



**Arbitration CAS 2013/A/3047 FC Zenit St. Petersburg v. Russian Football Union (RFU), award of 7 October 2013**

Panel: Mr Patrick Lafranchi (Switzerland), President; Mr José Juan Pinto (Spain); Prof. Ulrich Haas (Germany)

*Football*

*Disciplinary sanctions for improper conduct of supporters*

*Objective scope of the arbitration agreement*

*Request to issue a sanction against a third party*

*Standard of proof*

*Liability of a club for the behaviour of its supporters*

*Interpretation of a provision*

*Security obligations and strict liability*

1. The intention of the parties determines the objective scope of an arbitration clause. In cases of doubt about the actual intention of the parties, it is presumed that a competent arbitral tribunal should judge about all pending disputes between the parties. In other words, an arbitration clause has to be interpreted widely once its validity is established. This interpretation results from the principle of procedural efficiency.
2. Whether or not the appellant is entitled to request from the adjudicating authority to issue a sanction against a third party is not an issue of jurisdiction, but a question relating to the principle of standing to sue or to be sued. The latter is a matter of substantive law. In case the applicable rules contain a provision granting the appellant such a right, the claim has to be directed not only against the adjudicating authority, but also against the third party. If the appellant has filed its claims solely against the adjudicating authority, the latter has no standing to be sued and the claim shall be dismissed.
3. According to well established CAS jurisprudence, the standard of proof to be applied with regard to disciplinary proceedings is the “comfortable satisfaction” of the Panel.
4. A very important principle in football is the principle of liability of a club for the behaviour of its supporters. This principle fulfils a preventive and deterrent function. Its purpose is not to punish the club itself, which may have nothing to feel guilty about, but to pass the responsibility on the club for its supporters’ faulty behaviour.
5. According to Swiss Law, there are four coequal methods of interpretation (grammatical, systematical, historical and teleological). While interpreting a statute, the judge has to seek for an objectively right and satisfying decision, taking account of the normative context and the *ratio legis*. Thereby no interpretation method prevails over another.

Rather, the judge has to choose those methodical arguments that allow approximating the *ratio legis* as close as possible.

6. Security obligations of a home club and strict liability of a club for its supporters' behaviour are two different elements which can lead to different sanctions. The fact that the home club failed to fulfil some of its order and security obligations, for which it was sanctioned, does not prevent the application of the strict liability principle of the visitor's club for its supporters' behaviour.

## INTRODUCTION

1. This appeal is brought by FC Zenit St. Petersburg (hereinafter referred to as "the Appellant" or "FC Zenit"), against a decision of the Appeals Committee of the All-Russian Public Organization Russian Football Union (hereinafter also referred to as "the Appeals Committee") dated 7 December 2012 (hereinafter also referred to as "the Appealed Decision") imposing in particular various sanctions to FC Zenit following alleged violations by the FC Zenit's fans of the RFU regulations in the context of a football match against the FC Dynamo Moscow (hereinafter referred to as "FC Dynamo").

### I. THE PARTIES

2. FC Zenit is a Russian football club, affiliated with the Russian Football Union (hereinafter also referred to as "RFU") which in turn is affiliated with the Fédération Internationale de Football Association (hereinafter referred to as "FIFA").
3. The Russian Football Union (hereinafter referred to as "the Respondent" or "RFU") is the national football association of Russia. It is the governing body of Russian football and exercises regulatory, supervisory and disciplinary functions over clubs, officials and players in Russia. It is affiliated with the Union des Associations Européennes de Football ("UEFA") and the Fédération Internationale de Football Association ("FIFA").

### II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts and allegations based on the parties' written submissions and evidence adduced at the hearing. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in its Award only to the submission and evidence it considers necessary to explain its reasoning.

5. On 17 November 2012, FC Zenit played a match against FC Dynamo at Khimki Arena in Moscow (hereinafter also referred to as “the Stadium”).
6. The Khimki Arena is the stadium where FC Dynamo plays its home matches in the Russian Football Premier League. For years, Sector B of the stands of the Khimki Arena (hereinafter referred to as “Sector B”) is allocated to the fans of the visiting team. Sector B has a capacity of approximately 2’600 people.
7. In the course of the preparation of the match, issues arose regarding the allocation of tickets to the visiting team (FC Zenit) by the home team (FC Dynamo).
8. In the 37th minute of the match, a pyrotechnic device hit the goalkeeper of FC Dynamo, Anton Shunin, who was playing, at that time, in front of Sector B. The pyrotechnic device hit the leg of Mr Shunin and exploded right in front of him, causing a cornea burn of both eyes. Subsequently, Mr Shunin was not able to continue the match and needed medical treatment.
9. Following these events, the match’s referee, Mr Nikolaev, decided to abandon the match.
10. On 22 November 2012, the RFU’s Control and Disciplinary Committee (hereinafter referred to as the “RFU CDC”) rendered a decision against the Appellant. This decision is reported as follows in the Appealed Decision (translation from Russian to English provided by the Appellant):

“RFU CDC:

- *In accordance with Paragraph 1 of Article 102 of the Disciplinary Regulations and Paragraph 23 of the Annex I to the RFU Disciplinary Regulations, sanctioned the Applicant with a defeat 0-3, two next home matches behind closed doors in a competition under auspices of RFU and fine of 500 000 (Five hundred thousand) rubles for interference by persons, other than players or officials of the Club, in the match No. 121 SOGAZ-Russian championship between the Applicant and FC Dynamo Moscow held on 17.11.2012 that led to match abandonment,;*
- *In accordance with Article 112 of the Disciplinary Regulations and Paragraph 34 of the Annex 1 to the RFU Disciplinary Regulations sanctioned the Applicant with a fine of 100 000 (One hundred thousand rubles) for chants of obscenities by the Club fans at the stadium during the match;*
- *In accordance with Paragraph 2 and 3 of Article 114 of RFU Disciplinary Regulations and Paragraph 37 of Annex 1 to the RFU Disciplinary Regulations sanctioned the Applicant with a fine of 500 000 (Five hundred thousand rubles) for throwing pyrotechnics by spectators and hitting a player with a pyrotechnics,*  
  
*(Decision N° 24/1 of 22.11.2012 (Russian Football Premier League). FC Dynamo Moscow was given the victory 3-0.*

*By the same decision, the RFU CDC,*

- *in accordance with Article 112 of the Disciplinary Regulations RFU and Paragraph 34 of the Annex 1 to the RFU Disciplinary Regulations, sanctioned FC Dynamo with a fine of 80 000 (Eighty thousand rubles) for chants of obscenities by the Club fans at the stadium;*

- *in accordance with Article 101 of the RFU Disciplinary Regulations and Paragraph 22 of Appendix 1 to RFU Disciplinary Regulations sanctioned FC Dynamo Moscow with a fine of 500 000 (Five hundred thousand roubles) and one next home match behind closed doors in a competition under auspices of RFU for failing to provide for the public order and security at the stadium, which led to disorderly conduct by spectators and grave consequences.*

*By the same decision the RFU CDC in accordance with Paragraph 1 of Article 90 of the RFU Disciplinary Regulations and Paragraph 7 of Annex 1 of the RUF Disciplinary Regulations, sanctioned the Applicant's head coach Mr. L. Spalletti with a fine of 30,000,00 (thirty thousand rubles) for going beyond limits of the technical area without the permission of the referee".*

11. On 7 December 2012, the Appeals Committee rendered the Appealed Decision, which operative parts reads as follows (translation from Russian to English provided by the Appellant):

*"On the basis of Article 40 of the RFU Charter, Articles 70, 71 and 84 of the RFU Disciplinary Regulations and on the basis of the foregoing. The RFU Appeals Committee*

*DECIDED*

*Uphold the decision of the RFU CDC N°24/1 of 22.11.2012 (RFPL). This decision shall enter into force upon its adoption.*

*In accordance with Paragraph 4 of Article 13 of the RUF Disciplinary Regulations the fines imposed on the Applicant must be paid within (30) days as of the dates of receipt of the decision by the RFU Appeals Committee.*

*In accordance with Paragraph 1 of Article 39 of the RFU Disciplinary Regulations may be appealed to the Court of Arbitration for Sport (Court of Arbitration for Sport . "CAS"), located in the city of Lausanne".*

### **III. PROCEEDINGS BEFORE THE CAS**

12. On 28 December 2012, the Appellant filed an appeal with CAS against the decision issued by the RFU Appeals Committee on 7 December 2012 (hereinafter referred to as "the Appealed Decision").
13. On 3 January 2013, the Appellant's Counsel requested an extension of ten days of the time limit to file the Appeal Brief.
14. On 4 January 2013, the CAS Court Office informed the Parties that the Deputy President of the CAS Appeals Arbitration Division granted an extension of the time limit to file the Appeal Brief until 15 January 2013.
15. On 15 January 2013, the Appellant filed its Appeal Brief.
16. On 17 January 2013, the CAS Court office informed the Parties that the Respondent should file its Answer within a 20-day time limit.

17. On 5 February 2013, the Respondent requested an extension of the time limit to file its Answer until 11 March 2013, considering the important work to gather evidence, in particular as it was the holiday season in Russia.
18. On 6 February 2013, the Appellant objected in principle to such extension on the basis that the request was allegedly made on the last day of the time limit and that the holiday season was finished. However, the Appellant agreed that the time limit be extended until 11 February 2013. The Appellant also stressed that this case should be dealt with urgently as it might affect the results of the on-going Championship.
19. On the same day, the CAS Court Office informed the Parties that the Deputy President of the Appeals Arbitration Division granted the Respondent a 15-day extension to file its Answer.
20. On 21 February 2013, the Respondent filed its Answer. Together with its Answer, the Respondent filed a number of evidence, in particular videos.
21. On 25 February 2013, the CAS Court Office informed the Parties of the receipt of the Answer and that according to Article R56 of the Code of Sports-related arbitrations (hereinafter the "CAS Code"), *"unless the parties otherwise agree or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, nor to produce new exhibits, nor to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer"*.
22. On 1 March 2013, the Respondent informed the CAS Court Office that it did not consider as necessary to hold a hearing in the case at hand.
23. On the same day, the Appellant requested a hearing to be held in the case at hand.
24. On 15 March 2013, the Parties were informed that the following persons had been appointed as Arbitrators: Mr Patrick Lafranchi, Attorney-at-law in Bern (Switzerland) as President of the Panel, sitting with Mr José Juan Pintó, attorney-at-law in Barcelona (Spain) and Prof. Ulrich Haas, Professor, in Zurich (Switzerland) as Members of the Panel.
25. On 30 April 2013, the Appellant filed a letter dated 1 April 2013 from the Head Department of the Russian Ministry of Interior for Moscow, addressed to the General Director of FC Zenit. In the cover letter, the Appellant quoted the following part of the translation from Russian into English (provided by the Appellant):

*"Currently the first unit of the Investigation division of the Main Investigation office of the Head Department of the Ministry of Interior for Moscow oblast is carrying out criminal investigation (case No. 28741), opened on 17 November 2012 by the inquiry unit of the Department of the Russian Ministry of Interior for Khimki city district further to establishment of indications of crime envisaged by clause "a" of Article 213 of the Russian Criminal Code.*

*The investigation established that on 17 November 2012 at 16:00 a Russian Championship football match between Dynamo (Moscow) and Zenit (St. Petersburg) was to take place at the Arena-Khimki stadium, which is located at: Moscow oblast, Khimki city district Kirova street, vladenie 24.*

*During the course of the match, at 16:37 an unidentified person, who was driven by hooligan motivation and who acted in grave violation of public order and who was located at a spectators' tribune threw a burning firecracker (flare) towards the Dynamo goalkeeper Mr. Shunin A.V., who was standing in the goal area of the football field".*

The Appellant further stated that "[i]herefore, the criminal investigation hasn't established neither the author's identity nor specified the tribune from which the firecracker was thr[own]".

Finally, the Appellant considered that this letter should be accepted in the file in accordance with Article 44 para. 1 of the CAS Code considering the date when such document was issued and its official origin.

26. On 2 May 2013, the Respondent commented on the Appellant's letter dated 30 April 2013 and stressed in particular that the Appellant did not quote all the relevant part of the letter from the Head Department of the Russian Ministry of Interior for Moscow, in particular the following:

*"The search of B sector of the Arena-Khimki stadium showed the following: writings on the northern wall of the sector (Only Peter, only victory), remains of pyrotechnic devices and damage to the protecting net".*

The Respondent provided another letter from Head Department of the Russian Ministry of Interior for Moscow, dated 19 April 2013, in which it is confirmed that during the investigation it was established that the pyrotechnic device was thrown from sector B.

27. On 2 and 6 May 2013, the Appellant and the Respondent signed the Order of Procedure and returned it to the CAS Court Office
28. In its letter dated 3 May 2013, the Appellant considered that the letter of the Head Department of the Russian Ministry of Interior for Moscow dated 19 April 2013 was an answer to a request from FC Dynamo and that therefore the Respondent should also file the latter.
29. On 8 May 2013, the Respondent provided the requested letter of FC Dynamo to the Head Department of the Russian Ministry of Interior for Moscow, dated 12 April 2013. In this letter, FC Dynamo requested information on the pending criminal proceedings following the events which occurred during the football match in question, in particular regarding the provenance of the pyrotechnic device which was thrown on the field.

#### **IV. HEARING**

30. A hearing was held on 9 May 2013 at the Lausanne Palace Hotel in Lausanne, Switzerland (hereinafter referred to as the "the Hearing"). The following persons attended the Hearing:
- For the Appellant: Mr Oleg Zadubrovskiy, Head of Legal Department and Mr Pavel Pivovarov, Executive Director, assisted by Messrs Juan de Dios Crespo Pérez and Agustin Amoros, Counsel;

- For the Respondent: Ekaterina Fedyshina, Deputy General Secretary, and Denis Rogachev, Deputy Executive Director, assisted by Messrs Philippe Fuchs and Jan Kleiner, Counsel.
31. At the beginning of the Hearing, the Parties agreed that the letters, filed by the Parties on 30 April 2013, from the Head Department of the Ministry of Internal Affairs of the Russian Federation for Moscow Area dated 1 and 19 April 2013 could be accepted in the case file.
  32. The Parties were then afforded the opportunity to present their case, to submit their arguments, and to answer the questions asked by the Panel.
  33. The Parties explicitly agreed at the end of the Hearing that their right to be heard and to be treated equally in these arbitration proceedings had been fully observed.
  34. On 14 May 2013, the Panel issued a “partial” operative part of the award which provides the following:

*“The requests filed by FC Zenit St. Petersburg on 28 December 2012 against the Russian Football Union (RFU)*

- *that the decision No. 10-12 of the Appeals Committee be annulled in its part “concerning the Appellant’s defeat with score of 0-3” and*
- *to “issue a new disciplinary decision ruling [t]o sanction FC Dynamo Moscow with a defeat of 0-3 and a fine of 500.000 (Five hundred thousand) roubles for interference in the match by persons, not being players and officials of the Club, which led to abandonment of the match, in accordance with Paragraph 1 of Article 102 of the Disciplinary Regulations and Paragraph 34 of the RFU Annex 1 to the RFU Disciplinary Regulations;*

*Alternatively, to order the repetition of the match in full or the continuation of it since minute 37 and sanction FC Dynamo Moscow with a fine of 500.000 (Five hundred thousand) roubles for interference in the match by persons, not being players and officials of the Club, which led to abandonment of the match, in accordance with Paragraph 1 of Article 102 of the Disciplinary Regulations and Paragraph 34 of the RFU Annex 1 to the RFU Disciplinary Regulations;*

*Additionally, to sanction FC Dynamo Moscow with a fine of 500.000 (five hundred thousand) roubles for throwing fireworks by spectators and hitting a player with the same, in accordance with Paragraphs 2 and 3 of Article 114 of the RFU Disciplinary Regulations and Paragraph 37 of the Annex 1 to the RFU Disciplinary Regulations”*

*are dismissed”.*

## V. POSITION OF THE PARTIES

35. The following outline of the Parties’ positions is illustrative only and does not necessarily comprise each and every contention put forward by the Parties. The Panel, however, has carefully considered all the submissions made by the Parties, even if no explicit reference has been made in what immediately follows.

**A. FC Zenit**

36. The Appellant made a number of submissions, in its Statement of Appeal, in its Appeal Brief and at the Hearing. These can be summarized as follows:

- a. The Appellant could not obtain the tickets for the Match to be sold in its ticket offices as the software used by FC Dynamo is different than FC Zenit's one. Mr Borisov, FC Dynamo's Head of Ticket Sale, informed Mrs Shurygina, FC Zenit's Head of Ticket Sale Department, that 23 tickets had already been sold for Sector B in FC Zenit's ticket office as well as via internet. Therefore, the Appellant felt that there was no sense in making the written request to FC Dynamo, as provided for in the applicable regulations. The Appellant then had no other choice than to insert on its website an information for its supporters mentioning that the tickets sale would be done directly at the Khimki Arena. FC Dynamo should therefore be liable for the behaviour of the supporters in Sector B in relation with the Match.
- b. FC Dynamo failed in adopting all the security measures required when selling tickets for Sector B. FC Dynamo did not keep detailed records of sales, including the names and addresses of all ticket holders as required by the UEFA Safety and Security Regulations. FC Dynamo has not made available such personal information of the spectators seated in Sector B to whom it sold tickets at its own discretion.
- c. As the allocation of tickets was not done in accordance with the regulations, it cannot be presumed that the persons present in Sector B on the Match day were the Appellant's supporters.
- d. It is highly unlikely and improbable that the litigious pyrotechnic device was thrown from Sector B. It is impossible or, as a minimum very unlikely that any pyrotechnic device with powder charge enough to cause the injuries observed on the goalkeeper could go through the net placed between Stand B and the playing field and whose holes have a dimension of 3,5 cm<sup>2</sup>.
- e. The remains of the litigious pyrotechnic device were not made available to the Appellant, there are no relevant videos of any throw of the pyrotechnic devices, it is not determined who threw the litigious pyrotechnic device and the ticket allocation procedure was not controlled by FC Zenit. Therefore, in application of the "*Beweisnotstand*" theory, FC Dynamo should be liable for the match abandonment.
- f. FC Dynamo failed in all its security obligations and therefore the liability for the supporters' behaviour cannot be shifted to the Appellant.
- g. FC Dynamo's supporters had a violent relationship with their own players and the team was not performing well at the time of the event. It is therefore more likely that the pyrotechnic device was thrown by a FC Dynamo's supporter.
- h. As the sanction consisting of playing two matches behind closed doors had already been executed, the Appellant shall be compensated for the economic effects of this sanction, i.e. lack of revenues for tickets sales, catering, merchandising and other services rendered at the Khimki Arena during these two matches.



**B. RFU**

37. The Respondent made a number of submissions, in its Answer and at the Hearing. These can be summarized as follows:
- a. FC Zenit's fans are well known to regularly use pyrotechnic devices during football matches and to also throw them onto the playing field.
  - b. As to the allocation of tickets, the Respondent considers that the mechanism applicable for the allocation of tickets is clear: if no written request has been filed by the guest club within the appropriate deadline, the home club can sell tickets for the guest sector at its own discretion. It is also clear, that if the parties agree on another procedure, this is binding upon both parties, and those supporters who bought tickets are considered to be supporters of the guest team, even though no written request was filed by the guest club.
  - c. The Respondent acknowledges that 23 tickets were sold to 10 persons before the deadline for FC Zenit to file a written request for the allocation of tickets in accordance with the applicable regulations. These persons were required to provide their banking details, phone number as well as their e-mails in order to buy these tickets and therefore it was ensured at all times that only supporters of FC Zenit were able to buy tickets for sector B.
  - d. It was orally agreed between Mr Borisov and Ms Shurygina that FC Dynamo would allocate a quota in excess of 10% to supporters of FC Zenit. In addition, it was agreed that Sector B (sub-sections B1, B2 and B3) would be as usual reserved for supporters of FC Zenit.
  - e. It was therefore agreed that the tickets could be bought on the Match day at the Khimki Arena on locations reserved for FC Zenit's supporters. This was later confirmed by an email sent from Mr Borisov to Ms Shurygina and can be confirmed by photos taken on the Match day.
  - f. The information regarding the allocation of tickets was published on FC Zenit's website.
  - g. On the Match day, a representative of FC Dynamo went to a place around 80 km outside Moscow where the buses with the FC Zenit's supporters were waiting, and delivered approximately 600 tickets to Zenit supporters.
  - h. The pre-match protocol and the Delegate report show that representatives of FC Zenit did not have any complain regarding the allocation of tickets.
  - i. The Appellant did not bring any evidence that the supporters located in Sector B were not its supporters. The Appellant is trying to argue that FC Dynamo did not sell the tickets in line with the applicable regulations, which is false.
  - j. Even if the Panel comes to the conclusion that the sale of tickets was not done in line with the applicable regulations, the supporters in Sector B nevertheless belong to FC Zenit, as:

- it was agreed between Mr Borisov and Ms Shurygina as well as in the pre match meeting that the seats in Sector B would be allocated to the Appellant's supporters;
  - the Appellant announced on its website that Sector B of the Khimki Arena was reserved for its supporters;
  - Sector B of the Khimki Arena is known to be the guest Sector;
  - Supporters located in Sector B were escorted by the police into the stadium using the entrance for Sector B
- k. All of this proves that the supporters in Sector B were the Appellant's supporters, as unanimously recognized before, during and after the match by everybody: players, referees, match delegate, spectators, media and by the competent disciplinary bodies.
- l. As to the fact that the litigious pyrotechnic device was thrown from Sector B of the Stadium, the Respondent asserts that the match protocol as well as the delegate report explicitly state that the pyrotechnic device was thrown from supporters seated in Sector B.
- m. In addition to those official documents, the referee and the director general of the Khimki Arena confirmed that the pyrotechnic device was thrown from Sector B.
- n. A look at the blueprints of the Stadium leads to the conclusion that the pyrotechnic device could have only been thrown from Sector B because all other sectors are too far away for such a throw.
- o. As to the protection net, it does not fully protect the playing field from all kind of objects that can be thrown from the spectators area, as not too large objects can be easily thrown through the net. In addition, some of FC Zenit's supporters cut a big hole into the net. This is evidenced by pictures taken during the Match.
- p. The video recordings demonstrate that only in Sector B pyrotechnic devices were ignited and thrown from there onto the pitch, during as well as after the match.
- q. As to the question of the "*Beweisnotstand*" theory invoked by the Appellant, the Respondent contends that this theory is only applicable if a strict proof is not possible or not reasonable due to the nature of facts. Consequently, the simple fact that one party does not have the evidence to prove a fact is not a case of "*Beweisnotstand*". In this regard, the Respondent notes that the remains of the pyrotechnic device that hit the goalkeeper were seized by the police and that the same was done with the official video recordings of the Khimki Arena.
- r. As to the failure by FC Dynamo to respect its order and security obligations, the Respondent considers that it is not relevant as the applicable regulations provide for a liability of each club for its supporters as long as the supporters can be identified as supporters of a certain club, irrespective of whether the home club had violated some of its security obligations.
- s. As to the Appellant's prayers for relief aiming at sanctioning FC Dynamo, the Respondent contends that as FC Dynamo is not a party to the present proceedings, CAS does not have jurisdiction over FC Dynamo and therefore the Panel cannot impose sanctions on it. To decide otherwise would mean to violate FC Dynamo's basic right to be heard.

## VI. THE PARTIES' REQUESTS FOR RELIEF

38. The Appellant's requests for relief are the following:

*"The Appellant requests the Panel:*

1. *To accept this Appeal against the decision of Appeals Committee of the All-Russian Public Organisation RUSSIAN FOOTBALL UNION.*
2. *To adopt an award annulling the said decision in its following parts:*
  - *The part concerning the Appellant's defeat with score of 0-3, fine as per Article 102 of RFU Disciplinary Regulations, and two next home matches under auspices of RFU behind closed doors;*
  - *The part concerning the fine of 500.000 (five hundred thousand) roubles imposed on the Appellant for violation of Paragraph 2 and 3 of Article 114 of the RFU Disciplinary Regulations;*
3. *To issue a new decision in accordance with Paragraph 1 of Article 102 of the Disciplinary Regulations and Paragraph 34 of the RFU Annex 1 to the RFU Disciplinary Regulations ruling to sanction FC Dynamo Moscow with a defeat of 0-3 and fine of 500.000 (Five hundred thousand) roubles for interference in the match by persons not being players and officials of the Club, which led to abandonment of the match; and, in accordance with Paragraph 2 and 3 of Article 114 of the Disciplinary Regulations, sanctioning FC Dynamo Moscow with a fine of 500.000 (five hundred thousand) roubles for throwing fireworks by spectators and hitting a player with the same. Alternatively, in respect to the match result sanction, order the repetition of the match or the continuation since minute 37.*
4. *To condemn RFU to pay ZENIT a compensation of ELEVEN MILLIONS AND TWO HUNDRED AND FIFTY THOUSAND (11.250.00) roubles due to the losses caused by the sanction of two home matches played behind closed doors.*
5. *To fix a sum of 20.000 CHF to be paid by the Respondent to the Appellant to aid the Appellant in the payment of its defence fees and costs.*
6. *To condemn the Respondent to the payment of the whole CAS administration costs and the Arbitrators fees".*

39. The Respondent's requests for relief are the following:

*"The football Union of Russia respectfully requests the honourable Panel to issue an award:*

1. *Not admitting the Appeal with respect to Appellant's Prayer for Relief requesting a sanctioning of FC Dynamo (Prayer for Relief no. 3) and rejecting all other Prayers of Relief of Appellant;*
  - *or, in the alternative –*
2. *Rejecting the Appeal;*
  - *or, in the alternative -*
3. *Annulling the Appealed Decision and referring the case back to the previous instance;*
  - *and, in any event -*

4. *Ordering the Appellant to (i) pay any arbitration costs in full and (ii) pay in full, or pay a contribution towards the legal fees and other expenses incurred by the Football Union of Russia in connection with these proceedings”.*

## VII. THE ADMISSIBILITY OF THE APPEAL AND CAS JURISDICTION

40. The admissibility of an appeal before CAS shall be examined in light of Article R47 of the CAS Code, which reads as follows:

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

41. The Appellant considers that CAS jurisdiction derives from Article 39(1) of the RFU Disciplinary Regulations, which states that decisions of the Appeals Committee may be appealed to the Court of Arbitration for Sport.

42. The Respondent’s position with regard to CAS jurisdiction is the following:

*“14. As the Panel may have already determined upon a first reading of the Prayers for relief of Appellant [recte: Respondent], CAS has only jurisdiction for some of Appellant’s Prayers for Relief.*

*15. The jurisdiction of CAS is not contested with regards to the Prayers for Relief aiming at setting aside (i) the 0-3 defeat of Appellant (Prayer for relief no. 2, first lemma, first sentence) and (ii) RUB 5.000.000.- fine (Prayers for Relief no. 2, second lemma).*

*16. No jurisdiction of CAS, however, is given for Appellant’s Prayers for Relief aiming against a third party which is not a party to this CAS procedure, i.e. all requests directed against the club FC Dynamo Moscow (Prayers for Relief no. 3). If CAS were to issue an award against FC Dynamo Moscow this would be a serious violation of Swiss law and make the award invalid, because of course no award can be rendered against a party that was not a party of the CAS procedure.*

*17. And also no jurisdiction is given for Appellant’s Prayers for Relief aiming at enforcing an (absurd) counterclaim for damages against Respondent (Prayer for Relief no. 4). This, because since the edition 2010 of the CAS Code of Sports related Arbitration (the “CAS Code”), no new claim and counterclaim is admissible within an appeal procedure. Appellant did not raise its new claim before the previous instance: its request for compensation of an alleged damage is a totally new issue which was not part of the disciplinary procedure before the previous instance. Therefore the totally new request and counterclaim of Appellant, directed at obtaining a compensation for damages, is “clearly not admissible”, as it has been confirmed many times in CAS jurisprudence”.*

**A. Prayers aiming to sanction FC Dynamo Moscow**

43. The Appellant has directed various claims against the RFU with the aim of sanctioning FC Dynamo Moscow (prayers number 3, first and third lemma), a club not named as a party in these proceedings.
44. Article 39 *et seq.* of the RFU Disciplinary Regulations (hereinafter referred to as “the RFU DR”) provide for an arbitration clause. According thereto a decision by the RFU Appeals Committee can be appealed to the CAS. The Panel is of the view that the term “appeal” (and, thus, also the arbitration clause) must be construed in a broad sense (cf. also RIGOZZI, *L’arbitrage international en matière de sport*, 2005, no. 773). It encompasses not only the case in which a party requests a decision by the RFU to be squashed. Instead the arbitration clause covers also cases in which a party requests that a decision of the RFU be substituted by another decision. Therefore, the Panel finds that it has also jurisdiction in respect to Appellant’s requests listed under number 3 of its Statement of Appeal.

**B. Prayer concerning a compensation for damages of RUB 13’800’000.00**

45. The Panel considers the Appellant’s Prayer concerning the compensation of RUB 13’800’000.00 out of the subsequent considerations as admissible.
46. Article 40 of the RFU DR gives the CAS jurisdiction to rule as a last instance over decisions taken by the Appeal Committee of the RFU. The validity of this arbitration clause and its subjective scope, *i.e.* the parties bound by the agreement (*in casu* the Appellant and the Respondent) are not disputed. Yet, the agreement’s objective scope is disputed as the Respondent contests CAS jurisdiction concerning this request. The objective scope of the arbitration agreement therefore has to be examined more thoroughly.
47. The intention of the parties determines the objective scope of an arbitration clause (KELLERHALS/BERGER, *Internationale und interne Schiedsgerichtsbarkeit in der Schweiz*, 2006, Rz. 462 ff.). In cases of doubt about the actual intention of the parties, it is presumed that a competent arbitral tribunal should judge about all pending disputes between the parties. In other words, an arbitration clause has to be interpreted widely once its validity is established. This interpretation results from the principle of procedural efficiency (KELLERHALS/BERGER, *Internationale und interne Schiedsgerichtsbarkeit in der Schweiz*, 2006, Rz. 490, BGE 116 Ia 56 E. 3b; BGE 129 III 675 E. 2.3.).
48. In *casu*, the intention of the parties at the moment of the conclusion of the arbitration clause cannot be determined. Consequently it shall be presumed that the CAS has jurisdiction to decide all pending disputes between the parties. Since the pending prayer for relief is the indemnification claim raised by the Appellant against the Respondent (prayer number 4), it is covered by the relevant arbitration clause. In consequence, the Panel has jurisdiction over the Appellant’s prayer for relief number 4.

### **C. Admissibility of the other prayers**

49. The admissibility of the prayers not mentioned in the precedent numeral VIII/A and VIII/B – pecuniary claims in the sense of Art. 177 para. 1 of Switzerland’s Federal Code on Private International Law (hereafter referred to as “CPIL”) – is not disputed. Those prayers are therefore admissible.

## **VIII. MERITS**

### **A. Applicable Law**

50. Article R58 of the CAS Code provides that *“The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled, or according to the rules of law, the application of which the Panel deems appropriate”*.
51. In the present case, the “applicable regulations” are the RFU regulations, in particular the RFU DR and the SOGAZ-Football Championship among teams of clubs of Premier League 2012-2013 (hereinafter referred to as “the Competition Regulations”). The subsidiarily applicable additional law will be determined later on if necessary.

### **B. Prayers concerning FC Dynamo Moscow**

52. Whether or not the Appellant is entitled to request from the RFU/the Panel to issue a sanction against FC Dynamo Moscow is not an issue of jurisdiction (see *supra*), but a question relating to the principle of standing to sue or to be sued. The latter is a matter of substantive law (ZÜRCHER, in: Kommentar zur Schweizerischen Zivilprozessordnung (ZPO) (Teil 1), 2010, N 67 zu Art. 59 ZPO; S. 382; GRAF, in: GesKR 2012 S. 380; BGE 107 II 82 E. 2a). The applicable rules do not contain any provision granting the Appellant a right to claim from RFU/the Panel to sanction a third party, such as FC Dynamo Moscow. Even if there was such a right (according to the applicable substantive rules), this Panel would be barred from deciding upon such a claim, since the latter would have had to be directed not only against the RFU, but also against FC Dynamo Moscow. Insofar RFU and FC Dynamo Moscow form a mandatory passive joinder of parties. Since Appellant has filed its claims pertaining to number 3 of the Statement of Appeal solely against the RFU, the latter has no standing to be sued. Thus, the claims raised in prayer number 3 of the Statement of Appeal, and directed towards FC Dynamo Moscow, shall be dismissed.

### **C. Other prayers**

#### *1. Preliminary notes*

53. The following considerations refer to the substance of the Parties’ allegations and arguments without listing them exhaustively. In its discussion of the case and its findings on the merits, the Panel has nevertheless examined and taken into account all of the Parties’ allegations,

arguments and evidence on record, whether or not expressly referred to in what immediately follows.

2. *Standard of proof*

54. To determine whether the Appellant shall be sanctioned in accordance with the applicable regulations, the Panel must examine whether the evidence provided by RFU establishes the alleged facts. To do so, the Panel must consider the applicable standard of proof.
55. CAS jurisprudence with regard to disciplinary proceedings has been developed through a wide number of CAS cases (in particular: CAS 2009/A/1920, CAS 2010/A/2172, CAS OG 96/003-004 and CAS 2011/A/2625) and it has been decided that the standard of proof to be applied in this kind of cases is the “comfortable satisfaction” of the Panel.
56. The Panel agrees with this position and considers that this standard of proof is applicable in the case at hand.

3. *Applicable provisions of the RFU Disciplinary Regulations and of the Competition Regulations*

57. The infringements which may lead to a sanction according to the RFU DR are contained in Articles 85 *et seq.* of the those regulations. The relevant provisions in the present case are the following:

*“Article 102. Match abandonment.*

*Interference in the match by persons, other than Players and Officials of the Club, which led to match abandonment, including mass public disorders, which led to the match abandonment the guilty Club shall be sanctioned by forfeiting the match paying a fine in accordance with Paragraph 23 of the Appendix No. 1 to the Regulations and/or paying one (1) to five (5) matches behind closed doors or one (1) to five (5) matches at a neutral stadium in another city.*

*Note: The guilty Club in this article shall be considered a Club, to whom persons interfering in the run of play are found to belong. If the persons who interfered in the match are not found to belong to any of the Clubs, the home side shall be liable for such disciplinary infringement”.*

*Article 114. Usage and throwing of pyrotechnics by spectators.*

*1. Using pyrotechnic items by spectators at the stadium before, during or after the match without throwing them onto the tribunes, field and the area adjacent to the field shall be sanctioned by paying a fine in accordance with Paragraph 36 of Appendix No. 1 to these Regulations.*

*2. Throwing pyrotechnic items by spectators before, during or after the match, field and the area adjacent to the field shall be punished by a fine in accordance with Paragraph 37 of Appendix No. 1 to these Regulations.*

*3. In case of pyrotechnic items thrown by spectators at Players, Club officials, Match officials and supporters hit any of them, the guilty Club shall be sanctioned by paying a fine in accordance with Paragraph 37 of Appendix No. 1 to these Regulations and/or by playing one (1) to three (3) matches behind closed doors or playing (one) to three (3) games at a neutral stadium in a different city.*

*Note: The guilty Club in this article shall be considered a Club, to whom persons who threw the pyrotechnic item are found to belong. If the persons who threw the pyrotechnic item are not found to belong to any of the Clubs, the home side shall be liable for such disciplinary infringement”.*

58. These provisions contain a very important principle in football, which is the principle of liability of a club for the behaviour of its supporters. This principle fulfils a preventive and deterrent function. Its purpose is not to punish the club itself, which may have nothing to feel guilty about, but to pass the responsibility on the club for its supporters’ faulty behaviour (in this sense: CAS 2002/A/423).
59. In order to determine to what club supporters belong to within Russian stadiums, the RFU has established a set of different rules.
60. In this regard, Article 32 of the RFU DR reads as follows:

*“1. A home side shall be liable hereunder for any violations committed by spectators of a match, except for cases provided for in part 2 of this article.*

*2. A visiting club shall be liable for any violation hereunder committed by spectators being its supporters (i.e. persons occupying seats of the stadium provided for a visiting club by a home club as per the competition regulations).*

*3. Spectators occupying seats of the stadium provided to a visiting club by the home side as per the competition regulations are considered to be the supporters of the visiting team, unless otherwise proved.*

*Spectators who are not occupying seats of the stadium provided to a visiting club by the home side as per the competition regulations are considered to be supporters of the home team, unless otherwise proved”.*

61. The RFU DR is meant to apply to all the competition held under the auspices of RFU (Article 2 of the RFU DR) and is completed by a different set of rules adapted to each particular competition.
62. Since the match in question was played under the Russian Football Premier League, the applicable competition regulations referred to in the above mentioned provision are the Competition Regulations.
63. Article 21 of the Competition Regulations contains a mechanism as to how seats have to be distributed among supporters of the home team and of the visiting team. Article 21.6 of the Competition Regulations provides that the visiting club has the right to purchase up to 10% of



the total capacity of the stadium. Under certain circumstances, the visiting club can also be allocated more than 10% of the total capacity of the stadium's seats.

64. As to the procedure to allocate tickets to the visiting club by the home club, the Competition Regulations provide as follows:

*"21.7.1 The home club must provide for sale of tickets to the supporters of visiting team exclusively upon written request of the visiting Club that must be received no later than five days before the date of the Match.*

*21.7.2 The home club may sell tickets to the sector for the supporters of visiting team to the visiting Club and / or fan club of the visiting Club and / or other persons specified in the written request of the Guest Club only.*

*21.7.3 In case the request from the visiting club is absent upon the deadline indicated in Par. 21.7.1 hereof, the home club may sell tickets to the sector for the visiting team supporters at its own discretion".*

65. The question of the allocation of tickets to the visiting club is important as the Competitions Regulations provide for different presumptions deriving directly from this question. The relevant provisions of the Competition Regulations in this regard are the following:

*"22.3.1 The spectators (the team supporters) of the visiting Club are meant to be supporters who are in the guest sector during the Match and who have bought tickets in accordance with the request of the visiting Club specified in Par. 21.7.2 of the Regulations.*

*22.3.2 The spectators (the team supporters) of the home Club are meant to be all the supporters of the home team, who are in the Stadium, except the visiting Club supporters".*

66. Considering the facts of the case and the above-mentioned provisions applicable in the case at hand, the Panel shall answer the following questions:

- Was the allocation of tickets done in accordance with Articles 21.7.1 to 21.7.3 of the Competition Regulations?
- Are the presumptions of Articles 22.3.1 and 32.3(1) of the Competition Regulations applicable?
- Was Sector B of the Khimki Arena occupied by the Appellant's supporters?
- Was the pyrotechnic device thrown from Sector B?
- What are the consequences of the FC Dynamo's failure regarding order and security?
- Was there a violation by the Appellant of the applicable rules?
- Which sanctions shall be applied?

4. *Was the allocation of the tickets done in accordance with Articles 21.7.1 to 21.7.3 of the Competition Regulations?*
67. The Appellant considers that the allocation of tickets for Sector B of the Khimki Arena, sector usually reserved for the visiting team's supporters, was not done in accordance with the Competition Regulations as no written request was made by the Appellant. In this regard, the Appellant contends that at least 23 people bought their tickets for the Match before the deadline to file the above-mentioned written request and that the Respondent did not evidence that those people were supporters of FC Zenit. The Appellant also states that some people bought tickets for Sector B directly at the Stadium on the Match day, without having to show identification documents proving that they were coming from the St-Petersburg area.

68. With regard to this issue, the Respondent states the following:

*"The mechanism contained in art. 21 of the SOGAZ Regulations is clear: If no written request has been filed by the guest club within the deadline set in art. 21.7.1 of the SOGAZ Regulations, the home club can sell tickets of the guest sector at its own discretion (art. 21.7.3 of the SOGAZ Regulations). It is also clear that if the parties agree on another procedure (e.g. over the phone) this is binding upon both parties and those supporters who bought these tickets are considered to be supporters of the guest team, even though no written request was filed by the guest club".*

And further that:

*"In addition, it must be kept in mind that – as admitted by the Appellant – in total only 23 tickets (out of approx. 2'700 seats that were allocated to supporters of Appellant!) were sold to ten persons before the deadline of art. 21.7.1 of the SIGAZ Regulations expired (see also no. 2.19 of the Appeal Brief). These persons were required to provide their banking details, phone numbers as well as their e-mails in order to buy these tickets and therefore it was ensured at all times that only supporters of Appellant were able to buy tickets for sector B".*

69. As seen, the main point in the argumentation of the Appellant is that it did not file a written request within the meaning of Article 21.7.1 of the Competition Regulations. Out of this fact the Appellant derives the conclusion that none of the supporters in the Khimki Arena could be considered as its supporters. In consequence the Appellant, based on Article 32 of the RFU DR, does not deem itself liable for the conduct of any of the supporters present at match day in the Khimki Arena. The Panel examined this and the Respondent's position thoroughly and came to the following conclusion.
70. According to Article R58 of the CAS Code, the Panel can apply rules of the law that it deems appropriate if the law chosen by the parties does not answer the relevant question. The *in casu* applicable regulations do not contain interpretation rules. The Panel therefore deems it appropriate to apply the interpretation rules applicable under Swiss law. This choice results out of the fact that those rules represent international (civil-law) consent of how to interpret statutes (KRAMER Ernst A., Juristische Methodenlehre, p. 42 f.).

71. According to Swiss Law, there are four coequal methods of interpretation. They are the grammatical (seeks after the semantic meaning of the word or phrase), the systematical (seeks after the systematic position of an article in the legal texture of the greater whole), the historical (seeks after the original intention of the rule) and the teleological method (seeks after the spirit and purpose of the statute) of interpretation (KRAMER Ernst A., *Juristische Methodenlehre*, p. 57 ff., p. 85 ff.; 116 ff.; BGE 135 III 112 E. 3.3.2). While interpreting a statute, the judge has to seek for an objectively right and satisfying decision, taking account of the normative context and the *ratio legis* (BGE 135 III 112 E. 3.3.2). Thereby no interpretation method prevails over another. Rather, the judge has to choose those methodical arguments that allow approximating the *ratio legis* as close as possible (KRAMER Ernst A., *Juristische Methodenlehre*, p. 122).
72. In casu, Article 21.7.1 of the Competition Regulations, obligate the visiting Club in order to receive tickets for its supporters to pose a written request to the home Club no later than five days before the relevant match. The semantic sense of a “*written*” request is undoubtful, as well as the fact that the Appellant as a visiting Club did not pose a written request to the home Club.
73. However, while examining the rationale of Article 21.7.1 of the Competition Regulations one comes to another result. The purpose of the statute is to ensure clear evidence over the question if a team posed a ticket-allocation-request or not. Thus, if it is undoubtful that the visiting Club posed a (non-written) request, the *ratio legis* of Article 21.7.1 of the Competition Regulations is achieved as well. If one were to insist in such circumstances on the lack of a written request, this would be overly formalistic and contrary to the rationale of Article 21.7.1 of the Competition Regulations.
74. In the present case, the parties agreed - as it will be derived from the consecutively list of undisputed facts - that the Appellant contacted FC Dynamo in order to obtain tickets for its supporters for the relevant match, that this request was made by the Appellant at least five days prior to the match day and that the parties subsequently agreed on the *modus operandi* to allocate match tickets for the supporters of the Appellant.
75. Mr Borisov confirmed by an email dated 12 November 2012 to Mrs Shrugyna (FC Zenit’s Head of Ticket Sale Department) that tickets would be available for the FC Zenit’s supporters at the Khimki Arena.
76. On the same date, the Appellant inserted on its website the following announcement:

*“Dynamo-Zenit: ticket for the guest tribune can be bought in Moscow”*

*The ticket department of the FC Zenit advises that the sale of tickets for the guest sector for the match against FC Dynamo of the 16<sup>th</sup> SOGAZ round of the Russian Championship will be done only at Chimki.*

*The fans of the blue-whites will have 2600 seats in three sectors – B1, B2 and B3. The price of one ticket is RUB 300.*

*The sale will be carried out at the match day only against presentation of a passport with a valid St. Petersburg address (city or region) at the ticket window for fans of FC Zenit at the front of stadium Arena Chimki (between entrances 7 and 8) until the end of the first match half.*

*The match between Dynamo and Zenit takes place next to Moscow on 17 November and begins at 1600 hrs St. Petersburg time”.*

77. It was also proven that there was actually a desk at the Khimki Arena on the Match day at which it was expressly indicated that supporters from the visiting team could buy tickets for Sector B for RUB 300, as indicated in the above mentioned announcement on the Appellant’s website.
78. It is also not contested that a large number of tickets (approx. 750) for the guest sector were sold to the Appellant’s fans clubs and delivered by a representative of FC Dynamo on the Match day directly to those supporters, which were coming by organized buses, on the highway at the entrance of Moscow.
79. It can therefore not seriously be disputed that the Appellant posed a request for ticket allocation of the relevant match due to the fact that the parties agreed of how to allocate tickets to the Appellant’s supporters. As seen, the agreement covered the entire ticket distribution on the match at the Khimki Arena. In consequence, the Panel considers the criteria of Article 21.7.1 of the Competition Regulations as fulfilled.
80. However, it is obvious that FC Dynamo Moscow breached Article 21.7.3 of the Competition Regulations because it sold 23 tickets without knowledge and agreement of the Appellant before the expiry of the deadline stated in Article 21.7.1 of the Competition Regulations. Thus, the sale of those 23 tickets was not covered by the consensus of the Appellant. The ticket-allocation to the Appellant was therefore not completely in compliance with the applicable Competition Regulations.

5. *The affiliation of the supporters in Stand B*

81. As seen above, Article 22.3.1 of the Competition Regulations reads as follows: *“The spectators (the team supporters) of the visiting Club are meant to be supporters who are in the guest sector during the Match and who have bought tickets in accordance with the request of the visiting Club specified in Par. 21.7.2 of the Regulations”.*
82. Article 32.3(1) RFU DR set forth a similar rule and reads as follows: *“Spectators occupying seats of the Stadium provided to a visiting club by the home side as per the Competition regulations are considered to be the supporters of the visiting team, unless otherwise proved”.*
83. As seen before, disregarding 23 tickets that were sold without knowledge and agreement of the Appellant, the tickets for the guest sector (Stand B) in the Khimki Arena were allocated according to the applicable Competition Regulations. Thus, for those spectators (Stand B minus 23 supporters) the presumption of Article 32.3(1) RFU DR applies. They have to be considered as supporters of the visiting Club.

84. However, the presumption of Article 32.3(1) RFU DR does not apply for the 23 supporters that purchased their tickets before the Appellant requested tickets for its supporters. Nevertheless, as can be seen below, also those spectators have to be considered as the Appellant's supporters.
85. Article 32.3(2) RFU DR states that "[s]pectators, who are not occupying seats of the Stadium provided to a visiting club by the home side as per the Competition regulations are considered to be the supporters of the home team, unless otherwise proved". The Respondent has to prove therefore that the problematic 23 supporters that were standing in Sector B were supporters of the Appellant. Since the identity of those 23 spectators is unknown the proof comes down to the evidence that the entire Stand B was occupied by supporters of the Appellant.
86. The Appellant brought forward various proves to comply with its burden of evidence such as the:
- Pre-match protocol;
  - Delegate report;
  - Witness statements;
  - Videos;
  - Photos.
87. After studying and examining those pieces of evidence the Panel holds that Sector B was entirely filled with supporters of the Appellant. A large number of the Stand B spectators wore blue colour clothes, many persons were waving FC Zenit's flags and the fence separating the stand from the field was entirely covered with banners supporting FC Zenit. On the other hand there is no evidence at all that supporters respectively ultras of FC Dynamo – as brought forward by the Appellant - would have sneaked into Stand B. This conclusion is strengthened by the argumentation that supporters of FC Dynamo that would have tried to sneak into sector B would have been identified very quickly by the supporters and ultras of the Appellant and would have had to fear serious physical harm. In view of these considerations the Panel considers it as established that all supporters of Stand B were supporters of the Appellant.
6. *Was the litigious pyrotechnic device thrown from Sector B?*
88. As it is established that Sector B was occupied by the Appellant's supporters, the next question to be determined is whether the litigious pyrotechnic device that was thrown on the pitch and led to the Match abandonment was actually thrown from Sector B.
89. The Appellant contends that "*it is highly unlikely that the firecracker was thrown from the Stand B*". To support this allegation, the Appellant states that "*it is impossible or at least very unlikely that any pyrotechnic device with powder charge enough to cause such great effect could go through the net placed between the Stand B and the playing field and whose holes have a dimension of 3,5cm*".

90. The Appellant further contends that it is not able to provide evidence to support its position as the pyrotechnic device and the Stadium's videos on the Match day were not provided by the Respondent and/or FC Dynamo. The Appellant invokes the "*Beweisnotstand*" theory in this regard. According to the Appellant in a case of "*Beweisnotstand*", the procedural fairness demands that the contesting party must substantiate and explain in detail why it deems the facts submitted by the other party are wrong.
91. According to Article 69 of the RFU DR the burden of proof in a disciplinary matter lies with the competent judicial body. This means that the Appellant does not bear the burden of evidence to demonstrate his compliance with the applicable statutes.
92. Pursuant to Article 68 para. 1 of the RFU DR, any information contained in the match protocol and in the reports of Match Officials shall be considered to be reliable, until otherwise proved. Hence, Article 68 para. 1 of the RFU DR establishes a rebuttable presumption in favour of the correctness of match protocols and reports of match officials. In view of the allocation of the burden of proof the Respondent has to produce the relevant protocols while the burden to rebut the content of those protocols lies with the Appellant.
93. In exhibit 17 the Respondent provided the parties and the Panel with the Premier League Delegate Report, signed by Konovalov P., delegate of FC Dynamo, as well as Fedotov Y., delegate of the Appellant. The report states that "*[o]n the 37<sup>th</sup> minute of the match from stand B where FC Zenit supporters were situated ... aiming FC Dynamo goalkeeper Shunin a pyrotechnic device with a strong light sound effect was thrown and hit his leg*".
94. According to paragraph 15 of the list of terms and definitions of the RFU DR Match Officials are persons, supervising observance of the Laws of the Game, match organization and persons, evaluating actions of referees (including referee, assistant referee, fourth official, delegate, referee inspector, match commissioner). The Premier League Delegate Report was written from delegates that, according to the title of the report, observed the match organization and the match conduct. The Premier League Delegate Report has therefore to be considered as a report of a Match Officials in the sense of Article 68 para. 1 of the RFU DR.
95. During the hearing the Appellant only alleged the falsehood of the Premier League Delegate Report without bringing forward any piece of evidence or witness statement. The Appellant in other words was not able to rebut the relevant statement of the Report that the pyrotechnical device was thrown from Stand B. Further the Panel considers that the "*Beweisnotstandstheorie*", brought forward by the Appellant in its Statement of Appeal, does – with reference to the correct considerations in Rn. 95-97 of the answer of the Respondent – not apply in the present matter. In consequence, the Panel considers that the relevant pyrotechnical device that hit FC Dynamo's goalkeeper Shunin and let to the abandonment of the match was thrown from Stand B.

7. *FC Dynamo's order and security failures*

96. The Appellant considers that FC Dynamo did not fulfil its obligations with regard to order and security in accordance with Article 21 of the Competition Regulations and that therefore the strict liability principle of Articles 102 and 114 of the RFU DR cannot be applied in the case at hand.
97. The RFU CDC, in its decision dated 22 November 2012, sanctioned FC Dynamo with a fine of RUB 500,000 and one match behind closed doors *"for failing to provide for the public order and security at the stadium, which led to disorderly conduct by spectators and grave consequences"*.
98. The Panel considers that the security obligations of a home club and the strict liability of a club for its supporters' behaviour are two different elements which can lead to different sanctions.
99. This position is comforted by the CAS jurisprudence, in particular the cases CAS 2002/A/423 and CAS 2007/A/1217.
100. In the case CAS 2002/A/423, the Panel had to apply the UEFA Disciplinary Regulations, which contain similar rules as in the present matter, and considered that:

*"L'art. 6 al. 1er RD, faisant endosser une responsabilité objective par les clubs pour les faits de leurs supporters, remplit donc une fonction préventive et dissuasive. Son objet n'est pas de punir le club en tant que tel, qui peut ne rien avoir à se reprocher, mais de faire supporter par le club la responsabilité des actes, fautifs eux, de son public. [...]"*

*Le second alinéa de l'art. 6 RD est rédigé d'une manière différente de l'alinéa premier. Il prévoit que l'association organisatrice ou le club organisateur répond de l'ordre et de la sécurité dans l'enceinte du stade et dans ses abords immédiats avant, pendant et après le match. Ils pourront être rendus responsables de tout incident et sont passibles de mesures disciplinaires pouvant être assorties de directives".*

101. In the case CAS 2007/A/1217, the Panel, applying also Article 6 of the UEFA Disciplinary Regulations, considered that *"the fact that the tickets were not strictly controlled is not relevant in the case of the Appellant [which was sanctioned for its supporters behaviour]. It may have an effect only on the sanction AS Nancy [the host club in this case] shall face according to Article 6 para. 2 of the Disciplinary Regulations"*.
102. The case at hand is not different from these cases in this regard and the fact that FC Dynamo failed to fulfil some of its order and security obligations, for which it was sanctioned, does not prevent the application of the strict liability principle of the Appellant for its supporters' behaviour.
103. The Appellant's argument in this regard shall therefore be rejected.

8. *The violation*

104. In view of the above the Panel considers that it is comfortably satisfied that the litigious pyrotechnic device, which lead to the injury of FC Dynamo's goal keeper and the abandonment of the Match, was thrown from Sector B by a supporter of the Appellant.
105. According to Article 32 para. 2 of the RFU DR a visiting Club shall be held liable for any violation committed by spectators being its supporters. As seen above, the spectators in Stand B are to be considered supporters of the Appellant. In consequence, the Appellant shall be held liable for the pyrotechnical device thrown from Stand B that caused the abandonment of the match. Consequently, the Appellant shall be sanctioned in accordance with Articles 102 and 114 of the RFU DR. Therefore, the Appellant's prayers number 2 and number 4 are rejected.

9. *The sanction*

106. The Panel considers that the sanction imposed on the Appellant by the RFU CDC, and confirmed in the Appealed Decision, is compliant with Article 102 and 114 RFU DR. Furthermore, the Appellant has not made any subsidiary argument(s) with regard to the sanctions to be applied. The Panel therefore does not see any reason to depart from the RFU CDC's position and the sanctions set forth in the Appealed Decision shall be confirmed.

10. *Conclusion*

107. In light of the above, the Panel has decided to dismiss not only the Appellant's main prayers for relief, which was notified to the parties on 14 May 2013 (see paragraph 34) but also the remaining pending requests for relief.
108. Therefore, the appeal filed by the Appellant against the decision issued by the Appeals Committee of the Russian Football Union on 7 December 2012 is dismissed in its entirety.



## ON THESE GROUNDS

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

1. As notified by way of a partial operative part on 14 May 2013:

*“The requests filed by FC Zenit St. Petersburg on 28 December 2012 against the Russian Football Union (RFU)*

- *that the decision No. 10-12 of the Appeals Committee be annulled in its part «concerning the Appellant’s defeat with score of 0-3» and*
- *to «issue a new disciplinary decision ruling [t]o sanction FC Dynamo Moscow with a defeat of 0-3 and a fine of 500.000 (Five hundred thousand) roubles for interference in the match by persons, not being players and officials of the Club, which led to abandonment of the match, in accordance with Paragraph 1 of Article 102 of the Disciplinary Regulations and Paragraph 34 of the RFU Annex 1 to the RFU Disciplinary Regulations;*

*Alternatively, to order the repetition of the match in full or the continuation of it since minute 37 and sanction FC Dynamo Moscow with a fine of 500.000 (Five hundred thousand) roubles for interference in the match by persons, not being players and officials of the Club, which led to abandonment of the match, in accordance with Paragraph 1 of Article 102 of the Disciplinary Regulations and Paragraph 34 of the RFU Annex 1 to the RFU Disciplinary Regulations;*

*Additionally, to sanction FC Dynamo Moscow with a fine of 500.000 (five hundred thousand) roubles for throwing fireworks by spectators and hitting a player with the same, in accordance with Paragraphs 2 and 3 of Article 114 of the RFU Disciplinary Regulations and Paragraph 37 of the Annex 1 to the RFU Disciplinary Regulations»*

*are dismissed”.*

2. Furthermore, the appeal filed by FC Zenit St. Petersburg on 28 December 2012 against the decision issued by the Russian Football Union Appeals Committee on 7 December 2012 is dismissed in its entirety.
3. The decision issued by the Russian Football Union Appeals Committee on 7 December is confirmed.
- (...)
6. All other prayers for relief are dismissed.