision that should have been taken by UEFA in the first place"*;
- no real assessment of the security situation was carried out and that common sense dictates that there was no way UEFA could have guaranteed the safety of the Albanian side;
- security was not restored;
- there is a contradiction as to whose responsibility it was for deciding whether the Match should restart; and
- *"the Match Referee testified that if he had been the person assaulted with a chair by a Serbian hooligan (instead of the Albanian player Bekim Balaj), he would have abandoned the Match. [Thus, u]nless the Panel is prepared to accept that the physical integrity of a(n Albanian) player is worth less than the one of a UEFA official, the [Appealed Decision] can only be set aside"*.

119. The Appellant added at the hearing that the Montenegro v. Russia 2016 UEFA European Championship qualifiers match of 27 March 2015 was not comparable to the present case, as in that case no security stewards attacked any players in that match. Further, the Appellant added that the Respondent's contention that the Albanian side usurped the Match Referee's authority is not legally accurate. It is the Match Referee's

prerogative to abandon the Match if he considers the conditions for doing so are fulfilled. In the present case, the Match Referee considered that such conditions were fulfilled and now, in light of the applicable UEFA regulations, the consequences of such abandonment must be determined.

120. On the second point, the Appellant submits that the Appealed Decision adopted an over-simplistic interpretation of the word “*responsible*”, by focusing only on the final link of a long chain of events, i.e. the Albanian side’s alleged refusal to play, without considering the full circumstances in which the alleged refusal occurred. In addition, the Appellant submits that interpreting the word “*responsible*” without making any reference to actual responsibility of “*fault*” is inconsistent with the usual meaning of the word. The Appellant adds “*Strict liability and responsibility for the behavior of a third party are not excluded but must be explicitly provided for by the applicable regulation. The [Appealed Decision] would have had a basis only if the relevant regulations would ha[ve] explicitly provided that the team which, for whatever reasons, refuses to play is responsible for the match not having being played in full. This is not what the UEFA [DR] say. The UEFA Rules requires the CEDB to ‘tak[e] a decision in the matter’ depending on which side is ‘responsible’*”. The Appellant contends that the question of responsibility cannot be answered by simply looking at the final link in the chain of events, since the UEFA rules require the disciplinary body to assess the totality of the circumstances and decide who is responsible for the match not being played in full.
121. According to the Appellant, the reason for the Albanian players’ refusal to play was that “*they were the victim of deliberate attacks by many Serbian hooligans and security officials*”. As such, the Appellant maintains that the FAS must bear responsibility under Article 21 DR for the Match not being played in full and, accordingly, it should be deemed to have lost the Match 3:0. The Appellant believes that to hold otherwise would “*de facto reward the authors of the assault and punish even further the victims*”. To the Appellant, it is irrelevant whether or not the appearance of the drone “*triggered*” the behaviour of the Serbian supporters and security officials, as it cannot justify such behaviour, which was the decisive element in the Match not being played in full, nor eliminate the FAS’ responsibility for it. The Appellant is adamant that “*the assault of the Albanian players is certainly the decisive element in the chain of events. If one were to reason by analogy with the concepts of fault and causality under Swiss civil responsibility, the assault would be a factor overriding any other source of responsibility (causalité dépassante)*”.
122. On the third point, the Appellant maintains that even if the FAA was “*responsible*” for the Match not having been played in full, that the Albanian side’s decision to not resume the Match for safety reasons would be justified under the Swiss criminal law doctrine of *état de nécessité*, or “*state of necessity*”, applicable by analogy.

123. On the final point, the Appellant contends that, in the event that the FAA is considered responsible for the Match not being played in full, and if the doctrine of *état de nécessité* is held inapplicable, the Albanian players did not commit any fault.
124. At the hearing, the Appellant insisted on the importance of context. In its view, it was entirely legitimate for the Albanian players not to continue the Match in circumstances in which they (i) played in a hostile stadium; (ii) were hit by hooligans which security did nothing to stop; and (iii) were attacked by security stewards, being persons who were supposedly there to protect them.
125. In support of its position on the abandonment of the Match, the Appellant called Mr. Lorik Cana and Mr. De Biasi, the captain and coach of the Albanian national team, respectively.
126. Mr. Cana testified, *inter alia*, that:
- i) the Match Referee did not give a clear order to restart the Match, but only expressed an intention was to try and finish the first half of the Match once security was ensured;
  - ii) neither the Match Referee nor the UEFA delegate (Mr. Been) indicated to Mr. Cana that steps had been taken to ensure the safety of the players;
  - iii) two meetings were held in the dressing rooms between the Match Referee and the captains of both national teams;
  - iv) in the first meeting, he told the Match Referee that his team was absolutely not in the condition to restart the Match, as the players were injured and scared for their safety, with football being the last thing on their minds, following which the Match Referee asked whether this was his final decision;
  - v) in the second meeting, after returning to his team's locker room to check whether his team was in agreement with the position he had expressed to the Match Referee, he confirmed to the Match Referee that his team was unable to continue playing that Match;
  - vi) the Match Referee did not attempt to persuade him to continue the Match;
  - vii) after the second meeting, Mr. Been came with a typed declaration and requested that he sign it. Mr. Cana did not solicit the declaration from Mr. Been;
  - viii) after reading the declaration, he considered it appropriate to add some language in handwriting prior to signing it (see *supra* at para. 30);
  - ix) a security steward attacked him during the field invasion;
  - x) he does not have any social media accounts; the tweets and Instagram posts submitted by the Intervening Party that purport to emanate from him are from a person claiming to be Lorik Cana;

- xi) at the Match it was the first time that he had heard the chant “*Kill, Kill the Albanians*”; and
- xii) the chants did not make him fear for his life; since he had partaken as a professional football player in more than 500 matches, he had grown accustomed to hearing insulting chants from opposing teams’ supporters; it was the attacks by the Serbian supporters that made him fear for his life.

127. The coach of the FAA national team, Mr. De Biasi, testified, *inter alia*, that:

- i) a security steward punched Mr. Cana;
- ii) never before in his long career in football had he witnessed a security steward attack a player or so frightful a situation as the one caused by the massive field invasion by local fans;
- iii) while it may have been physically possible for the Albanian side to continue playing the Match with the injuries sustained, the mental impact of the incidents that occurred after the 42<sup>nd</sup> minute (i.e. the fear) was too damaging on the Albanian side for it to continue the Match; moreover, the fear placed them at a disadvantage from a competitive point of view, i.e. the teams would no longer be playing under equal conditions if the Match were to continue;
- iv) he understood the players’ decision and if they had not taken it, he would have taken it for them;
- v) he was not involved in the players’ decision;
- vi) nobody told him that his team had been ordered to continue the Match or that safety had been ensured;
- vii) he was scared and particularly fearful of the Serbian supporters even breaking into the coaches’ locker room.

128. In light of the foregoing, the Appellant requests in its prayers for relief that the CAS issue an arbitral award:

*“I. Setting aside the Decision under Appeal.*

*II. Ordering that the Decision under Appeal is amended, particularly so as to find the Football Association of Serbia to have violated Article 27 of the Competition Regulations and Article 14 and 21 DR.*

*III. Imposing to the Football Association of Serbia the sanction it deems appropriate under Article 14 DR, including disqualification from [sic] the competition.*

*IV. Ordering that “the Football Association of Serbia is deemed to have lost the Match 0:3”*

*V. Declaring that no sanction be imposed on the Football Association of Albania in connection with the illicit banner or, alternatively, ordering that the*

*sanctions imposed in the Decision issued by the CEBD are modified to replace it with a considerably reduced sanction.*

*VI. Condemning UEFA and/or Football Association of Serbia to pay all the arbitration costs; and*

*VII. Ordering UEFA and/or Football Association of Serbia to pay a substantial contribution towards the Appellant's arbitration related costs".*

## **IX.2 The Respondent: UEFA**

### **a) *The Appellant has no standing to appeal the sanctions imposed on the FAS***

129. The Respondent maintains that the Appellant does not have standing to appeal the sanction imposed on the FAS, as it is not directly affected by that part of the Appealed Decision. In support of this assertion, the Respondent points to (i) Article 62 para. 2 of the UEFA Statutes (see *supra* at para. 57), which, according to the Respondent, is very restrictive and only extends the right of appeal to the direct addressee of a measure; and (ii) CAS jurisprudence, namely CAS 2008/A/1583 and 1584, which makes a distinction between parties that are “*directly affected*” by a decision – and thus have standing to appeal to the CAS – and parties that are only “*indirectly affected*” – and thus lack such standing. The Respondent argues that the Appellant has no standing to bring the proceedings given that the Appellant is neither the direct addressee of the Appealed Decision, nor is it directly affected by the Appealed Decision. According to the Respondent, the Appellant is only indirectly affected by said decision as a competitor of the FAS. At the hearing, the Respondent elaborated on this argument, stating that as far as the application of Article 14 DR is concerned, it is unaware of any cases before UEFA in which the disciplinary body went directly to Article 14 para. 4 DR in order to apply harsher sanctions. Instead, UEFA disciplinary bodies generally stick with the progression of sanctions for recidivism set forth in Article 14 para. 3 DR.
130. The Respondent further maintains that, in the event that the Panel accepts the Appellant's appeal against the sanction imposed on the FAS, the fine for the drone of EUR 100,000 cannot be considered as evidently and grossly disproportionate, and may even be too lenient. The Respondent stresses that apart from a warning and reprimand, a fine is the lightest sanction among the list of sanctions enumerated by Article 6 DR. Furthermore, in its view the level of the fine is appropriate given: (i) the seriousness of introducing a drone inside the stadium full of spectators (i.e. the object carried by the drone could have been of a far more dangerous nature, such as an explosive); and (ii) the highly political and offensive nature of the banner. The Respondent objects to the cases referred to by the Appellant where UEFA imposed a lower ban for the display of illicit banners because “[f]irst, both quoted cases refer to UEFA club competitions in which national pride is less sensitive... [second] none of the clubs involved, not even

*indirectly, represented two associations sharing a political and violent background as the ones in the case at hand*, third, *none of these cases involved the combination of a pseudo terrorist attack aimed to offend the attendees and the opponent of the match*, fourth, *none of these cases included a demonstration of political engagement directly against the nation represented by the opponent*", and fifth, the case in connection with the UEFA Champions League match between Valletta FC and FK Partizan was not even dealt with by the UEFA disciplinary bodies under the scope of an illicit banner infringement, but rather under crowd disturbances. The Respondent adds that the fine of EUR 100,000 only amounts to 1-2 percent of the benefits (from revenues linked to the centralized television rights) that the FAA receives for its participation in the 2016 European Championships qualifying round alone.

**b) *The Appellant is responsible for the drone and illicit banner***

131. The Respondent maintains that the Appellant must be held responsible for the drone and the illicit banner. The Respondent points out that the applicable standard of proof is "*comfortable satisfaction*", meaning that the Panel must determine whether it is comfortably satisfied that the drone was operated by an Albanian supporter. The Respondent insists that, in making such assessment, the Panel must bear in mind that the notion of supporter is an open concept that must be assessed from the perspective of a reasonable and objective observer. The Respondent concludes that in the present case "*a reasonable and objective observer can only conclude that the drone... [with] the banner was controlled by one or several Albanian supporters*" based on the following: (i) the content on the banner, particularly the map of "*Greater Albania*" and the Albanian nationalist symbols (i.e. the date of 28 November 1912 and the images of political leaders Ismail Qemali and Isa Boletini); (ii) the reaction of Albanian players and officials who tried to reclaim and keep the banner from the Serbian players; and (iii) the subsequent appearance of the same banner in other matches and events, as well as in t-shirts, cups and video games.

**c) *The Appellant is responsible for the Match not being played in full***

132. The Respondent's version of the facts is as follows. At the Crisis Meeting it was decided that the remainder of the first half should be played once security was restored. The Match Referee then spoke with the captains and managers of both teams and while he was informing them that play must be resumed the Albanian captain, Mr. Cana, without inquiring as to whether or not it was safe to continue the Match, informed the UEFA officials that his team was unwilling to do so, as they feared for their physical and mental well-being, i.e. the Albanian national team categorically refused to play. In support of this contention, the Respondent repeatedly pointed to the transcript of the

UEFA Hearing , particularly the Match Referee’s statement that “...*both teams were told they must go out and continue the game once we ensured the safety.*”

133. The Respondent considers the Albanian side’s alleged refusal to play to be a violation of Articles 27 CR and 21 DR and, with the Appellant allegedly having taking into its own hands a decision that only the Match Referee had the power to make, a usurpation of the referee’s power under the Laws of the Game. To the Respondent, holding otherwise would send the wrong message to the world of football and would result in UEFA being incapable of organizing its own matches and competitions.
134. The Respondent is of the opinion that, as occurred in the Montenegro v. Russia 2016 UEFA European Championship qualifiers match of 27 March 2015, the Appellant should have continued the Match and that the alleged categorical refusal to play left the Match Referee with no choice but to abandon the Match. The Respondent adds that this alleged categorical refusal to play cannot be justified by the tragic incidents that preceded it nor by any supposed security concerns.
135. The Respondent concludes from this that the Appellant must be held responsible for the Match being abandoned under Article 21 DR and must accordingly be awarded with a forfeiture of 0:3 in the Match, as the UEFA Appeals Body and CEDB correctly held.
136. With respect to Article 21 DR, the Respondent insists that the meaning of that article is straightforward: “*If the fact that a match cannot be played in full can be attributed to actions, omissions, or the behavior of one specific party, this party must be sanctioned. The question is entirely objective: Can the cancellation of a match be directly, and objectively, linked to the behaviour of one party? If so, this is the “responsible” party, and this party shall suffer the regulatory consequences... Article 21 DR only intends to allocate responsibility in an objective manner, regardless of the subjective element of ‘fault’*”. At the hearing, the Respondent compared the application of Article 21 DR to the flipping of a coin – if the FAA is not responsible, then the FAS must automatically be so, and there cannot be a shared responsibility between them.
137. In light of the foregoing, the Respondent requests in its prayers for relief that the CAS issue an award:

*“- Declaring inadmissible and/or unfounded the appeal of the Football Association of Albania insofar as the Appellant requests a specific sanction to be imposed on the Football Association of Serbia.*

*- In any case, rejecting the reliefs sought by Appellant and confirming the Appealed Decision.*

*- Charging all costs and expenses of these proceedings to Appellant;*

*- Granting substantial contribution to Respondent for the legal fees incurred.”*

### **IX.3 The Intervening Party: Football Association of Serbia**

#### **a) *The Appellant has no standing to appeal the sanctions imposed on the FAS***

138. The Intervening Party argues that the Appellant's request to impose a sanction on the FAS is not admissible as the FAA is not directly affected by the decision against the FAS for the following reasons:
- where a third party is only affected because it is a competitor of the addressee of the decision taken by the association, that party is not "*directly affected*" as such effects are only indirect consequences of the decision; otherwise, all the other national teams that are in the same group with the Albanian and Serbian national teams would be able to appeal against sanctions imposed or not imposed on the FAS.
  - the FAA is not directly affected merely due to its status as an alleged victim of racism and other discriminatory conduct under Article 14 DR; that would only be the case if the disciplinary regulations provided for a specific right to appeal for the victim.
139. Furthermore, the Intervening Party submits that the fact that the UEFA Appeals Body decided to hear the cases against the FAS and FAA together "*for practical procedural reasons*" does not give rise to standing to appeal for the FAA. The Intervening Party adds that CAS' "*de novo power of review*" also does not grant this right of appeal to the Appellant because the "*Panel's power to review is restricted by the subject of the right of appeal in general and the scope to which extend the imposed sanctions (against an FA) is challenged*". The Intervening Party points out that UEFA initiated two separate disciplinary proceedings – one against the Appellant and the other against the FAS. The punishment for the illicit chants were dealt with only in the CEDB Serbia Decision and have not been challenged by UEFA or the Appellant (as an intervening party) in proceeding CAS 2015/A/3875 *Football Association of Serbia v. UEFA*. The Intervening Party is adamant that any request for additional punishment on the FAS had to be made in that CAS proceeding, but that the Appellant failed to intervene in said proceedings to make such a request. The Intervening Party concludes that three conclusions can thus be drawn "*(i) the [FAA] has no standing to appeal in the proceeding UEFA vs. Serbian FA (CAS 2015/A/3875), (ii) the Albanian has no standing to appeal in the proceeding UEFA vs. Albanian FA (CAS 2015/A/3874) with respect to sanctions concerning the Serbian FA, and (iii) the Panel has no right to impose additional sanctions on the Serbian FA in the proceeding UEFA vs. Albanian FA (CAS 2015/A/3874).*"
140. In the Intervening Party's observations it maintained that, in the event that the Panel holds that the Appellant's request to sanction the FAS is admissible, then the FAS did not violate Article 14 DR. According to the its written submission, no racist or



discriminatory chants, including “*Kill the Albanian*” (in Serbian: “*Ubi ubi Shiptara*”) or “*Kill slaughter the Albanians until they are exterminated*”, were sung inside the stadium during the Match. However, at the hearing, the Appellant showed the video footage of the Match and identified the aforementioned chants. The Intervening Party did not challenge their occurrence, and its interpreter did not challenge the Appellant’s interpreter’s translation of the chants.

141. With regards to the “*Kosovo is Serbia*” chants and banners, in its observations the Intervening Party alleges that they are not racist or illicit because Kosovo is still part of the Republic of Serbia, as is enshrined in the Serbian Constitution. As to chants containing the word “*Shiptar*”, the Intervening Party alleges that they are not discriminatory because that word does not have a discriminatory connotation; it is simply the ancient term, originating in the 17<sup>th</sup> century, for Albanians. To the Appellant, “*what is clear... is that taking into account the history of the Balkan conflict and the long-lasting hatred between these two nations, such misconducts of the Serbian fans are of a political and not of a racist or discriminatory nature*”.
142. Finally, the Intervening Party submits that (i) the Appellant’s requested sanction of disqualification from the competition or forfeiting of the Match would not comply with Article 14 para. 2 DR; and (ii) it cannot be punished twice for the same incident. In its view, sanctioning it under Article 16 para. 2(e) DR and again under Article 14 DR for the same chants would constitute a violation of the fundamental principle of “*ne bis in idem*” and thus public order (article 190(2)(e) PILA).

**b) *The Appellant is responsible for the drone and illicit banner***

143. The Intervening Party argues that the operator of the drone has been identified as an Albanian national who lives in Italy. In support, the Intervening Party submits the Facebook account of Mr. Ismail Morinaj and a twitter message of “*@Albanian soccer*” which reads “*Ismail Morina the man who flew the drone during the Serbia-Albania game. A hero & patriot to Albanians. Respect!!!*”, together with a picture of this individual with the Albanian flag. Thus, in its view, the argument put forth by the Appellant that there is no evidence showing that an Albanian supporter operated the drone is without foundation.
144. Moreover, the Intervening Party considers to be nonsensical the Appellant’s conspiracy theory (i.e. that it is not inconceivable a Serbian supporter carried out the stunt to create a situation of violence). In this respect, the Intervening Party points out that the Serbian supporters had no motive in carrying out such a stunt, especially since it carried with it a high risk of backfiring, i.e. of becoming detrimental to the Serbian national team. According to the Intervening Party, nobody could foresee what the reactions of such a

stunt would be or that it would result in a win for the Serbian national team by forfeiture.

145. In any case, the Intervening Party stresses that the meaning of the term “*supporter*” adopted by the CAS is based on the reasonable and objective observer. Under this approach, one could only conclude that the drone was operated by an Albanian supporter because the banner is closely connected to Albania and the use of the drone was the only possible means for an Albanian supporter to transmit a message from outside the stadium. The Intervening Party rejects Mr. Besson’s expert report, indicating that it fails to mention CAS jurisprudence on the notion of supporter and, moreover, to cite any case law in support for his opinion that there must be a minimum connection between the FAA and the operator of the drone failing which a person cannot be characterized as a supporter for purposes of a disciplinary sanction against an association or club.

**c) *The FAA is responsible for the Match not being played in full***

146. The Intervening Party asserts that the FAA is responsible for the Match not being played in full. The Intervening Party contends that during the Crisis Meeting, after having consulted with all the relevant persons, and after having assessed the situation from a safety and security perspective, the Match Referee decided that it was safe to continue the Match. According to the Intervening Party, the Match Referee then *demand*ed both teams to resume the Match. In support, the Intervening Party refers to the Match Referee’s testimony, in particular where he said “...*both teams were told they must go out and continue the game once we ensured the safety....*”. The Intervening Party stresses that notwithstanding this demand, the Albanian side categorically refused to play, i.e. the Albanian players were clear that they would not continue the Match under any circumstances and did not care about the points or winning or losing. The Intervening Party concludes that, due to said refusal, the Albanian side must be held responsible for the Match not being played in full.
147. On the other hand, the Intervening Party maintains that it cannot be held responsible for the Match not being played in full, as it did everything in its power to make sure that the Match could be continued, including bringing 400 riot police and 210 additional stewards to control the situation and restore order. According to the Intervening Party, the FAS even offered to empty the stadium, partially or fully, if that were necessary to continue the Match.
148. The Intervening Party adds that the decisions of the Match Referee to restart the Match and to abandon the Match due to the Albanian’s refusal to play are field of play decisions under Article Law 5 LG. According to the Intervening Party, such decisions

are final and binding and not subject to any challenge or appeal unless it can be proven that the decision was taken arbitrarily or in bad faith, which is not the case here.

**d) Other comments**

149. The Intervening Party further submits:

- There was no lack of clarity about the safety responsibility and an assessment of the security situation was taken. The decision on whether or not it was safe to continue the game was taken by the Match Referee and the UEFA Match Delegate. Mr. Vincent Egbers assessed the security situation personally and in close cooperation with the FAS Security Officer, who then advised Mr. Harry Been about the security situation. It was Mr. Egbers professional opinion that the Match could be restarted.
- Within a few minutes of the events that occurred in the 42<sup>nd</sup> minute of the Match, riot police entered the stands and restored order in the stadium.
- After the Crisis Meeting the stadium public address system announced that the Match would be continued and that if there was one more incident that the Match would be abandoned definitively.
- The injuries were not the reason for the Albanian side's refusal to play, as is now alleged by the Appellant. Rather, the reason for such refusal was that the players were "*physically and mentally affected by the experience*" (citing Mr. Atkinson testimony in the UEFA Appeals Body proceeding) and (erroneously) under the belief that it was not safe to continue the Match. The Intervening Party alleges that the handwritten part of the declaration Mr. Cana signed after the Match (i.e. "*the physical injuries of many of my players don't allow us to keep playing and we were even attacked by the securities of the stadium*") is not reliable, as it was added at a later stage, meaning that he must have sought advice from a third party about what to write.
- "*The alleged injuries of the Albanian players which they allegedly suffered during the on-pitch brawl are no reason to refuse to continue the match as (i) this was not the reason provided to the referee, (ii) no one from the Albanian team informed any UEFA official that one or more of their players were so badly injured that they [could not] continue to play, (iii) no one asked any of the UEFA officials for medical assistance, and (iv) all the players played for their clubs just a few days after the match in question took place...*"
- While the incidents that occurred after the 42<sup>nd</sup> minute of the Match are "*intolerable*" ones, they were all "*a direct consequence of the massive provocation to the Serbian national pride associated with the statement of the*

*fascist banner which was attached to the drone, and the attach of the Serbian player Mitrovic by two Albanian players” and would not have occurred but for such provocation. In support of its contention, the Appellant submits that even the UEFA Ethics and Disciplinary Inspector, who represented UEFA before the UEFA Appeals Body, stated in his reply to the FAA’s Appeal of 24 November 2014 that “In the case at hand, not only was a banner of a political nature (absolutely unrelated to football) displayed by the [Albanian] supporters, but its display was the catalyst of all the intolerable incidents that followed, including: a. The invasion of the field by Serbian fans in attendance. b. The on-field brawl between players and supporters. c. The interruption of the Match. d. The Match eventually being abandoned by the appellant’s refusal to continue to play.”*

- Despite there being 210 police officers and 109 stewards around the field, 15 Serbian fans succeeded in invading the field and some of them were able to hit Albanian players. Notwithstanding these facts, it cannot be concluded that the security was insufficient as the security forces in and around the stadium were the largest in the history of the FAS, reaching 4,000 police officers (of which 1,000 were riot police) and 947 security stewards). Security cannot be 100 percent effective and if this were to be UEFA’s goal then all matches would have to be played behind closed doors.
- Under Article 40 para. 3 of the UEFA Safety and Security Regulations (2006) the FAS is required to leave a way for the spectators to escape the playing field in case of an emergency, which, in the event that there are no adequate means to evacuate backwards or sideways, means that some gates to access the field must be left open as emergency routes.
- No security steward punched Mr. Cana. The security steward accused of doing so was actually pushing Mr. Cana aside in order to punch the Serbian supporter.
- The FAS had no legal right to prevent Mr. Bogdanov from entering into the stadium and once inside, “*it was impossible to give him special attention at all times*”. He could only be prevented from entering for two reasons: (i) if the court imposed a ban on attendance on him; or (ii) if on match day a steward concluded by his behaviour that he was under the influence of alcohol or drugs and would likely behave in a violent way or misbehave. In any case, Mr. Bogdanov was not directly involved in any physical attack on Albanian players and the FAS did file a criminal complaint against him.

- At the entrance of the stadium, FAS security personnel body searched the entering spectators and confiscated many dangerous and prohibited objects. However, spectators are very creative in finding ways of sneaking into stadiums prohibited objects (one practically uncontrollable method being the use of body cavities); therefore, some dangerous and prohibited objects could have made their way into the stadium.

150. In support of its positions, the Intervening Party called as witnesses Mr. Lakovic (General Secretary of the FAS), Mr. Pantic (Chief of stewarding services) and Mr. Ivanovic (captain of the Serbian national team).

151. Mr. Lakovic testified, *inter alia*, that he attended the Crisis Meeting and that at said meeting the Match Referee, after consulting the UEFA officials, took the decision for the Match to continue, which he then communicated to both teams.

152. Mr. Pantic testified, *inter alia*, that:

- i) 1,200 security stewards work for him, 947 of which were deployed for the Match and 109 of which surrounded the field at the beginning of the Match (whereas normally only 30 to 50 security stewards do so);
- ii) two security rings were set up;
- iii) the security stewards confiscated many dangerous objects at entry but some attendees managed to sneak into the stadium small pyrotechnical devices or firecrackers;
- iv) 10 to 15 Serbian supporters managed to invade the field (out of approximately 100 people that attempted to do so), but were quickly removed thereafter by security stewards;
- v) one Serbian supporter managed to grab a chair (which appertained to one of the security stewards) with which he attacked an Albanian player, but he was quickly removed thereafter by security stewards;
- vi) the security stewards accused of punching Mr. Cana was actually protecting him and punching the Serbian supporter who was beneath him, as confirmed by an internal investigation conducted by his company. He admits, however, that from the pictures it is understandable why one would conceive that the security steward was punching Mr. Cana;
- vii) the steward that waved his hands up and down to pump up the crowd was fired;
- viii) he was satisfied with the performance of 946 out of the 947 security stewards working that day; and
- ix) nobody from the stewarding team came into possession of the drone.

153. Mr. Ivanovic testified, *inter alia*, that:

- i) he attended the Crisis Meeting, where the continuation of the Match was discussed;
- ii) the Match Referee did not say “*I order you to come back onto the pitch*”;
- iii) “*The referee said that as far as he is concerned the match can go on once the delegate passes the decision and that’s why he instructed us to prepare ourselves to go to the tunnel and then to start the continuation of the match... The referee stated that he wanted the match to be continued after the delegate passes his decision and we were told to be ready with our team to continue... At the meetings we discussed a lot of different options in a short period of time. The referee said if the delegate approves, we will go to the pitch. Afterwards we were told that in 10 minutes we should all meet in the tunnel, thus leading us to conclude that the delegate gave the ‘green light’... This final meeting the referee said in 10 minutes I will be in the tunnel and I am asking for the continuation of the match. When it turned out that it is only us in the tunnel, we were of course to run to the center of the pitch and the referee was supposed to start the game, so when he saw that the Albanian side was not there he just whistled in the tunnel thus proclaiming the match over and then we could return to our locker rooms*”;
- iv) after the Albanian team did not show up in the tunnel he went to their changing room and spoke with Mr. Cana who told him that his team was not prepared to continue the Match;
- v) the alleged injuries to the Albanian players were not mentioned at all during the Crisis Meeting; and
- vi) he did not investigate the physical condition of the Albanian players.

154. The Intervening Party makes the following requests in its observations:

*“1. The Appeal of the Appellant shall be dismissed, or it is to be declared inadmissible respectively.*

*2. Para. 2 and 3 (with respect to the Appellant) of the Decision of the UEFA Appeals Body of 2 December 2014 shall be confirmed.*

*3. The Appellant shall bear the costs of this proceeding and shall compensate the Serbian FA for its legal expenses with regard to the UEFA and CAS proceedings.”*

## **X. JURISDICTION AND APPLICABLE LAW**

### **X.1 Jurisdiction**

155. The jurisdiction of the CAS, which is not disputed by the Parties, derives from Article R47 of the CAS Code and Article 62 para. 1 of the UEFA Statutes (Edition 2014).

156. According to Article R47 of the CAS Code: “*An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or*

*regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body”.*

157. Pursuant to Article 62 para. 1 of the UEFA Statutes, “[a]ny 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”.
158. Neither the Respondent nor the Intervening Party raised any jurisdictional objection, and the Parties confirmed the jurisdiction of the CAS by signing the Order of Procedure.
159. The Panel considers that the CAS has jurisdiction to decide on the present dispute.

## **X.2 Applicable Law**

160. Article 63 para. 3 of the current UEFA Statutes stipulates as follows: “...proceedings before the CAS shall take place in accordance with the Code of Sports-related Arbitration of the CAS”.
161. Article R58 of the CAS Code provides that in an appeal arbitration procedure before the CAS, “[t]he 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”.
162. According to Article 5 DR, “the disciplinary bodies base their decisions on UEFA’s Statutes, regulations, directives and decisions, as well as the Laws of the Game and Swiss law and any other law that the competent disciplinary body considers applicable”.
163. Both the FAA and the FAS are members of UEFA and are, thus, bound to comply with all its rules. UEFA is also bound to comply with its own rules. It follows that the applicable law under which the Panel will decide the present dispute is to be found in all pertinent UEFA rules (including, in particular, the DR and the Laws of the Game referenced therein), with Swiss law applying subsidiarily.

## **XI. MERITS**

164. In light of the Parties' submissions, the Panel must decide:

(A) whether the Appellant's request to sanction the FAS under Article 14 DR for racist and discriminatory chants is an admissible appeal, or whether the Appellant lacks standing to sue in that regard;

(B) whether the Appellant is responsible under Article 16 DR(e) for the drone and illicit banner and, if so, whether the fine the UEFA Appeals Body imposed of EUR 100,000 is grossly disproportionate; and

(C) whether the Appellant refused to continue to play and/or is responsible for the Match not being played in full in violation of Article 27.01 CR and 21 DR.

165. The Panel will also, as indicated in its letter to the Parties of 15 April 2015, set out its reasoning for dismissing the Appellant's request for production of the submissions in CAS 2015/A/3875 *Football Association of Serbia v. UEFA*.

166. The Panel will address each of these issues in separate subsections below.

### **XI.1 Dismissal of Appellant's request for production of submissions in CAS 2015/A/3875 *Football Association of Serbia v. UEFA***

167. On 13 April 2015, the Appellant requested for the production of the submissions filed in CAS 2015/A/3875 *Football Association of Serbia v. UEFA* (i.e. the parallel appeal brought by the FAS against the very same Appealed Decision at issue here). The Appellant declared in this letter that "*it understands that there may be common arbitrators in the CAS panels that will deal with CAS 2015/A/3875 and CAS 2015/A/3874 (with the possible exception of Mr. Sands who was nominated by the Appellant in CAS 2015/A/3874)*"... and that "[a]ccordingly, in order for all the parties and all the arbitrators to be fully and equally apprised of all the material that has been put before the arbitrators related to events surrounding the [M]atch", the submissions of CAS 2015/A/3875 *Football Association of Serbia v. UEFA* should be produced. Both the Respondent and the Intervening Party objected to this request.

168. As previously mentioned, the Panel dismissed the Appellant's request. The reasons for such dismissal are the following. First, the present proceeding is separate from CAS 2015/A/3875 *Football Association of Serbia v. UEFA* (hereinafter "CAS 2015/A/3875"), which means that the FAA is a third party to that dispute. As such, the FAA does not have a right of access to the submissions in that proceeding. Moreover, absent the consent of the concerned parties (UEFA and FAS), the arbitrators appointed also in CAS 2015/A/3875 are in principle prevented from disclosing to the FAA the submissions filed in that proceeding. This is in keeping with Article S19 of the CAS Code, under which arbitrators must keep CAS arbitral proceedings confidential from



third parties. That Article reads: “*CAS arbitrators and mediators are bound by the duty of confidentiality, which is provided for in the Code and in particular shall not disclose to any third party any facts or other information relating to proceedings conducted before CAS*”. Second, the FAA could have intervened in CAS 2015/A/3875, and in that way obtained the submissions available in that proceeding, and also an opportunity to comment on them; however, the FAA chose not to so intervene, with the consequence that it remained outside that proceeding with no right to receive said submissions. Third, the Panel points out that the FAA’s request came at an unreasonably late stage of the proceeding – two days before the hearing – whereas the FAA had known for a long time of the existence of the proceedings in CAS 2015/A/3875. Indeed, the existence of the parallel appeal brought by the Intervening Party against the Appealed Decision was made evident in the letter from the CAS Court Office dated 9 February 2015 (see *supra* at para. 73), in which the Appellant was informed that “*the Serbian FA has been analogously ordered to produce [the] transcript [of the UEFA hearing] in the procedure CAS 2015/A/3875 and the Panel, thus, encourages the FAs of Albania and Serbia to cooperate in this respect*”.

169. The Panel feels bound to note that if the Appellant is implicitly asserting, by requesting the production of the submissions of CAS 2015/A/3875, that the President of the Panel and Mr. Schimke cannot be impartial in the present case because they are also arbitrators in that proceeding, then the Appellant should have formally challenged the constitution of the Panel. However, the Appellant has chosen not to do so, neither before nor after the CAS hearing, despite the fact that, based on the language of the CAS Court Office letter of 9 February 2015 (quoted in the preceding paragraph), it should have known in the exercise of reasonable diligence – as required by the Swiss Supreme Court (see judgments 4P.105/2006 of 4 August 2006, 4A\_528/2007 of 4 April 2008 and 4A\_110/2012 of 9 October 2012) – that two arbitrators in the present arbitration were also sitting on the panel of CAS 2015/A/3875.
170. To conclude, the Panel confirms, based on the foregoing reasons, its dismissal of the Appellant’s request for the production of the submissions of CAS 2015/A/3875 *Football Association of Serbia v. UEFA*.

#### **XI. 2 *The racist and discriminatory chants***

171. The CEDB Serbia Decision (see *supra* at paras. 63-64) considered that the Serbian supporters’ chants “*Kill, Kill the Albanians*” and “*Kill and slaughter them [the Albanians] until there are none left*” (see *supra* at para. 9) did not have a racist or discriminatory connotation but merely a political one. On that basis it acquitted the FAS from the charge of racist behaviour of its supporters under Article 14 DR, and decided that only Article 16 para. 2(e) DR had been infringed (see *supra* at paras. 49-50). The

UEFA Appeals Body confirmed such decision by holding as inadmissible, for lack of standing, the FAA's challenge against this portion of the CEDB Serbia Decision (see *supra* at para. 66). The FAA appealed before the CAS this limb of the Appealed Decision (see *supra* at paras. 95-107).

172. The Panel has *prima facie* formed the view that hateful chants calling for the killing or extermination of one national or ethnic group, such as those quoted in the previous paragraph, would be perceived by any reasonable onlooker as an insult to the human dignity of a group of persons on grounds of ethnic origin. However, as the Respondent and the Intervening Party disputed the FAA's standing to appeal in relation to this matter, the Panel is allowed to review the CEDB's legal qualification of those chants only if this Appellant's grievance is admissible under the relevant UEFA rules.
173. The Panel notes that, pursuant to Article 47 DR, the UEFA Statutes stipulate which decisions taken by disciplinary bodies may be challenged before the CAS, and under which conditions.
174. According to Article 62 para. 2 of the UEFA Statutes, "Any decision taken by a UEFA organ may be disputed exclusively before the CAS in its capacity as an appeals arbitration body... Only parties directly affected by a decision may appeal to the CAS" (emphasis added).
175. In order to determine whether the Appellant's request to sanction the FAS under Article 14 DR for racist and discriminatory chants is admissible, the Panel must assess whether the Appellant is "*directly affected*" by the relevant decision.
176. The CAS has generally interpreted the words "*directly affected*" in Article 62 para. 2 of the UEFA Statutes in a restrictive manner. In CAS 2008/A/1583 & 1584, the Panel considered the Article's wording, practical application and legislative history, and held:

*"The wording of Art. 62(2) of the UEFA Statutes does not do much to put the flesh on the bones of the provision either. At most one can see an attempt that not just any effect on the complainant's legal position should suffice in order to justify a right to appeal. Rather the decision taken by the association must directly interfere with the rights of the person. The latter is always the case if the matter concerns the accused or the addressee of the (potential) measure by the association or disciplinary measure. However, the wording of Art. 62(2) of the UEFA Statutes does not exclude the possibility that a third party can also be a party, i.e. a person against whom the measure taken by the association is not directly aimed; for the provision refers to the actual state of being affected, not to whether someone is formally the addressee of the measure or not.*

[...]

*Where the third party is affected because he is a competitor of the addressee of the measure/decision taken by the association, – unless otherwise provided by the*

*association's rules and regulations – the third party does not have a right of appeal. Effects that ensue only from competition are only indirect consequences of the association's decision/measure. If, however, the association disposes in its measure/decision not only of the rights of the addressee, but also of those of the third party, the latter is directly affected with the consequence that the third party then also has a right of appeal”.*

177. On this approach it is clear that Article 62 para. 2 of the UEFA Statutes permits a party to appeal under two circumstances. The first is if the party is the addressee of the measure imposed by UEFA. The second is if the party, even though it is a third party, i.e. not the addressee of a measure, is “directly affected” by the measure imposed by UEFA as opposed to “indirectly affected” by it, the latter encompassing the situation in which a third party is only affected due to its status as a competitor of the addressee of the measure taken by UEFA.
178. The Panel considers this approach to be correct. If one applies this test to the present case, the Appellant is not “*directly affected*”.
179. First, the Appellant is not the direct addressee of the CEDB Serbia Decision. Indeed, while it was the FAA’s complaint filed on 20 October 2014 that led the UEFA Ethics and Disciplinary Inspector to bring charges against the FAS for racist and discriminatory chants, the addressee of the CEDB Serbia Decision was only the FAS.
180. Nor is the Appellant the direct addressee of the limb of the Appealed Decision corresponding to the CEDB Serbia Decision’s dismissal of Article 14 DR charges. To be sure, the Appellant’s appeal was eventually heard together with the FAS’ appeal of the CEDB Serbia Decision in a single proceeding before the UEFA Appeals Body and a single decision was issued. However, the specific claims and sanctions remained independent in the Appealed Decision and were dealt with by decisions addressed separately to each of the Parties. In this way the addressee of the dismissal of Article 14 DR charges continued to be exclusively the FAS.
181. Second, the Appellant is not “directly affected” by the measures that may have been reasonably applicable for an infringement of Article 14 DR (see *supra* at para. 49). In this respect, taking into consideration that this would have been the first violation of Article 14 DR committed by the FAS, the Panel is of the opinion that, under Article 14 paras. 2 and 3 DR, the appropriate punishment would have been within the range between the sanction provided for a first offence (“*a minimum of a partial stadium closure*”) and the sanction applicable for a second offence (“*one match played behind closed doors and a fine of € 50,000*”) with no room for additional disciplinary measures under Article 14 para. 4 DR (which in the Panel’s view would not be appropriate for a first offense, absent any evidence of truly extraordinary circumstances). The Panel observes that a sanction ranging between a partial stadium closure and a match behind

closed doors and a fine would not have given any advantage to the Appellant. In fact, paradoxically, it might have even been detrimental to the Appellant (as a match behind closed doors could benefit one of the Appellant's competitors, which would have the opportunity to play in Serbia without any Serbian spectators present).

182. Moreover, the Panel finds that the Appellant is also not directly affected as the "victim" of the racist and discriminatory chants, at least in the sense of the established case law. According to CAS 2008/A/1583 & 1584, this could only be envisaged if the UEFA rules provided a specific right for a victim to appeal, which they do not. Indeed Article 62 para. 2 of the UEFA Statutes links the "directly affected" requirement to the disciplinary decision and not to the conduct giving rise to the disciplinary proceedings ("*directly affected by a decision*", emphasis added). Without such a right, the mere fact that an individual is a victim does not as such establish a standing to appeal a sanction imposed on the offender. Such an interpretation would have far-reaching consequences and could lead to the possibility of appeals from a potentially very large group of persons. Under such an interpretation, for instance, any player who is injured by a dangerous tackle or is bitten by another player would be able to appeal if he were unhappy with the sanction imposed on the offender.
183. The Panel also rejects the Appellant's argument to the effect that, from a procedural point of view, the consolidation of both appeals into a single proceeding before the UEFA Appeals Body and the fact that a single decision was issued, in view of the CAS' *de novo* power of review, means that the FAA has the right to appeal all aspects of the Appealed Decision, including all the factual and legal elements of the Article 14 DR charges against the FAS. As previously noted, despite the consolidation of both appeals into a single hearing and a single decision, the specific claims and sanctions remained independent in the Appealed Decision and were addressed separately to each of the Parties.
184. Finally, the Panel does not agree with the Appellant's argument that its appeal should be admitted as a matter of principle, because a *reformatio in peius* of the sanction would not be possible whenever, in a case such as this, the UEFA Ethics and Disciplinary Inspector wrongly refrains from exercising his or her right under Article 25 para. 3(b) DR to lodge an appeal against too lenient a decision of the CEDB. The Panel finds that such a procedural situation is not inappropriate, as it is commonplace in other sporting matters, for instance in relation to doping, where the competitors of the accused athlete have no standing to appeal to the CAS against an excessively lenient decision and can only hope that the WADA or the relevant anti-doping organization do appeal such decision.

185. In light of the foregoing, the Panel finds that the Appellant lacks standing to appeal the limb of the Appealed Decision linked to the CEDB Serbia Decision's dismissal of Article 14 DR charges and to request the Panel to impose sanctions on the FAS pursuant to Article 14 DR for racist and discriminatory chants. As a result, the Panel dismisses that part of the Appellant's appeal in its entirety for lack of standing.
186. Due to the Appellant's lack of standing to appeal, the Panel may not review this limb of the Appealed Decision. However, as set out below, the chants from the Serbian supporters appear to be relevant in relation to the assessment of the issue of responsibility for the Match not being continued (see *infra* at paras. 242-243).

### **XI.3 The drone and illicit banner incident**

187. Articles 8 DR and 16 DR provide that national associations and clubs are strictly liable for the misbehaviour of their supporters. The Appellant does not dispute the legitimacy under Swiss law or any other law of such strict liability provisions (nor does the Intervening Party). Indeed, CAS jurisprudence has already attested to the lawfulness of such rules under Swiss law (see CAS 2013/A/3094 and the awards addressed therein), taking into account the principle that strict liability for the behaviour of supporters is a fundamental element of the current football regulatory framework. It is also one of the few legal tools available to football authorities to deter hooliganism and other improper conduct on the part of supporters (the Panel notes that strict liability is widely used by many legal systems to deter activity that is seen as being particularly harmful to social values and interests in circumstances in which it would be very difficult to prove the negligence of the responsible party).
188. What the Appellant does challenge is the UEFA Appeals Body's conclusion that it was comfortably satisfied that the drone carrying the Albanian nationalistic banner was controlled by an Albanian supporter. In brief, the Appellant claims that there is no evidence to support such a finding, that there is no minimum connection between the FAA and the unknown operator of the drone, and that the UEFA regulations do not contain any presumption allowing for the identification of the offender simply based on the nature of the offence (the Appellant notes that even if there was such a presumption, it could not operate here due to the circumstances of the case, i.e. that no Albanian fans were in the stadium, the police searched the Albanian delegation for the drone's operating device to no avail, and there is no proof Albanian fans were in the vicinity).
189. According to CAS jurisprudence, the term "*supporter*" is an open concept that is intentionally undefined. It must be assessed from the perspective of a reasonable and objective observer.
190. In CAS 2007/A/1217 the Panel held:

*“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’. ... 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.”*

191. Furthermore, the CAS has confirmed that it is not necessary for supporters to be in the stadium, or to be in sight. An association or a club becomes responsible for its supporters’ misbehaviours so long as the incident takes place at a match, even if the supporters are not present within the stadium:

*“the Panel turns its attention to the meaning of the expression ‘at a match’ in Article 6(1) of the UEFA DR and finds that this expression does not limit the Club’s liability for misconduct of their supporters to the inner bounds of the stadium. The Panel finds that the notion ‘at a match’, incorporates misconduct of supporters that could influence the smooth running of the match involved.*

*The Panel observes that although the perpetrators launched the fireworks from outside the stadium, three of them landed inside the stadium and therefore had a direct negative impact on the course or smooth running of the match, which becomes apparent because the referee felt obliged to shortly interrupt the game” (CAS 2013/A/3139).*

192. In that case, the CAS panel held the club was liable because it was convinced, in the eyes of a reasonable and objective observer and on the basis of the facts in that case, that the unseen and unknown perpetrators who launched the fireworks had to be considered as supporters of the club.
193. 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”*.
194. The Panel adheres to the considerations of the aforementioned CAS jurisprudence. It considers that the main issue in this matter is to assess whether the drone carrying the *“Greater Albania”* banner with various Albanian nationalistic symbols, which

undoubtedly influenced the smooth running of the Match, is to be considered as having been prepared and operated by one or more supporters of the Albanian side, in the eyes of a reasonable and objective observer. The Panel is bound to recognise that no conclusive evidence has been put before it to attribute the use of the drone to any identified Albanian supporter. It notes, however, that: (i) within the stadium there were about one hundred people linked to and authorized by the FAA (see *supra* at para. 7); (ii) the remote control used to operate such a drone is a small device which is easily hidden; (iii) after the abandonment of the Match the Serbian police searched the FAA's delegation and the dressing rooms but it did not frisk, according to the evidence before the Panel, the whole group of Albanians present in the stands; and (iv) the drone could equally have been controlled by an Albanian supporter outside the stadium.

195. The majority of the Panel holds that a reasonable and objective observer would conclude that a drone carrying a banner depicting Albanian extremely nationalistic and patriotic symbols was highly likely to be operated by one or more Albanian supporters inside or outside the stadium. Such an observer would take account of the following elements: the nature of the symbols and words depicted on the banner; the fact that the Albanian players reacted protectively towards the banner; and the fact that the banner gave rise to strongly negative feelings on the part of the Serbian players, staff and spectators in the stadium. Even if the supposed identification of the drone operator as an Albanian living in Italy (as contended by the Intervening Party, *supra* at para. 143) is not backed by persuasive evidence, the majority of the Panel considers that the support for the drone and banner incident shown by Albanians in social media tends to confirm the conclusion that such incident is to be attributed to Albanian supporters.
196. The majority of the Panel recognises that the attribution of the deployment of the drone and banner to Albanian supporters is based on a presumptive approach; however, the Panel notes that, as acknowledged in the Appellant's submissions, Swiss law accepts the resort to such an approach, as long as it is based on reasonable and objective criteria and is rebuttable by the other party. In this connection, the Panel notes that, as can be seen in several CAS cases related to supporters' misbehaviour (see e.g. CAS 2002/A/423, CAS 2007/A/1217, CAS 2013/A/3094, CAS 2013/A/3139), in most instances unruly spectators are not personally identified and a presumptive approach is used to determine whether an individual is considered to be a supporter of a given team, based on the perception of a reasonable and objective observer. This presumptive approach is based on a twofold rationale: (i) that most persons supporting a football team would consider it to be inappropriate (and even shameful and unbearable) to display in public the symbols of, or to show in any other manner support for and allegiance to, the opposing team (all the more so if there is animosity between the supporters of the two teams); and (ii) that practical reasons require that unruly

supporters' behaviour at football matches is to be attributed on the basis of reasonable and objective criteria to a given team, without the need to individually identify the perpetrators. Indeed, the attribution of supporters' misconduct to either team typically arises from symbols supporting a certain team worn or held by one or more individuals (shirts, hats, etc.), by the nature of the chants or slogans voiced by some spectators, by the location of the relevant individuals within the stadium, or, as is the case here, by the parading of a banner showing symbols and words clearly supporting one of the competing sides. The majority of the Panel considers all these elements to be reasonable and objective criteria. Per se, there is rarely absolute factual certainty as to whether the offender is a *true* supporter of the club or someone disguised as such. Under such approach, it is for the association or club being charged by UEFA to rebut such a presumptive attribution by providing evidence to the contrary. Otherwise, short of identifying and apprehending each time the responsible individuals and obtaining a confession or other compelling evidence about the side they support, it would be practically impossible for UEFA (or other sports organizations) to impose strict liability sanctions for supporters' misbehaviour.

197. On the facts before the Panel, the majority of the Panel considers that it is objectively reasonable to proceed on the basis that the drone carrying Albanian extremely nationalistic words and symbols was operated by an Albanian supporter. That conclusion could in principle be rebutted by the Appellant, but it has not been so rebutted. The Appellant has not submitted any evidence that would indicate the possible involvement of Serbian supporters for the drone incident, or developed any plausible theory (based on evidence) to suggest why any supporters other than Albanian supporters might have had an interest in operating the drone. The majority of the Panel deems it to be highly unlikely, in the absence of any supporting evidence, that some Serbian supporter(s) might have controlled the drone carrying a banner with Albanian extremely nationalistic words and symbols. It is difficult to see why a Serbian supporter would have seen benefit in seeking to cause a foreseeably chaotic situation among the home fans, and one which would more likely than not have exposed the Serbian side to sanctions, including the possible forfeiture of the Match.
198. It is also not conclusive, in the majority of the Panel's view, that the Albanian supporter(s) who might have operated the drone could not be observed or identified. In this respect, the Panel notes the following: First, the CAS has already dealt with a similar situation in CAS 2013/A/3139, where flares were launched from outside the stadium and parachuted on the field of play, and did not attribute any relevance to the fact that the perpetrators could not be seen. Second, and decisively, very often misbehaving supporters may not be individually identified even when they are inside



the stadium (as they may hide behind others, or cover their faces with scarves, bandannas or masks).

199. In light of the foregoing, the majority of the Panel is comfortably satisfied that the drone carrying the illicit banner was controlled by one or more Albanian supporters. This gives rise to the responsibility of the Appellant.
200. Having determined that the Appellant is responsible for the drone and illicit banner, the Panel must address whether the fine UEFA imposed on the Appellant for such violation of Article 16(e) DR is evidently and grossly disproportionate so that it must be reduced. To do so, the Panel must consider the relevant legal framework.
201. In this respect, the Panel notes that the CEDB and UEFA Appeals Body have full discretionary power when it comes to imposing a sanction. They must, however, in determining the disciplinary measure to be imposed, consider the objective and subjective elements of an offence, and take into account the aggravating and mitigating circumstances (see Article 17 DR *supra* at para. 51). The Panel further observes that among the disciplinary measures that may be imposed on member associations for the infringements committed is a fine, which must be within in the range of EUR 100 and EUR 1,000,000 (see Article 6 DR *supra* at para. 47).
202. The Panel also notes that, according to well-established CAS jurisprudence, even though CAS panels retain the full power to review *de novo* the factual and legal aspects involved in a disciplinary dispute, they must exert a degree of restraint in reviewing the level of sanctions imposed by a disciplinary body. Accordingly, CAS panels should reassess sanctions only if they are evidently and grossly disproportionate to the offence:

*“[t]he measure of the sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rule can be reviewed only when the sanction is evidently and grossly disproportionate to the offence” (CAS 2012/A/2762; CAS 2013/A/3139; CAS 2009/A/811-844).*

203. Further, the CAS has held as follows:

*“Far from excluding, or limiting, the power of a CAS panel to review the facts and the law involved in the dispute heard (pursuant to Article R57 of the Code), such indication only means that a CAS panel “would not easily ‘tinker’ with a well-reasoned sanction [...]”. Therefore, a panel “would naturally ... pay respect to a fully reasoned and well-evidenced decision ... in pursuit of a legitimate and explicit policy”. In other words, this Panel does not consider warranted, nor proper, to interfere with the Decision, to slightly adjust it” (CAS 2011/A/2645, with reference to CAS 2011/A/2518 and CAS 2010/A/2283, citations omitted).*

204. The UEFA Appeals Body concluded that the EUR 100,000 fine was legitimate and proportionate due to “*the sophisticated method used to display the illicit banner... since it is extremely difficult, if not impossible to prevent such an intrusion*” and as a way “*to discourage other supporters from using similar methods*”.
205. The majority of the Panel agrees with the UEFA Appeals Body’s reasoning, and with the fine of EUR 100,000, even if it appears quite severe when compared to the fine imposed for other incidents involving political banners and/or disrupting the match. The majority of the Panel notes, in particular, (i) the fine of EUR 10,000 the UEFA Appeals Body imposed in the 2013/2014 UEFA Champions League match between Arsenal and Bayern Munich for a banner reading “*Say no to racism say yes to Kosovo*”, and (ii) the fine of EUR 7,500 the UEFA Appeals Body imposed in the 2012/2013 UEFA Champions League match between Valletta FC and FK Partizan for four Serbian supporters climbing over the stadium wall, invading the stadium and showing a political banner, which interrupted the match for two minutes (see *supra* at para. 115).
206. Notwithstanding, the majority of the Panel is not prepared to reduce the fine, as it considers that the appearance of the drone carrying the banner disrupted the Match in a serious manner, and contributed to the totality of the circumstances that caused the Match Referee to prolong a Match stoppage that had already been initiated for other reasons (flares landing on the field in the 41<sup>st</sup> minute of the Match). The operation of the drone, with the apparent attempt to reduce its height and bring it closer to the ground, appears to have contributed to further unrest in the stands and, thereafter, a brawl between Albanian and Serbian players. These events were further disruptive of the Match, and would most likely have been so even if there had not been a field invasion by Serbian supporters. More generally, the majority of the Panel considers that the use of a drone in such circumstances constitutes a new and a very serious threat for the security of a football match, much more serious than a banner shown or hung within the stadium’s stands and which can be easily removed. The majority of the Panel thus holds that it is not evidently and grossly disproportionate to maintain the fine of EUR 100’000 imposed for the Appellant’s violation of Article 16(e) DR.

#### ***XI.4 The abandonment of the Match***

207. The Panel first turns its attention to the legal framework found in the Regulations of the UEFA European Football Championship 2014-2016 (the “CR”) and the UEFA Disciplinary Regulations (2014 Edition) (the “DR”) regarding a refusal to play and responsibility for a match not being played in full (see *supra* at paras. 46 and 52). The Panel observes the following.
208. According to Article 27.01 CR: “*If an association refuses to play or is responsible for a match not taking place or not being played in full, the UEFA Control and Disciplinary*

*Body takes a decision in the matter*” (emphasis added). Pursuant to Article 21 DR, which covers forfeits, *“If a match cannot take place or cannot be played in full, the member association [...] responsible forfeits the match”* (emphasis added). Article 21 para. 4(a) DR proceeds to define the consequences of a match being declared forfeit: *“the team forfeiting the match is deemed to have lost 3-0, unless the actual result is less favourable to the member association [...] at fault, in which case that result stands”* (emphasis added).

209. The Panel observes that, these UEFA provisions regulate two situations which can occur either prior to a match beginning (*“match not taking place”*) or once the match has started (*“match not being played in full”*), in circumstances in which a national association either (i) refuses to play, or (ii) is responsible for a match not being played or being played only in part. In the Panel’s view, this means that if no refusal to play can be established, the relevant question to be decided is which association may be said to be “responsible” for the match not being completed. The Panel also observes that neither UEFA provision offers details regarding the circumstances in which an association will be “responsible”, and that no assistance is to be found in other parts of these or other UEFA Regulations.
210. With regard to the disciplinary consequences, at the hearing the Parties addressed the question of whether these UEFA Regulations require responsibility to be attributed only to one association, and whether, as a consequence of such an approach, the application of a 0:3 loss will be the necessary consequence for either team when a match is not completed (the “flipping of a coin” scenario evoked by the Respondent). The alternative possibility is of a joint responsibility being envisaged in certain circumstances, with the consequence that the adjudicatory body might have discretion under Swiss law to devise a different solution, depending on the facts of the case (see *supra* at para. 91). The Panel is of the view that, in principle, there may be situations where a shared responsibility should be attributed to both clubs or associations and that, were such the case, the adjudicatory body might have a discretion under Swiss law in interpreting and applying the UEFA rules so as to devise a fair and reasonable solution to a specific case (for example, a 0-0 result or a match replay with or without spectators). However, for the reasons set out below (see *infra* at para. 239 *et seq.*), the Panel is of the opinion that the point does not arise in the present case, where the responsibility for the match not being played in full is to be attributed to one national association.
211. Also of great importance, particularly in determining whether a refusal to play occurred, is Law 5 LG (see *supra* at para. 45), which, *inter alia*, stipulates that the referee has the power and duty to stop, suspend or abandon the match, at his discretion, for any infringement of the Laws of the Game or because of outside interference of any kind. In addition, he has the power and duty to *“indicate[] the restart of the match after it has*

*been stopped*". The FIFA document setting forth the official "Interpretation of the Laws of the Game and Guidelines for Referees" clarifies, with reference to Law 5, that if an object thrown by a spectator hits a member of the refereeing crew, a player or a team official, "*the referee may allow the match to continue, suspend play or abandon the match depending on the severity of the incident*".

212. In reading Law 5 LG (which is not contradicted by the UEFA rules, quoted *supra* at paras. 46-57), the following is clear to the Panel: (i) only the referee has the duty and power to decide that a suspended match must be restarted or abandoned; (ii) the referee, and only the referee, must clearly indicate that a suspended match must be restarted; (iii) such indication must take the form of a direct – in the sense of coming personally from the referee and being addressed directly to the players – and unconditional order to the concerned players, exactly as any other decision that the referee must take "*regarding facts connected with play*" (penultimate paragraph of Law 5 LG).
213. In this connection, the Panel notes the considerable protection afforded to referees' field-of-play decisions, as reflected in long-established CAS jurisprudence. Thus, the CAS will not review a field-of-play decision unless there is persuasive evidence that there has been arbitrariness or bad faith in arriving at such decision, even when that decision is recognized as being wrong, with the benefit of hindsight (see, *inter alia*, CAS 2004/A/704, CAS 2001/A/354 & 355, CAS OG 12/010, CAS OG 02/007, and CAS OG 00/013). In these circumstances, given that a decision adopted by a football referee regarding facts connected with play is entitled to a significant degree of protection, the Panel considers that, in order to retain that protection, a decision must be precise and free from ambiguity in the perception of the concerned athletes or teams. Thus, for an order taken by a referee to have consequences, and for it to be protected, it must be direct, clear and unconditional. The Panel notes that this approach is analogous to the consistent CAS jurisprudence pursuant to which rules and regulations of a sports organization must be clear and precise if binding upon athletes or teams (cf. e.g. CAS 2006/A/1164, CAS 2007/A/1377, CAS 2007/A/1437, and CAS 2014/A/3832 & 3833).
214. Therefore, in the view of the Panel, for an association to be sanctioned with a 0:3 forfeit for its refusal to play after an interruption of the match, it is necessary for there to have been a direct, clear and unconditional order by the referee to the players to play. The application of this point is addressed in the following sub-section.

**a) *Refusal to play***

215. The Panel observes that in both the Appealed Decision and the CEDB Albania Decision, the awarding of a forfeit against the FAA was based on the Appellant's purported refusal to play. In this regard, the Panel is bound to express its concern as to the manner in which UEFA appears to have managed the situation it faced. On the

evidence before it, the Panel concludes that it does not agree with the UEFA disciplinary bodies' findings: it is not comfortably satisfied that the Appellant received from the Match Referee a clear, direct and unconditional order that it should continue to play in circumstances in which the Match Referee had determined (and represented to the Appellant's players) that he was satisfied that safety on the field of play had been fully assured such that the Match could resume.

216. With regard to UEFA's management of the situation, the Panel first notes that the evidence before it indicates that the UEFA officers at the UEFA Match Centre in Switzerland appear to have been keen to restart the Match. It may be that, not being present at the stadium, they may have underestimated the gravity of the situation and the perception of dangers felt by Albanian players and staff, as well as by Match officials. The Panel has noted the testimony of the Match Referee who declared that his "*recollection of the phone calls [with the UEFA Match Centre] was very much that we needed to try to get the game resumed. They wanted to try to play the game. We needed to. But we had to make sure that everything was safe before we did this. [...] once the security was ensured then yeah, we were encouraged to try to play the game*" (emphasis added). The Panel has also had regard to the testimony of the other UEFA officers offered at the UEFA Hearing (see *supra* at paras. 26).
217. Second, the Panel notes the apparent lack of clarity as to the division of powers and responsibilities between the Match Referee, the UEFA Match Delegate and the UEFA Security Officer. This is particularly so with regard to the question of whose responsibility it ultimately was to decide whether or not the Match could continue. The evidence before the Panel indicates that the three officials testified differently on this point. The Match Referee testified at the UEFA Hearing that he "*liaised with the UEFA security officer*" and that, while his role was "*to make sure that the pitch and the players are safe*", it was the UEFA Security Officer's role "*to ensure that the stadium and the safety is correct... and to ensure that [the Match] can continue [and to] say that it is safe to take the players out*", and that "*the UEFA delegate and the security officer are obviously [...] there to ensure the safety of the stadium, and the spectators*". The UEFA Security Officer, on the other hand, testified that his role as a security officer during a game was to "*just advise the [Match] delegate*", that he does not advise the Match Referee, and that "*the [Match] delegate is always there with the referee and I'm just there to assist the delegate in his approach for this high risk match*". In sharp contrast, the UEFA Match Delegate testified that "*the [Match] delegate has no security responsibility. The only thing he can do is advise the security people*", but also that he and the Match Referee "*agreed that [they] could continue to play under the circumstances*" and that he did not "*recall whether Mr. Egbers [the UEFA Security Officer] made a judgement to restart the match*".

218. The Panel considers that it would have been helpful if (i) the UEFA Match Centre had been more prudent and more deferent to the Match officials in the evaluation of the situation, and (ii) there had been greater clarity as to the respective roles of the Match Referee, the UEFA Match Delegate and the UEFA Security Officer, and the division of responsibilities. What is needed is a readily identifiable and clear chain of command and decision-making to deal with the situation that was faced in this match.
219. Third, the Panel has been unable to ascertain to its comfortable satisfaction, on the basis of the official reports and the testimony of the Match Referee, the UEFA Match Delegate and the UEFA Security Officer, that the Match Referee – the only official having the power and duty to decide the resumption of the Match – took a clear, definite and unconditional decision that safety had been assured so that the Match could resume. As addressed *infra* at paras. 226 *et seq.*, no clear order appears to have been given to either team to that effect. Rather, the evidence does no more than establish that there existed a general desire and intention (or perhaps a hope) that the Match could be restarted if security was ensured.
220. In this regard, the Panel notes that:
- The Match Referee’s official report (see *supra* at para. 39) stated that “*it became obvious that we would try and continue to play the remaining time due for the first half*”. Subsequently, at the UEFA Hearing the Match Referee testified that “*I think the final decision is between myself and the [UEFA] match delegate as to the final decision of the game will not continue*”; later, after Counsel for the FAS asked him whether the UEFA Match Delegate had taken a decision to continue the match he answered with some ambiguity, that “*We tried to continue the game, yeah. We left as long as we possibly could to try to get the game played. Unfortunately, it didn’t commence*”. The Match Referee also testified that “*both teams were told that they must return to the field of play and continue the game once safety was ensured*”;
  - The UEFA Match Delegate’s official match report declared that “*We of course had contact with UEFA and had the intention to restart the match again for the remaining 4 (+2) minutes in the first half. Serbia was willing to, the security officials agreed but the Albanian team was not ok*”. He subsequently confirmed this declaration at the UEFA Hearing, and testified that he “*didn’t ask the players to continue, as of yet*” and that they “*just had the general intention is to continue to play*” and that “*the decision was not to restart the match so it was not – we didn’t have to check whether the safety security was ok.*”
  - On his part, when asked whether it was possible to continue the Match, the UEFA Security Officer testified at the UEFA Hearing, “*Yes, but it was never a real decision because the captain really told us it doesn’t matter what you decide*” (emphasis added).

221. Fourth, the Panel notes that various steps taken by the Match Referee and UEFA officials during the Match stoppage were not entirely clear and logical. The first step that was taken, apparently based on the encouragement from the UEFA Match Centre, was to declare a general but conditional intention to restart the Match, once security was ensured. However, on the basis of the evidence before the Panel it appears that this step was taken without offering the Albanian national team any clarity as to the basis on which it could be determined that safety would be assured (having regard in particular to the fact that a safety steward had joined in the attack on the Albanian players).
222. A second step the Match Referee and the UEFA Match Delegate took was to ask both national teams what they thought about the intention to restart the Match. The Panel does not find to its comfortable satisfaction, however, that at this stage any definitive assessment of the security situation had taken place (the Panel also notes that there is no evidence before it to indicate that any such definitive assessment occurred at a later stage either). While the Match Referee testified that the UEFA Security Officer told him that it was safe to resume the Match, the Panel notes that (i) no official report makes any mention of such an assessment having taken place; and (ii) a preponderance of the testimony at the UEFA Hearing indicated that a definite security assessment was not actually done by the UEFA officials and would only take place if the Albanian players were willing to continue playing the Match. The Panel notes the following testimonies of the UEFA Hearing:
- The UEFA Match Delegate testified (emphasis added):
    - (i) (when asked who were the security officials who had determined that the match could continue) that he could not *“recall whether Mr. Egbers [the UEFA Security Officer] made a judgment to restart the match. It was actually the security responsible from the Serbian FA and I think the stadium manager. I’m not completely sure about that”* and that the FAS security officials *“gave the assurance that everything was under control and that they thought the match could be restarted”*;
    - (ii) *“We discussed with the players that our intention was to continue to play. And then they refused to continue to play. If they would have said yes, then the next step would have been that we would go out and convince ourselves that the circumstances would be good enough to continue to play”*; and
    - (iii) *“Well, to be honest, the decision was not to restart the match so it was not – we didn’t have to check whether the safety security was okay. The match was stopped because the Albanian players didn’t want to play again. So, it was if they would’ve said yes, the Albanian players, then we would have to check of course ourselves. Also, make a judgment on the security situation. We didn’t come that far because the Albanian players said no.”*
  - The UEFA Security Officer only went as far as to testify that based on his security assessment his professional opinion was that “[security officials] could

*make it safe*"; but he clarified, "there was never a discussion, shall we go back again because the Albanian captain always thought, as signing that in a declaration, that he won't go back again" (emphasis added).

223. As such, the Panel considers that no definitive assessment of the security situation seems to have been undertaken. Nor is there any evidence before the Panel to indicate that the concerns of the Albanian players as to security had been fully addressed, or that security had been ensured and could continue to be ensured. Rather, the evidence by the testimony of the Match Referee indicates no more than that "*both teams were told that they must return to the field of play and continue the game once safety was ensured*" (emphasis added). This was confirmed by the UEFA Match Delegate at the UEFA hearing when he stated that "*If [the Albanian national team] had said yes [to continuing the match], then the next step would have been that we would go out and convince ourselves that the circumstances would be good enough to continue to play*" (emphasis added).
224. The Panel considers that what was needed before any other step was a clear and definitive view to be taken as to whether safety had been assured. In the absence of such a view, there could be no reasonable basis for the UEFA officials to seek the opinion of the teams about the possibility of restarting the Match, certainly not without giving them the benefit of a clear and definitive assessment of the security situation.
225. In sum, the Panel is concerned that UEFA did not provide clarity and did not follow a logical or sensible order as to the steps that should have been taken in order to be able to determine whether the Match could continue.
226. Turning to the issue of whether the Albanian national team refused to play, based on the evidence in the record, and in particular the testimonies made at this CAS proceeding and at the UEFA Appeals Body hearing of 2 December 2014, the Panel finds to its comfortable satisfaction that the referee did not clearly, directly and unconditionally order the players to return to the field and continue to play the Match. As such, in the view of the Panel there cannot have been a refusal to play under the meaning of Article 27.01 CR.
227. In this respect, the Panel places considerable weight on the testimony of the Match Referee given to the UEFA Appeals Body (no party summoned him to give evidence before this Panel). The Panel treats as significant the following testimony, which was offered on the record :

UEFA Judge Eilers: *I would like to continue on the last question, and that was if you gave both teams, and in particular the Albanian team and captain clear instructions on the order to continue the game. That the game must be continued. Or-this is in dispute, this is why I have to ask about this again. Did*



*you only communicate to them that you were going to attempt to continue the game?*

Match Referee: *No, both teams were told that the game was to be played. We must go out and continue the game. There was no debate. This was, we will go out and continue the game. The Albanians refused.*

UEFA Judge Eilers: *So, there was an immediate order from you to the Albanian team, to the Albanian captain, your team must continue?*

Match Referee: *Both teams were told they must go out and continue the game once we ensured the safety.*

UEFA Judge Eilers: *So, the Serbian team followed your proposal and the Albanian team did not. Now, the Albanian team is saying that there was no clear instruction from your side to continue the match. This is an important point.*

Match Referee: *Both teams were told that they must return to the field of play and continue the game once the safety was ensured.*

[...]

FAA Counsel: *Yeah, and then when he says we are not going back, do you say sorry but you have to go? That's what I think what was the question. And I'm not sure that you really answered that because your answers was yes, I ordered to resume the game, and then your words were once the safety is ensured. If that's the order you gave, it's a conditional order to the players.*

Match Referee: *Both teams, both captains were aware that they had to go back out and continue the game (emphasis added).*

228. The Panel has read this testimony with great care, and also listened to the audio recording. The Panel notes that the Match Referee is a native English speaker and a highly experienced referee, and that he appears to have chosen his words with very great care. He was asked directly whether *he* personally ordered the teams to continue the Match. The Panel notes that he did not say that he so ordered. Rather, he repeatedly offered an answer in the passive tense, and in a manner that indicates that a person other than him may have issued an instruction, or perhaps a suggestion. He told the UEFA Appeals Body that both “*teams were told that they must return to the field of play and continue the game once the safety was ensured” (emphasis added). Three points may be noted with respect to the formulation of his words: first, he does not state that he told the teams they must return; second, the formulation chosen is not of an order being given; and third, such direction as was given was conditional on safety being “ensured”. There is no evidence before the Panel that the Match Referee ever told the teams that safety had been ensured.*
229. The Panel proceeds on the basis that the words used by the Match Referee were not chosen unintentionally, and that their ambiguity reflected the circumstances in which he

found himself. The Match Referee's conscious and repeated use of the passive tense points to the fact that someone other than him (the UEFA Match Delegate, the UEFA Security Officer) may have told the teams to go back on the field, but that he never did so, at least not in clear and direct terms that amounted to an order. The Panel is, thus, unable to conclude that it has been furnished with clear proof, to its comfortable satisfaction, that the Match Referee clearly, directly and unconditionally ordered the Albanian players to restart the Match.

230. Having read the Match Referee's report and having listened to his testimony, the Panel is persuaded that he may have been reluctant to restart the match in circumstances in which reasonable doubts persisted as to whether safety had been ensured, and would continue to be ensured. The Panel considers that such an approach is entirely reasonable, on the basis of the evidence before it as to the circumstances that pertained at the time: given the outburst of violence by Serbian supporters, and even by one of the stewards whose job was to ensure safety, that had been seen on the playing field just a few minutes earlier, it was not unreasonable in the view of the Panel for the Match Referee to have adopted the more ambiguous approach he chose, and not to have directly, clearly and unconditionally ordered the restart of the Match.
231. Such an approach is made all the more reasonable by reference to the events that had come before – the constant abusive, menacing and racist chanting; the throwing of dangerous objects; the massive field invasion; and the physical attacks on the Albanian players, which appear to have been of a severe nature, giving rise to the reasonable apprehension on the part of the Albanian players and staff, and of the refereeing crew, that they continued to be at risk of further harm. In fact, those supporters that invaded the field and attacked the Albanian players could have been armed with dangerous objects, such as a switchblade, that could have inflicted permanent injury, or even worse, to one or more of the Albanian players or to a member of the refereeing crew. This is far from an implausible scenario; as the Intervening Party has admitted, while body searches were conducted at the entrance of the stadium, some dangerous and prohibited objects could have been sneaked into the stadium without much difficulty.
232. This Panel's finding is bolstered by the fact that there is no other convincing evidence on the record to support the conclusion that the Match Referee clearly, directly and unconditionally ordered the teams that they must continue the Match.
233. Mr. Been, Mr. Egbers, Mr. Mirkov and Mr. Scott did not so testify at the UEFA Hearing.
234. The Match Delegate Mr. Been, for instance, testified, *inter alia*, that:

UEFA Ethics and Disciplinary Inspector (Mr. Miguel Liétard): *Hi, Mr. Been, I just have two quick, or maybe just one quick question. Just if you can tell me if*

*when you were in the dressing room with a meeting with referees, security officials, the team captains and officials, are you aware of the referee telling the captains of the team that play would continue?*

UEFA Match Delegate: *Yes, the-we discussed. Sorry. We discussed with both captains what to do, and we made clear that our intention was to continue to play. But Mr. Cana, the captain of Albania made it clear from the beginning on that there was no way that his team would continue to play.*

[...]

UEFA Judge Eilers: *But how are you able to instruct players to continue playing without being sure that security was guaranteed?*

UEFA Match Delegate: *No. That's not the way it went. We discussed with the players that our intention was to continue to play. And then they refused to continue to play. If they would have said yes, then the next step would have been that we would go out and convince ourselves that the circumstances would be good enough to continue to play.*

UEFA Judge Eilers: *I imagine that I am the team captain, and I would want to know what responsibility I would assume if I try and convince my players to go out. I would have to be sure that security is guaranteed. You say security at that point was not guaranteed. At that point when you asked players to continue you are saying the security had not been yet guaranteed -*

UEFA Match Delegate: *I didn't ask the players to continue, as of yet. We just had the general intention is to continue to play. And it was not a matter that the captain asked us whether the circumstances were okay. He had made a judgment of himself and he thought that-and the emotional and the physical circumstances were such that they couldn't continue to play. Even, there was no other question at stake at that very moment" (emphasis added).*

235. The Panel's finding is further supported by the testimony of witnesses who appeared at the CAS hearing on 17 April 2015:

- Mr. Cana testified that the Match Referee only expressed his intention to try and finish the first half once security measures were ensured, and that the Match Referee simply asked Mr. Cana whether his team was prepared to do so. According to Mr. Cana, however, the Match Referee never issued a clear instruction that the Match would restart, never indicated his view that safety had been and would continue to be assured, and did not order the teams to return to the playing field and resume the game.
- Mr. De Biasi testified that at no point did he receive or hear an order from the Match Referee to continue the Match.
- While Mr. Lakovic testified before the Panel that the Match Referee gave clear instructions that the Match would be resumed and that the teams were told to prepare to return to the field, this is contradicted by his witness statement,

where he indicated that the *UEFA Match Delegate* and the *UEFA Security Officer* were the ones who gave said instructions, not the Match Referee. When questioned by the Panel on this apparent discrepancy, Mr. Lakovic failed to give an adequate explanation.

- Mr. Ivanovic did not give clear testimony that the Match Referee personally and unconditionally ordered the Albanian side to continue the Match (see *supra* at para. 153).

236. Finally, the Panel's conclusion is also supported by contemporaneous evidence, namely the declaration signed by Mr. Cana in the dressing rooms during the forced stoppage of the game (see *supra* at para. 30). Nowhere in this statement is there any indication that Mr. Cana was given by the Match Referee a clear, direct and unconditional order to bring his team onto the playing field and to resume play, or that he refused such an order coming from the Match Referee. Rather, it seems that Mr. Cana only expressed the view that his team was mentally and physically unable to play due to the totality of incidents that occurred in the course of the game, including those occurring after the 42<sup>nd</sup> minute of the Match.
237. The evidence before the Panel points to the existence of a desire (and perhaps an intention) to be able to restart the Match in the event that safety was – and would continue to be – ensured. In the course of the process of intending to be in a position to be able to restart the Match, the evidence indicates that the Match Referee simply asked the teams whether they were prepared to do so, and possibly indicated his hope that they might be able to do so. Significantly, however, there is no evidence on the record that the Match Referee issued a clear, direct and unconditional order to “*indicate[] the restart of the match after it ha[d] been stopped*”, as stipulated in Law 5 LG. As such, the Panel is unable to conclude that there was a refusal to play on the part of the Albanian side. For there to have been such a refusal, there must first have been an order to continue playing, which should have been clear, should have been directed to the Albanian team, and should have been unconditional (in other words, not dependent upon some future determination as to whether safety had been and would continue to be assured). In the absence of such an order the Panel concludes that there cannot have been a refusal. Accordingly, the Panel concludes that the Appellant cannot be said to have violated Article 27.01 CR.
238. If the Panel had been provided with clear evidence that the Match Referee did in fact directly and unconditionally order the teams to continue to play the Match, which was an order that could only be given by the Match Referee in accordance with Law 5 LG, then it might have concluded that the Appellant had refused to continue to play in circumstances that would give rise to a violation of Article 27.01 CR. However, the record discloses no such evidence, also bearing in mind the CAS jurisprudence mentioned above in para. 213.

**b) Responsibility for Match not being played in full**

239. In these circumstances, the Panel must consider whether, notwithstanding the fact that the evidence does not reveal that the Appellant refused to play following an order issued by the Match Referee that it do so, it might nevertheless be responsible for the Match not being played in full in violation of Article 27 CR. The Panel finds that the Appellant is not so responsible. Rather, the fact that the Match was not played in full was due to the totality of the circumstances that pertained and, in the Panel's view, these are the responsibility not of the Appellant but of the Intervening Party.
240. To be sure, the drone incident and the Albanian players stripping away the banner from Mr. Mitrović were one element that contributed to the chain of events that led to the Match not being played in full. However, in the view of the Panel the incident was neither the principal factor nor a decisive factor.
241. The Panel notes that when the drone incident occurred the Match had already been stopped, in the 42<sup>nd</sup> minute. The match had been stopped because of the unruly behaviour of the fans in the stadium, who had thrown objects at Albanian players and staff before the Match began (see *supra* at para. 8), and continued to do so once it had started (see *supra* at para. 11).
242. The Panel notes too that, as already remarked, throughout the Match there was a continuous chanting by supporters in the stadium, as confirmed by the available video clips of the Match. The chants included "Kill, kill the Albanians" and "Kill and slaughter them [the Albanians] until there are none left". These chants were both offensive and imbued with racist and discriminatory content and, in the view of the Panel, were also deeply menacing.
243. The Panel's findings as to the character of the chants are significant in relation to the findings as to the factors that led the Match to not being played in full. The chants contributed to a threatening and intimidating atmosphere, one in which the feelings of security and safety of the Albanian players were bound to be compromised, particularly in view of what happened after the 42<sup>nd</sup> minute of the Match.
244. The Panel refers to the fact that, without any appreciable resistance from FAS security personnel, (i) at least 15 individuals were able to invade the field and to physically attack the Albanian players aggressively by tackling, kicking and throwing punches (one of these individuals even managing to run all the way near the rim of the centre circle of the field and to hit an Albanian player on the shoulder with a plastic chair), and (ii) Serbian supporters were able to throw objects including coins, bottles and chairs at the Albanian players and even physically attack them aggressively by tackling, kicking and throwing punches as they exited the field. As previously mentioned, these incidents

were of a severe nature, as they posed a very serious threat to the security and health of the Albanian players (see *supra* at para. 230).

245. Moreover, the Panel refers to the fact that (i) the FAS security personnel were lackadaisical in their efforts to remove those Serbian supporters that invaded the field and even those that attacked the Albanian players (e.g. the Serbian fan who after attacking the players at the tunnel was left to calmly sit by the corner flag and Mr. Bogdanov and his posse who walked freely around the field); and (ii) as the Panel has found, following the field invasion, even a security steward attacked an Albanian player. In circumstances in which players are violently attacked by spectators and even by the individuals whose services have been retained to ensure their safety and security, the fears of the Albanian players are entirely reasonable and understandable. Indeed, those menacing chants of thousands of people that professional players are accustomed to ignoring while playing (as stated by the Albanian captain in his oral testimony) acquire a whole different meaning – a very sinister and realistic one – when those same people are able to personally attack them on the field. As the Albanian coach, Mr. De Biasi, testified before the Panel, after what he saw on the pitch he was fearful that Serbian supporters might be able to break into the dressing rooms, using violent means.
246. Accordingly, the Panel finds that the reluctance of the Albanian players to return to the field – in the absence of a direct and clear order from the Match Referee, or a determination that safety had been assured – was understandable and reasonable. In particular, as the Albanian players were the victims of a frightful and shocking assault, the Panel does not view their attitude in the dressing rooms as the event, in terms of causal link, that brought about the abandonment of the match.
247. The Panel also understands why the totality of circumstances – the throwing of dangerous objects, the chanting, and the attacks by Serbian supporters and even a security steward – might have caused the Match Referee to hesitate to conclude that the safety of the players had been ensured and would continue to be ensured.
248. For these reasons, the Panel concludes that the Match stoppage and the eventual Match Referee's abandonment of the Match were proximately caused by the security lapses of the Match organizers and the intolerable and outrageous acts of violence exerted on the Albanian players by the Serbian supporters and by at least one security steward. For these acts the FAS bears the exclusive responsibility in accordance with the UEFA rules. The drone incident certainly did not assist in calming matters down, but in all the circumstances it is these other appalling acts of behaviour which are the significant factors in causing the Match to be abandoned.
249. As such, the Panel holds that the FAS and not the Appellant must be considered as responsible for the Match not being played in full in violation of Article 27.01 CR.

250. This being the case, the Panel must draw the disciplinary consequences of its holding. Under Article R57 of the CAS Code and the related CAS jurisprudence, the Panel has full power to review *de novo* the facts and the law (see, e.g., CAS 2009/A/1880 & 1881, CAS 2009/A/1545; CAS 2008/A/1594) and it “*may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance*”.
251. If UEFA rules provided a range of sanctions for such a disciplinary violation, the Panel would consider the possibility to refer the case back to the UEFA Appeals Body to decide the appropriate sanction to be inflicted to the FAS, so as to allow the FAS to set forth its defence as to the proportionality of the sanction. However, the FAS chose to intervene in these proceedings, and it acknowledged at the hearing that under Article 21 DR the sanction for an association (or club) responsible for the abandonment of a match is automatically a 0:3 forfeit (unless the actual result were less favourable to the faulty association or club). In circumstances in which the FAS intervened in these proceedings, a referral back to the previous instance would serve no purpose, as the FAS would not be in a position to obtain a different sanction for its responsibility in causing the abandonment of the Match. Accordingly, the principle of procedural economy requires this Panel to directly issue a new decision which sets aside and replaces this limb of the Appealed Decision. As a result, the Panel holds that, pursuant to Article 21 DR, it is the FAS which must bear the consequence of a 0:3 forfeit.
252. Moreover, the Panel finds that such a sanction is entirely proportionate, even if it is added to the sanctions that the Appealed Decision already imposed on the FAS (a three-point deduction and a fine of EUR 100,000). In the Panel’s view, the inviolability of the field of play and the protection of the safety of the players from actions of spectators should be fully guaranteed at all times. The Panel feels that the significant gravity of what happened (and of what might have happened in less fortunate circumstances) in the Belgrade stadium – a considerable number of spectators invading the field and violently attacking the visiting team, in the face of indifference on the part of the stewards (and even the support of a few of them) – would justify the imposition of severe sanctions, such as disqualification from the current UEFA competition. Hence, even if the loss of the Match is inflicted on top of the other sanctions, the total punishment still appears to be proportionate. Nor could the FAS invoke to its benefit the double jeopardy principle, because the additional sanction resulting from this award is inflicted on a count (responsibility for the abandonment of the Match) which the Appealed Decision did not attribute to the FAS.
253. In light of the foregoing, the Panel overturns this limb of the Appealed Decision and grants the Match forfeiture of 0:3 in favour of the Appellant. It follows that the issues

the Appellant raised regarding state of necessity and fault are moot and the Panel needs not discuss them.

## **XII. COSTS**

254. Given that this is a disciplinary case of an international nature, pursuant to Articles R65.1 and R65.2 of the CAS Code the proceedings are free of charge, except for the Court Office Fee, which the Appellant has already paid and is retained by the CAS.
255. According to Article R65.3 of the CAS Code: *“Each party shall pay for the costs of its own witnesses, experts and interpreters. In the arbitral award, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and the outcome of the proceedings, as well as the conduct and financial resources of the parties”*.
256. In exercising its discretion with regards to legal fees, the Panel considers that the Appellant’s appeal has been upheld to a significant extent (having regard to the importance in these proceedings of the question of responsibility for the Match not being played in full). It is thus of the view that it is fair and appropriate to hold the Respondent and the Intervening Party responsible for contributing each CHF 10,000 towards the Appellant’s legal fees and other expenses incurred in connection with these proceedings.



**ON THESE GROUNDS**

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

1. The appeal filed on 30 December 2014 by the Football Association of Albania against the decision adopted on 2 December 2014 by the UEFA Appeals Body is partially upheld.
2. The Football Association of Albania's request to impose Article 14 DR sanctions on the Football Association of Serbia is dismissed for lack of standing.
3. The fine of EUR 100,000 imposed on the Football Association of Albania is confirmed.
4. The UEFA Appeals Body's decision of 2 December 2014 that the Football Association of Albania is deemed to have violated Article 27.01 of the Regulations of the European Championship 2014-2016 and Article 21 of the UEFA Disciplinary Regulations (2014 Edition) is set aside.
5. The UEFA 2016 UEFA European Championship qualifying match played between the Serbian and Albanian national teams on 14 October 2014 shall be deemed to have been forfeited by the Football Association of Serbia by the score of 0:3.
6. UEFA and the Football Association of Serbia are ordered to contribute each to the legal fees and expenses incurred by Football Association of Albania in the amount of CHF 10,000 (ten thousand Swiss Francs).
7. All other or further requests or motions submitted by the Parties are dismissed.

Done in Lausanne, 10 July 2015

**THE COURT OF ARBITRATION FOR SPORT**



Massimo Coccia  
President of the Panel