



**Arbitration CAS 2010/A/2266 N. & V. v. UEFA, award of 5 May 2011**

Panel: Prof. Luigi Fumagalli (Italy), President; Mr Andras Gurovits (Switzerland); Mr Christian Duve (Germany)

*Football*

*Match-fixing*

*Principle of the individualisation of the sanction*

*Standard of proof in cases relating to “integrity issues”*

*Burden of proof*

*Content of the principles of “loyalty, integrity and sportsmanship” in Art. 5 of the UEFA Disciplinary Regulations*

*Absence of exculpatory circumstances*

*Measure of the sanction*

1. To find a disciplinary responsibility it is necessary that evidence is given that a particular individual committed, by his actions and/or omissions, a rule infringement.
2. The party bearing the burden of evidence, in order to satisfy it, needs to convince a panel that an allegation is true by a “balance of probability”, i.e. that the occurrence of the circumstances on which it relies is more probable than their non-occurrence. In this context, the panel needs however to be comfortably satisfied that the relevant facts have been established, bearing in mind the seriousness of the allegation which is made. Yet, while assessing the evidence, a panel will have in mind that corruption is, by nature, concealed as the parties involved will seek to use evasive means to ensure that they leave no trail of their wrongdoing.
3. Disciplinary rules enacted by sports authorities are private law (and not criminal law) rules. Consequently, any legal issue concerning the satisfaction of the burden of proof should be dealt within the context of the principles of private law of the country where the interested sports authority is domiciled. In Swiss law, Article 8 of the Civil Code, which establishes the rule on the burden of proof, allows the adjudicating body to base its decision also on natural inferences.
4. The principles of “loyalty, integrity and sportsmanship” imply the duty of the players to fully cooperate with the sporting authorities in their effort to prevent manipulation of matches. The failure to do so breaches those principles also because it amounts to a conduct which brings the sport of football into disrepute, and ends up in the (at least passive) involvement in a bribery attempt, both of which are also sanctioned by the UEFA Disciplinary Regulations.
5. The fear of possible reactions by a criminal gang is no excuse under the UEFA Disciplinary Regulations for a player’s failure to report an illicit approach.

6. **The measure of the sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rules can be reviewed only when the sanction is evidently and grossly disproportionate to the offence.**

N. is a professional football player of Hungarian nationality, born in 1980. In the season 2009-2010 N. was a player of Debreceni VSC (“Debreceni”), a Hungarian football team participating in the 2009-2010 edition of the UEFA Champions League (the “UCL”).

V. (N. and V. are referred to as the “Players” or the “Appellants”) is a professional football player of Montenegrin nationality, born in 1982. In the season 2009-2010 V. was a goalkeeper of Debreceni.

Union of European Football Associations (UEFA; the “Respondent”) is an association established under Swiss law and has its headquarters in Nyon, Switzerland. UEFA is the governing body of football in Europe and the organizer of the UCL.

On 20 October 2009, the UCL match Debreceni v. Fiorentina (the “Match”) was played in Budapest (Hungary), with the final result of 4-3 in favour of the Italian team. The Appellants played the Match in the Debreceni team.

Investigations carried out by the police authorities of Bochum (Germany) in cooperation with the UEFA Disciplinary Services revealed that a criminal gang was planning, *inter alia*, to manipulate the Match within the framework of an organised betting fraud. As a result of such investigations, criminal proceedings (the “German proceedings”) were started, and are currently pending, before the German judicial authorities.

On 15 June 2010, the UEFA Disciplinary Inspector, deeming that the Players had violated the principles of loyalty and integrity, “*by non reporting attempts of bribery and by acting in a way that is likely to exert an influence on the progress and/or result of a match by means of behaviour in breach of the statutory objectives of UEFA*”, requested the Control and Disciplinary Body of UEFA (the “CD Body”) “*to take the appropriate disciplinary measures*”.

On 24 June 2010, the Chairman of the CD Body, acting as a single judge, rendered a decision (the “CD Decision”) as follows:

- “1. *The player N. is suspended until 31.12.2011.*
2. *The player N. is fined EUR 7,000.*
3. *The player V. is suspended until 30.06.2012.*
4. *The player V. is fined EUR 10,000.*

5. *The above fines must be paid into the bank account indicated below within 30 days of communication of this decision.*
6. *FIFA will be requested to extend the present decision so as to give it worldwide effect”.*

In support of the CD Decision, the CD Body preliminarily considered “*the way in which the disciplinary inspector had conducted his investigation, about which the players’ representative has expressed some concerns*”, and “*recalled that ... the disciplinary proceedings of a private association such as UEFA are of a civil nature. There is thus an essential difference between criminal proceedings conducted by a state in the public interest and ‘private’ disciplinary proceedings conducted by UEFA to defend its statutory goals and interests. In such ‘private’ proceedings, and given the nature of the facts investigated, the means used by the disciplinary inspector to clarify the situation and gather evidence for the sole purpose of providing the Control and Disciplinary Body with the facts with which to take an internal disciplinary decision appeared ... to be in line with the general principles of law*”.

The CD Body, then, considered the provisions deemed to be relevant within the UEFA system, underlining that “*UEFA controls the behaviour of individuals engaged in its football activities through various rules, notably the UEFA Statutes and the UEFA Disciplinary Regulations (DR), whose goal is to facilitate game play and to protect the integrity of matches, competitions and UEFA’s reputation*”, holding, with respect to Article 5 of the UEFA Disciplinary Regulations (Edition 2008) (the “DR”), that

*“under the broad wording of this provision, which gives only examples of forbidden conduct, the loyalty expected from players implies total transparency in all situations they find themselves in, including attempted bribery, corruption and match-fixing, and full cooperation with the football authorities to denounce such attempts. A breach of this loyalty is therefore committed by any player who fails to notify UEFA or any football authority that he has been approached by people looking to fix a match, in an attempt to have him help them to do so.*

*This loyalty can be breached even if their conduct does not actually have any negative result.*

*Preserving the uncertainty of the outcome of football matches is UEFA’s prime concern. Indeed, it is the raison d’être of organised football. If supporters knew the result of a match in advance or how many goals were going to be scored, there would be no sporting interest in watching the game and this would spell the end of football. For this reason, UEFA has a zero tolerance policy towards anyone jeopardising the uncertainty of the outcome of football matches and the reputation of UEFA in this respect”.*

The CD Body, then, remarked that “*the different pieces of evidence on file establishes the facts the two players are charged with*”, and concluded that “*it appears clear enough ... that both the accused at least failed to inform UEFA or their club of the fact that they had been approached by people looking to fix the match. Their silence constitutes a violation of the loyalty and integrity expected from players towards UEFA under Article 5 DR and gives reason to think that they had, at least at some point, accepted the idea of fixing the match*”. More specifically, the CD Body examined the position of each of the Players as follows:

*“V. (goalkeeper)*

*He was approached by Marijo Cvrtak, a member of a criminal organisation that was attempting to fix the Debreceni VSC v Fiorentina match on 20 October 2009, so as to make sure Debreceni VSC would lose with a handicap of two (i.e. Fiorentina would win with a goal difference of two).*

*He met Cvrtak for the first time two days prior to the match, at the car park situated between Debrecen and Budapest.*

*He had a second meeting with him and Dragan Mihelic, together with his team-mate, the defender No. 17, and their manager. An envelope containing money was handed over during this meeting, which took place in a cafe three to four hours before the match.*

*At no time did the goalkeeper inform his club or UEFA of having been approached in connection with an attempt to fix the match in question.*

*He incidentally acknowledged, however, having been approached before in connection with other matches, without having informed any football authority then either.*

N. (No. 17)

*He attended the second meeting mentioned above and failed to inform any football authority that he had been approached by people obviously trying to fix the match in question”.*

The following evidence was analysed by the CD Body in support of such findings:

*“The coherent and measured statement of witness X, whose credibility was challenged by the players’ representative, but whose identity and credibility were, however, duly checked by the chairman, who is convinced that he has no personal interest whatsoever in the players being found guilty or getting into trouble.*

*Witness X observed both of the above-mentioned meetings from just a few metres away and confirmed having personally seen the players and the envelope being handed over. He clearly situated the car park where the first meeting took place.*

*Witness X was also sincere during the interview when he was unable to answer a question: he simply said ‘I don’t know’ or ‘I cannot remember exactly’, for example, when the players’ representative asked for the name of the cafe where the second meeting took place or the exact time this meeting took place. He said he could only remember that the meeting has lasted 30 minutes and was about three or four hours before the match. The witness was asked this question several times during the hearing and always gave the same answer. It is important to mention that the events took place a year before the witness had to testify. He also admitted that he could confirm neither the mark of car in which the players arrived at the car park for the second meeting, nor what clothes they wore.*

*Conversations tapped by the German police, whose exact content UEFA received access to, including an SMS of 21 October 2009 (‘I had coffee with number 17’) and a phone conversation between Marijo Cvrtak and Ante Sapina of 20 October 2009 (19.41), in which Cvrtak informed Ante Sapina that the Debreceni VSC goalkeeper had sent him a text message in which he had cancelled the deal.*

*These conversations confirm that the match in question was to be fixed and, together with the witness’ statement, confirm that the players in question were somehow informed of, if not involved in, this match-fixing deal.*

*Contrary to this concordant evidence, the credibility of the goalkeeper V., who claimed at the hearing not to remember the shirt number of his team-mate N., who has played in defence with his back towards the goalkeeper for the past two years and always as No. 17, is indeed very doubtful.*

*As for the club’s programme for the day of the match, brought by the players’ representative as an alibi, this does not discredit the witness either. Indeed, the fact that the period from 14.00 to 16.00 on the day of the match was scheduled for ‘relaxation in the rooms’ before a ‘snack’ at 16.30 did not prevent the players from leaving their rooms for a meeting at the cafe for about 30 minutes from about 16.00. Nobody claimed that the players had stayed at the hotel during this time”.*

With respect to the measure of the sanction, finally, the CD Body held that it had to be set (and actually set it) on the basis of the following elements:

- “- *the seriousness of the offences committed;*
- *UEFA’s zero tolerance policy towards match-fixing, in order to maintain public confidence in the integrity of the UEFA matches;*
- *the attitude and circumstances of the players, i.e. that:*
  - *V. admitted to having been contacted for match-fixing projects before, but denied the facts for the match in question, even after having been confronted with other evidence; he obviously lied about not knowing the shirt number of his team-mate; he had two meetings with people trying to fix the match in question;*
  - *N. had met with the people trying to fix the match in question;*
- *the need to prevent any repetition and re-establish the reputation of football and UEFA”.*

On 9 July 2010, the Chairman of the FIFA Disciplinary Committee adopted two decisions whereby the Players were

- “1. (...) *suspended worldwide for the duration of the suspension imposed by UEFA. This suspension covers all types of matches, including domestic, international, friendly and official fixtures.*
2. *This decision will follow the outcome of any possible appeal. (...)”.*

The Players appealed against the CD Decision before the UEFA Appeals Body (the “Appeals Body”). By decision dated 8 September 2010 (the “AB Decision”; the CD Decision and the AB Decision are jointly referred to as the “Decisions”), the Appeals Body decided as follows:

- “1. *The appeal is rejected. Consequently, the challenged decision of 24 June 2010 is upheld.*
2. *The costs of the proceedings, amounting to € 6,000, are charged to the appellants, each appellant to pay half of this amount after deduction of the appeals fee. Debreceni VSC and the Hungarian Football Federation shall be responsible for the collection of this amount.*
3. *This decision is final, in accordance with Article 66 Disciplinary Regulations. (...)”.*

In the AB Decision, the Appeals Body preliminarily underlined that

*“under the terms of Article 2 of its statutes, UEFA’s objectives particularly include to promote football in Europe in a spirit of peace, understanding and fair play, without any discrimination on account of politics, gender, religion, race or any other reason (letter a), to prevent all methods or practices which might jeopardise the regularity of matches or competitions or give rise to the abuse of football (letter e), and to ensure that the needs of the different stakeholders in European football (leagues, clubs, players, supporters) are properly taken into account (letter j). (...) Article 5 DR states that member associations, clubs, as well as their players, officials and members, shall conduct themselves according to the principles of loyalty, integrity and sportsmanship (paragraph 1). A breach of these principles is committed by anyone who, in particular, engages in or attempts to engage in active or passive bribery and/or corruption (paragraph 2(a)), or acts in a way that is likely to exert an influence on the progress and/or the result of a match by means of behaviour in breach of*

*the statutory objectives of UEFA with a view to gaining an undue advantage for himself or a third party (paragraph 2(j))”.*

The Appeals Body, then, considered the evidentiary rules deemed applicable in the UEFA disciplinary proceedings and remarked that:

*“(...) in the case of alleged breaches of the UEFA Statutes and its other regulations, the burden of proof is carried by UEFA’s organs for the administration of justice, as described in Article 21 DR.*

*(...) In principle, a fact is considered established if the judge is convinced that an allegation is true. Legislation, legal opinion and case-law have made exceptions to this rule on the assessment of evidence. The burden of proof may be reduced if there is a ‘lack of evidence’ (Beweisnot), which may occur if, by the very nature of the case, strict proof is impossible or cannot be reasonably demanded, particularly if the facts alleged by the party that carries the burden of proof can only be established indirectly or by means of circumstantial evidence. The standard of proof required is then limited to a balance of probability (die überwiegende Wahrscheinlichkeit), which is subject to higher demands than simple probability (die Glaubhaftmachung). A balance of probability depends, from an objective point of view, on the existence of significant grounds to support the accuracy of an allegation, together with the absence of other possibilities of significant importance or that might reasonably be taken into consideration (ATF 133 III 81 rec. 4.2.2 p. 88/89 and the quoted judgements; see also ATF 135 V 39 rec. 6.1 p. 45).*

*Disciplinary rules in sport are inspired by these notions. For example, in relation to doping, Article 3.1 of the World Anti-Doping Code stipulates as follows: (...).*

*Similarly, hearing an appeal against an Appeals Body decision related to corruption, the Court of Arbitration for Sport considered that “taking into account the nature of the conduct in question and the paramount importance of fighting corruption of any kind in sport and also considering the nature and restricted powers of the investigation authorities of the governing bodies of sport as compared to national formal interrogation authorities, the Panel is of the opinion that cases of match fixing should be dealt in line with the CAS constant jurisprudence on disciplinary doping cases. Therefore, the UEFA must establish the relevant facts “to the comfortable satisfaction of the Court having in mind the seriousness of allegation which is made” (see CAS 2009/A/1920 FK P., rec. 85, p. 18)”.*

In its examination of the merits of the alleged disciplinary infringements, the Appeals Body found the Players responsible of the violations found by the CD Body, and that UEFA “*was right to sanction them*”, on the basis of the following findings:

- “a) In this case, the respondent based its decision on telephone recordings made by the Bochum criminal police on the orders of the German public prosecutor’s office, the investigation carried out by UEFA disciplinary services and the hearing of informer X (...).*
- b) In the Appeals Body’s opinion, the transcripts of the recorded telephone conversations between Ante Sapina and Marijo Cvrtak, and Ante Sapina’s statement, are objective elements that are sufficient to prove the appellants’ culpability.*

*As mentioned above, these individuals are members of a criminal organisation; they were arrested by the German police; they were charged and remanded in custody pending their trial, which is due to begin on 6 October 2010.*

*It is clear from their telephone conversations, especially those that took place on 20 and 21 October and 5 November 2009, that they tried to contact players with a view to manipulating the Debreceni VSC v Fiorentina match. In this context, they referred to the team's goalkeeper and player No. 17.*

*The match-fixing plot ultimately came to nothing after the Debreceni VSC players refused to cooperate, as Ante Sapina explained in his statement to police officers Bahrs and Selzer in Bochum on 14 May 2010 (see minutes of 14.05.2010, UEFA/chief inspector exhibit No. 6).*

*There is absolutely no doubt that the goalkeeper in question is V. and that the No. 17 must be the player N. who, as he told today's hearing, has worn this number at the club for at least two years.*

*The Appeals Body questioned the two players/appellants about these facts.*

*Their explanations and repeated denials did not convince the Appeals Body. From an objective point of view, they failed to cast doubt over the contacts they made with members of a criminal group, as demonstrated by the telephone recordings. They could not explain the reference made in the recordings to the goalkeeper and player No. 17 and to the Debreceni VSC v Fiorentina match. Finally, they could not dispute that the intention to manipulate the match with the complicity of the Debreceni VSC players was expressly admitted by Ante Sapina, one of the main protagonists, who is currently in custody awaiting trial in Germany.*

*As for the person known by the appellants as 'witness X', the Appeals Body notes, firstly, that he cannot be considered a UEFA witness in the sense of Article 58 DR, since he is not subject to UEFA's disciplinary powers. He is, in fact, an informer who infiltrated the criminal fraternity and provided information to UEFA as part of the vast investigation opened by the German authorities. The chairman and vice-chairman of the Control and Disciplinary Body, as well as the Appeals Body, considered this person to be credible and that his testimony could be taken in good faith (see D and H).*

- c) *That being said, the Appeals Body considers that the documents provided by the public prosecutor's office in Bochum are sufficient to establish with an adequate balance of probability that V. and N. were approached by members of a criminal network with a view to manipulating a UEFA Champions league match. They failed to inform UEFA, the Hungarian Football Federation or club officials of this approach.*

*Therefore, in view of the transcripts of telephone recordings and Ante Sapina's statements to the German police, and having examined the parties, the Appeals Body considers that the evidence submitted is sufficient to conclude that the appellants violated the principles of conduct that they are bound to respect under Article 5(1) DR, and their duty of information. With regard to V., the panel has rarely seen records of conversations where the involvement of an individual in a criminal network had been established so clearly. As far as N. is concerned, the records of the conversations amongst members of the criminal group revealed at least their contact with the player with the intention to fix the match v Fiorentina. Both appellants are cited in the conversation (the goalkeeper and the number 17)".*

Finally, the Appeals Body concluded that the CD Decision had applied "the appropriate sanction, bearing in mind the particular circumstances of the case and the gravity of the offence". In such respect, the AB Decision reads as follows:

*"It has been the Appeals Body's constant practice so far to consider the power of discretion to be abused or exceeded if the first instance had based its decision on untrue or erroneous elements, notably by not applying fundamental legal principles or by considering irrelevant facts or by not considering essential circumstances whose*

*evaluation was compelling. In other words, the Appeals Body would not overturn the verdict, even if it had decided differently, as long as the challenged decision is within the scope of what appears to be reasonable.*

*Pursuant to Article 17(1) DR, the disciplinary body determines the type and extent of the disciplinary sanction according to the objective and subjective elements, under consideration of incriminating and exonerating factors. In compliance with the general principles of law, the disciplinary sanction is thus fixed in accordance with the circumstances, in conformity with the degree of fault and reputation of the party concerned. In addition to this repressive element, the sanction must also be directed at a preventive and educational objective.*

*In the present case, it is true that the appellants have a previously unblemished disciplinary record. However, that is the least that can be expected of a player and it has very little relevance in view of the gravity of the offences they committed. By having, or at the very least concealing, contact with people involved in organised crime with a view to influencing the course of a UEFA Champions League match in return for payment in order to enable others to win bets illegally, the appellants did not hesitate to endanger the very essence of football, which relies on matches taking place in a spirit of loyalty, integrity and sportsmanship, free from all constraints except the laws of the game.*

*UEFA is quite right to believe that it should apply a policy of zero tolerance towards any player, member or official who is involved in criminal activities aimed at influencing the course and/or the result of a competition for financial gain.*

*The fact that, in this case, the attempt to fix the Debreceni VSC v Fiorentina match did not succeed is irrelevant to the violation of the principles of conduct committed by the appellants. However, the fact that the plan was not carried out should be, and clearly was, taken into account by the respondent when determining the sanctions (Article 17(1) DR)."*

The AB Decision was notified to the Appellants on 19 October 2010.

On 29 October 2010, the Players filed a statement of appeal with the Court of Arbitration for Sport (CAS), pursuant to the Code of Sports-related Arbitration (the "Code"), to challenge the Decisions. Together with their statement of appeal, the Appellants applied for a stay of the Decisions, pursuant to Article R37 of the Code.

On 15 November 2010, the Respondent filed its answer to the Appellants' request for provisional measures.

On 18 November 2010, the Appellants filed their appeal brief, which specified the requests, already included in the statement of appeal, for some procedural and evidentiary measures.

On 29 November 2010, the Deputy President of the CAS Appeals Arbitration Division issued an Order on Provisional and Conservatory Measures as follows:

- "1. The application for provisional and conservatory measures filed by N. and V. is dismissed.*
- 2. The costs of the present order shall be determined in the final award or in any other final disposition of this arbitration".*

On 13 December 2010, the Respondent filed its answer brief with eight exhibits, including the UEFA case file.



On 19 January 2011, the CAS Court Office advised the parties that the Panel had considered the procedural motions put forward by the parties and had taken the following decisions:

- “1. *The Appellants are invited to file, within 10 days upon receipt of the present correspondence, the summary of the expected testimonies of D., P. and F.;*
2. *With respect the depositions of Mr Cvrtak, Mr Mihelic and Mr Sapina, the Appellants are reminded that it is their duty to secure the attendance of the witnesses they wish to be heard at the hearing, as it is clearly stated in Article R44.2 by reference of the Article R57 of the CAS Code. The Panel also notes that it is not in position to order UEFA to provide the contact details of those witnesses to UEFA. In light of what has been stated, the Appellants’ motion in this respect is hereby denied.*
3. *As regards the deposition of Mr X and any other procedural motion filed by the Appellants, the Panel defers any decision on this point and on their relevancy after having heard the parties at the hearing”.*

On 28 January 2011, the Appellants, as instructed by the Panel, filed a summary of the expected testimonies of D., P. and F.

On 22 February 2011, the Respondent filed with the CAS Court Office copies, in the German original, of some depositions rendered in the German Proceedings by Mr Nürettin Günay, Mr Ante Sapina and Mr Marijo Cvrtak, with the request that they be admitted in the case file pursuant to Article R56 of the Code. An English translation of portions of such documents was filed on 25 February 2011.

In a letter dated 3 March 2011 the CAS Court Office informed the parties that the Chairman of the Panel had decided, in accordance with Article R56 of the Code, to accept the documents submitted by the Respondent on 22 February 2011, as well as the relevant translations into English submitted on 25 February 2011, with the indication that the mentioned documents would not be considered “witness statements” and that their evidentiary weight would be discussed at the hearing.

As authorized by the Panel on 7 March 2011, the Appellants filed on 9 March 2011 a brief with comments on the evidence offered by the Respondent in support of its claims.

On 10 March 2011, a hearing was held in Lausanne. The hearing was attended:

- i. for the Appellants: by N. and V. in person, assisted by Dr Andor Léka and Dr. István Micskey, counsel;
- ii. for the Respondent: by Mr Véron Mosengo-Omba, legal counsel, disciplinary services of UEFA, and by Mr Michael Noth and Mr Jean-Samuel Leuba, counsel.

At the hearing, *inter alia*,

- i. P., D. and F. were heard as witnesses, confirming in essence the content of their previously stated testimonies (as summarized by the Appellants on 28 January 2011);
- ii. the Appellants indicated that they did not intend to rely on any portion of the documents filed by the Respondent on 22 February 2011 not translated into English;

- iii. the parties agreed that the standard of evidence applicable in the proceedings is the “balance of probabilities”;
- iv. UEFA confirmed that it was not relying, in support of its claims before this Panel, on the declarations of Mr X, heard in the disciplinary proceedings before the CD Body;
- v. the Appellants clarified their request for relief, confirming that they were requesting that both Players be released of any responsibility and that the request of reduction of the sanction imposed on V. had been filed only in a subordinate way;
- vi. upon the Panel’s request, the parties indicated those factual elements in the file which they were referring to in order to substantiate their respective requests for relief.

At the conclusion of the hearing, the parties, after making submissions in support of their respective cases, confirmed that the Panel had respected their right to be heard and to be treated equally in the arbitration proceedings.

## LAW

### Jurisdiction

1. The CAS has jurisdiction to decide the present dispute between the parties. The jurisdiction of CAS, which is not disputed, has been confirmed by the signature of the Order of Procedure and is based *in casu*, for the purposes of Article R47 of the Code, on Articles 62 ff. of the UEFA Statutes and Article 66 UEFA Disciplinary Regulations (the DR).
2. More specifically, the provisions that are relevant to that effect in these proceedings are the following:
  - i. Article 62.1 of the UEFA Statutes, which provides that:  
*“Any decision taken by a UEFA organ may be disputed exclusively before the CAS in its capacity as an appeals arbitration body, to the exclusion of any ordinary court or any other court of arbitration”.*
  - ii. Article 66 DR, under which:  
*“Subject to the provisions regarding the Court of Arbitration for Sport (CAS) contained in the UEFA Statutes, decisions of the Appeals Body are final and become effective when announced”.*

## Appeal proceedings

3. As these proceedings involve an appeal against decisions in a dispute relating to a disciplinary infringement, issued by an international confederation (UEFA), which statutes provide for an appeal to the CAS, they are considered and treated as appeal arbitration proceedings in a disciplinary case of international nature, in the meaning and for the purposes of the Code.

## Admissibility

4. The statement of appeal was filed within the deadline set in the UEFA Statutes. No further recourse against the AB Decision is available within the structure of UEFA. Accordingly, the appeal filed by the Appellants is admissible.

## Scope of the Panel's review

5. According to Article R57 of the Code, the Panel has full power to review the facts and the law of the case. Furthermore, the Panel may issue a new decision which replaces the decision challenged, or may annul the decision and refer the case back to the previous instance.
6. However, pursuant to Article 62.6 of the UEFA Statutes,  
*"The CAS shall not take into account facts or evidence which the appellant could have submitted to an internal UEFA body by acting with the diligence required under the circumstances, but failed or chose not to do so".*

## Applicable law

7. According to Article 63.3 of the UEFA Statutes, *"proceedings before the CAS shall take place in accordance with the Code of Sports-related Arbitration of the CAS"*.
8. The Code, at its Article R58, requires the Panel to 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. In the latter case, the Panel shall give reasons for its decision"*.
9. The Panel notes that it is undisputed that the UEFA rules, on which the Decisions were based, are the *"applicable regulations"* for the purposes of Article R58 of the Code. They apply together with Swiss law, which is the law of the country where the federation (UEFA) which has issued the challenged decisions is domiciled.

10. More specifically, the UEFA rules that are applicable in these proceedings are contained in the UEFA Disciplinary Regulations (the DR) as follows:

i. Article 5 [“Principles of conduct”]:

“1 Member associations, clubs, as well as their players, officials and members, shall conduct themselves according to the principles of loyalty, integrity and sportsmanship.

2 For example, a breach of these principles is committed by anyone:

a) who engages in or attempts to engage in active or passive bribery and/or corruption;

(...)

d) whose conduct brings the sport of football, and UEFA in particular, into disrepute;

(...)

j) who acts in a way that is likely to exert an influence on the progress and/or the result of a match by means of behaviour in breach of the statutory objectives of UEFA with a view to gaining an undue advantage for himself or a third party.

(...)

l) who participates directly or indirectly in betting or similar activities relating to UEFA competition matches, or who has a direct or indirect financial interest in such activities”.

ii. Article 8 [“Principles”]:

“1 Unsportsmanlike conduct, breaches of the Laws of the Game, as well as infringements of the statutes, regulations, decisions and directives of UEFA, are punished by means of disciplinary measures. (...)”.

iii. Article 11 [“Other offences”]:

“1 Disciplinary measures provided for in Articles 14 and 15 of the present regulations may be taken against member associations or clubs if:

a) a team, player, official or member is in breach of Article 5 of the present regulations;

(...)”.

iv. Article 15 [“Disciplinary measures against individuals”]:

“1 The following disciplinary measures may be imposed against individuals in accordance with Article 54 of the UEFA Statutes:

a) warning,

b) reprimand,

c) fine,

d) suspension for a specified number of matches or for a specified or unspecified period,

e) suspension from carrying out a function for a specified number of matches or for a specified or unspecified period,

f) ban on exercising any football-related activity,

g) withdrawal of a title or award”.

v. Article 17 [“General principles”]:

“1 The disciplinary body shall determine the type and extent of the disciplinary measures to be imposed, according to the objective and subjective elements, taking account of both aggravating and mitigating circumstances. Subject to Article 6 (1) of the present regulations, no disciplinary measures may be imposed in cases where the party charged bears no fault or negligence”.

### The merits of the dispute

11. The main issues in this arbitration, as raised by the Appellants, concern the existence of the infringements for which sanctions have been imposed by the UEFA disciplinary bodies. The Appellants submit, in fact, that UEFA has not proved any violation by the Players of any UEFA rule. On the other side, UEFA maintains that the evidence offered confirms that the Appellants committed the violations for which they were sanctioned in a proper measure.
12. As a result of the Appellants' submissions, there are two questions that the Panel needs to answer:
  - i. the first question is whether the Appellants can be found to have committed the violations of the UEFA rules for which they were sanctioned;
  - ii. the second question, to be addressed in the event any of the Appellants is found to have committed violations of the UEFA rules, concerns the measure of the sanction to be imposed on him.
13. The Panel shall consider each of said questions separately.
14. Before turning to them, however, the Panel wishes to clarify some preliminary issues.
15. As a first point, it appears proper for the Panel to underline the necessity that the positions of the Appellants are examined separately. To find a disciplinary responsibility it is necessary that evidence is given that a particular individual committed, by his actions and/or omissions, a rule infringement. Therefore, it is essential to verify separately (a) whether evidence has been provided to show that V. breached the applicable provisions, and (b) whether evidence has been provided to show that N. breached the applicable provisions.
16. The other points concern the burden and the standard of evidence applicable for such purposes in these proceedings.
17. With respect to the burden of evidence, it is the Panel's opinion that UEFA bears the burden of proving that the Appellants' conduct violated the UEFA rules. In other words, it is the Panel's duty to verify whether UEFA has discharged this burden proving that the Appellants committed infringements of the applicable regulations.
18. With respect to the standard of evidence, it is the Panel's opinion that the party bearing the burden of evidence, in order to satisfy it, does not need to establish "beyond any reasonable doubts" the facts that it alleges to have occurred; it needs to convince the Panel that an allegation is true by a "balance of probability", i.e. that the occurrence of the circumstances on which it relies is more probable than their non-occurrence (see CAS 2008/A/1370 & 1376, § 127; CAS 2004/A/602, § 5.15; TAS 2007/A/1411, § 59). In this context, as indicated in a CAS precedent relating to "integrity issues" (CAS 2009/A/1920), the Panel needs however to be comfortably satisfied that the relevant facts have been established, bearing in mind the seriousness of the allegation which is made. Yet, the Panel, while assessing the evidence, has

well in mind that “*corruption is, by nature, concealed as the parties involved will seek to use evasive means to ensure that they leave no trail of their wrongdoing*” (CAS 2010/A/2172, § 54). Furthermore, the parties agreed that the standard of evidence applicable in the proceedings is the “balance of probabilities”.

19. In this respect, it must be noted that disciplinary rules enacted by sports authorities are private law (and not criminal law) rules (see on the point the advisory opinion CAS 2005/C/841, § 78). Consequently, in the Panel’s view, any legal issue concerning the satisfaction of such burden of proof should be dealt within the context of the principles of private law of the country where the interested sports authority is domiciled. In this respect, the Panel notes that in Swiss law (being the law subsidiarily applicable in these proceedings: § 9 above), Article 8 of the Civil Code, which establishes the rule on the burden of proof (“*Chaque partie doit, si la loi ne prescrit le contraire, prouver les faits qu’elle allègue pour en déduire son droit*”), allows the adjudicating body to base its decision also on natural inferences (see CAS 96/159 & 96/166, § 16).
20. The evidentiary measures requested and/or granted during these arbitral proceedings, finally, require a couple of remarks:
  - i. the documents containing the minutes of examinations of people accused of corruption by the German prosecutors which were lodged with the CAS Court Office on 22 February 2011 (in German) and on 25 February 2011 (their English translation) were admitted in the case file by the Chairman of the Panel pursuant to Article R56 of the Code. The Panel finds such decision correct, as it is satisfied by the explanations offered by the Respondent concerning the documents’ unavailability at an earlier stage of these proceedings. However, even if they were not admitted as “witness statements”, the Panel finds such documents meaningful, if read in conjunction with all other available evidence on file, and remarks that the declarations therein contained were not rendered with the present dispute in mind. In addition, the Appellants had ample opportunity to discuss them, both in writing and orally;
  - ii. the Panel, in a letter sent by the CAS Court Office on 19 January 2011, reserved any decision on some measures requested by the Appellants, and chiefly on the hearing of Mr X as witness. At the hearing it was confirmed that UEFA is no longer relying on the declarations of Mr X to support its case; on their side, the Appellants did not identify circumstances, other than those on which Mr X had rendered declarations before the CD Body, for the examination of Mr X. As a result, the Panel finds the deposition of Mr X to be irrelevant for its decision on the dispute between the parties. The application for evidentiary measures filed by the Appellant, to the extent not dealt with in the letter of 19 January 2011, is therefore dismissed.
21. With the above in mind, the Panel can turn to the examination of the questions concerning the disciplinary responsibility of the Appellants.

A. *Can the Appellants be found to have committed the violations for which they were sanctioned?*

a) Introduction

22. The Decisions found the Players responsible for the violation of Article 5.1 DR: more exactly, for breach of the *"principles of conduct"* therein established and of *"their duty of information"*, because, after having been *"approached by members of a criminal gang with a view to manipulating a UEFA Champions league match"*, they *"failed to inform UEFA (...) of this approach"*.
23. The Appellants in this respect raised, in their submissions, a point which needs to be examined first. The Appellants, in fact, allege that nothing in Article 5 DR, or elsewhere in the UEFA rules, obliges the players to report to the sporting authorities any form of illicit approach. Therefore, their alleged omission, following contacts which they in any case deny, could not be considered, even if proved, a violation of the disciplinary regulations.
24. The Panel does not agree with the Appellants' suggestion and confirms (in line with CAS precedents: CAS 2010/A/2172, § 70) that the principles of *"loyalty, integrity and sportsmanship"* imply the duty of the players to fully cooperate with the sporting authorities in their effort to prevent manipulation of matches. Indeed, without the assistance of the players, target of attempted bribery, it would be impossible for UEFA to guarantee the credibility of the competitions it organizes. Therefore, the players, approached in view of a manipulation, have the obligation to inform the authorities. The failure to do so breaches the principles of *"loyalty, integrity and sportsmanship"* also because it amounts to a *"conduct [which] brings the sport of football into disrepute"* (Article 5.2(d) DR), and ends up in the (at least passive) involvement in a bribery attempt (Article 5.2(a) DR).
25. The finding, therefore, that any of the Players had been contacted for the manipulation of a match and failed to report such contact would amount, for the player in question, to a breach of Article 5 DR.

b) Has a disciplinary offence been committed by V.?

26. V. admitted, before the UEFA disciplinary bodies, to having been contacted by the criminal gang, object of the German Proceedings. In the interview of 17 April 2010 before the UEFA disciplinary services, V. declared the following:  
*"(...) before the away match with Liverpool, two men came to the front of the hotel (...) where the whole Debrecen team was staying, and asked me to manipulate the match. The team was supposed to lose by three goals. One of them offered me about EUR 80,000 for it. (...) . I told them I could not do it because it was a CL match and opportunities to play against teams such as Liverpool don't come along very often. I also told him that, even if he offered me more money, I would not agree. (...) . They said that I could manipulate a different match if I wanted to. However, I immediately refused"*.
27. Such events were confirmed also before this Panel, with the explanation, however, (i) that V. failed to report the approach because he was afraid of the possible reaction of the criminal

gang, and (ii) that *“this statement should not be taken into account with respect to the Champions League match Debreceni VSC – ACF Fiorentina”*.

28. With regard to the Match, indeed, the parties discussed the available evidence to support (the Respondent) or deny (the Appellants) the finding, made by the Decisions, that V. had been contacted in view of its manipulation.

29. The Respondent points to the following evidence:

- i. the declarations rendered in the German Proceedings before the German authorities:
  - by Mr Ante Sapina on 14 May 2010, indicating that *“it was planned that Debrecen would lose in the handicap. I told my brother that the Debrecen players wanted to bet against themselves but wanted to wait until the team was announced. (...) . I told him later that the Debrecen players had pulled out because of their own line-up and that of the opposition (...)”*;
  - by Mr Nürettin Günay on 30 March 2010 as follows: *“Marijo had already approached me beforehand, and said the Liverpool v Debrecen Champions League match had been fixed. He said the ‘No. 1’ had been bought, i.e. the goalkeeper”*;
  - by Mr Ante Sapina on 19 July 2010 with respect to the Match:
    - *“Marijo wanted to fix the match so that Fiorentina would lose in a handicap. (...) He persuaded the goalkeeper to fix it, for which he wanted a considerable sum, about € 50-100,000. So Marijo wanted to borrow money from me, so that he could give the keeper that much. On the day of the match (...) the keeper called it off with Marijo and the match wasn’t fixed”*;
    - *“As far as I know, he [Marijo Cvrtak] spoke to another two defenders, but I don’t know whether he reached an agreement with them for this match. And I don’t know who the players were”*;
  - by Mr Marijo Cvrtak on 2 September 2010: *“There were rumours about both the Debrecen goalkeepers. Both were willing to fix matches, according to betting circles. I also tried to establish direct contact with the keepers myself. (...) . In the end I was able to make indirect contact with V. via someone called Danko from Vienna. (...) . Danko wanted € 100,000 for the keeper and € 50,000 for two other players, both defenders”*;
- ii. the telephone conversations, monitored for the purposes of the German Proceedings, which occurred:
  - on 20 October 2009 (day of the Match, scheduled for 20:45)
    - at 19:41:01 between Mr Ante Sapina and Mr Marijo Cvrtak, transcribed as follows: *“Marijo says that HE has just sent an SMS – he doesn’t pick up the phone when Marijo calls him, but sends him an SMS: ‘Nothing, but ask DINO why’. (...) . Ante initially does not understand what Marijo is saying and asks who wrote (the SMS). The goalkeeper, says Marijo (...) . Ante asks what Marijo wants to do now, what is up with the other two, whether the two of them could not say anything to HIM (...) . Marijo says (...) without the ‘1’ (...)”*;
    - at 19:54:16 between Mr Marijo Cvrtak and Mr Ante Sapina, during which *“Marijo (...) tells Ante that Carlo has told him that THEY have told him too. ‘It is too dangerous – no work’ ”*;



- at 20:10:17 between Mr Ante Sapina and Mr Ivan Pavic, summarized as follows: *“Ivan asks if the bloke who sent HIM the SMS was the one who brought them together. Ante says no – it was the goalkeeper (...)”*;
- at 20:20:09 between Mr Ante Sapina and Mr Branko Pavic: *“Ante says there has been a problem. HE pulled out – sent HIM an SMS: ‘Nothing today (...) but ask Dino why!’ Branko wants to know who sent the SMS. Ante replies: the goalkeeper!! (...) Branko asks if HE sent Marijo the SMS. Ante confirms: the goalkeeper sent Marijo the SMS (...)”*;
- at 20:31:54 between Mr Marijo Cvrtak and Mr Ivan Pavic, during which *“(...) says Marijo that Carlo also said that they said no to him. Marijo will find out what happened after the match. And why. (...)”*;
- at 22:42:55 between Mr Ante Sapina and Mr Branko Pavic: *“Ante is devastated (...): ‘That goalkeeper has cost me four or five hundred’ (...)”*;

on 21 October 2009

- at 00:07:37 between Mr Marijo Cvrtak and Mr Ante Sapina: *“Marijo reports what the GOALKEEPER told him. He doesn’t know whether it’s the truth or not. To be honest, though, he daren’t think about it. He (the goalkeeper) said that someone approached the captain and said, ‘if everyone else is “working”, why shouldn’t you also?’ Marijo himself knows for sure that this captain would never “work” and has never “worked” in his life. Carlo told him the same. He/the captain comes from a good family and has money (...) there is no chance that HE would “work”. He? kicked up an enormous fuss – who would “work”, what it would mean, and whether they were in the UEFA CUP to sell matches and so on. HE said it to the president, the coach and in front of everyone. Marijo does not know if this is true or not. HE says that the captain had talked the whole time. However, HE doesn’t understand everything in Hungarian and all the details. HE says the captain talked the whole time about DINO, DINO. Five people had been with HIM (captain), to offer IT to him. Five groups had approached HIM, offering HIM money. However, he says that HE would never have accepted it if he had not been called by HIM. Ante says that is exactly what he feared. Marijo repeats that five groups approached HIM. All the players were approached. Some even went to the president and offered him something – that’s how mad they are. Marijo cannot tell if it is true, but he can’t see any other reason why HE should turn Marijo down. HE wouldn’t have done it for no reason. Marijo can only pass on to Ante what HE told Marijo. Marijo will soon see what HE has to say. HE is saying something similar. But HE is not tied to HIM, says Marijo, which means that something happened, because NEITHER of them have ever refused before. Ante and Marijo do not understand how someone can go directly to the captain (...) when you ask around a bit in the team, everyone would say: ‘Just don’t ask HIM (the captain)’. Marijo reiterates that they could have asked everyone in the team – some would have said yes – the others would have said no...the only problem, the most dangerous thing is to go to the captain. No chance – they say HE (the captain) was offered 200,000 just for himself. The others were also meant to get it, but HE didn’t want to. (...)”*;

on 5 November 2009

- at 3:17:32 between Mr Ante Sapina and Mr Marijo Cvrtak, talking about Debreceni: *“Marijo points out that HE is no longer in goal – for a few games now. Now a Hungarian is in goal, says Marijo – Ante disputes this, says he is called Antic or Mantic or something similar (...)”*;

- iii. a text message (SMS), also monitored by the German authorities, sent on 20 October 2009, reading as follows: “Someone went to the captain, who has never ‘worked’ before, and said why shouldn’t you also take some if all the others are ‘working?’”;
  - iv. the team schedule for Debrecen for 20 October 2009 showing that the Players had free time in the hotel between 4:45 pm and 6:30 pm.
- 30. According to UEFA, all the above shows that the criminal gang had attempted to manipulate the Match and that V. (the goalkeeper of Debreceni) – approached also on a different occasion – had been contacted for such purposes, even though something happened at the very last moment, preventing the manipulation from actually succeeding. In addition, the Respondent questions also the credibility of V. and refers to his declarations before the CD Body, when he claimed not to remember the shirt number of his team-mate N., who had been playing in front of him for two years. On the other hand, UEFA, as made clear at the hearing, is not relying on the declarations of Mr X: in the UEFA’s opinion, all the other elements available are sufficient to find V. responsible of a disciplinary violation.
- 31. Contrary to the UEFA’s submissions, the Appellants point to the following elements:
  - i. the depositions before the Panel, whereby:
    - P., a player (the second goalkeeper) of Debreceni at the time of the Match, confirmed, as the roommate of V., that on 20 October 2009 they participated in all the team’s scheduled activities and that they left the hotel where they were staying only for such purpose, so that *“it is not possible at all that 3-4 hours prior to the kick off of the match”* V. *“showed up in a café in Budapest or at a venue other than the hotel”*;
    - F., the agent of V., stated that:
      - he did not *“participate in a meeting on 18 October 2009 with V. in a parking lot along the motorway between Budapest and Debrecen or at other venues”*;
      - he did not *“participate in a meeting on 20 October 2009 at around 16.45-17.45 with N. and V. in a café in Budapest or at other venues”*;
      - he did not *“meet Mario Cvrtak at the time specified above”*;
  - ii. the other declarations lodged before the UEFA bodies, i.e.
    - the statement signed by K., wife of V., indicating that *“it is not possible that V. on the 18th of October 2009 (Sunday) – especially in the afternoon – stayed outside of Debrecen, or in the service area between Budapest and Debrecen, because we were together in Debrecen”*; and
    - the statements signed by J., sport director of Hannover 96, by T., partner of F., and by S., player’s agent, about the activities performed by F. on 18 and 20 October 2009, intended to show that he could not participate in the alleged meetings between V. and the members of the criminal gang;
  - iii. the unreliability/inadmissibility of the declarations rendered by Mr X;
  - iv. the unreliability of the transcriptions of the telephone conversations, which are not *“authenticated”* and *“the geographical position of the caller and the receiver of the phone calls are [not] identified”*;

- v. the behaviour of the UEFA disciplinary inspector, who threatened V. while gathering his declarations;
  - vi. the declarations rendered by Mr Cvrtak on 2 September 2010 before the German authorities, admitting that:
    - he was not in Budapest on the day of the Match;
    - *“there was absolutely no fix (...). I was embarrassed about the nature of the planned fix. Ante asked me why it didn’t work out. I told him that someone had spoken to the captain. I just mentioned the name Dino because of a gut feeling (...) as a justification for the failed fix”*;
  - vii. the declarations rendered by Mr Sapina on 19 July 2010 before the German authorities, indicating that he did not know who the corrupt players were;
  - viii. the lack of direct evidence proving the contacts between the criminal gang and V.
32. All the above, in the Appellants’ opinion, shows that V. did not meet Mr Cvrtak before the Match and that the attempt of manipulation has not been proved.
33. The Panel has carefully reviewed the facts and the various pieces of evidence available, summarized above. On their basis, the Panel concludes that, on a balance of probability, it has been proven to its comfortable satisfaction that there were contacts between V. and the members of a criminal group involved in match fixing and betting fraud. V., indeed, admitted such contacts, even though not with respect to the Match, but to a different one. V. was obliged to report the said contacts to UEFA. By failing to make such a report, V. violated the principles of conduct as set forth under Article 5 DR.
34. With respect to the Match, the Panel finds that the transcripts of the telephone recordings of 20, 21 October and 5 November 2009 made available by the German authorities, in conjunction with all the other evidence, are particularly incriminating. The transcripts suggest that V. participated in the planning of an attempt to fix the Match as they make reference on several occasions to the goalkeeper (i.e. V.) in the context of match fixing and betting fraud, showing that the members of a criminal group contacted V. Such transcripts refer to conversations made by persons who were not aware of their tapping, and were therefore talking freely about their planned fraud: such persons had no reason or benefit to falsely implicate V. in the crime. The content of such conversations, then, has not been challenged in the depositions rendered by the persons involved before the German authorities: well to the contrary, they appear as confirmed. Furthermore, V. did not provide any plausible explanations that would contradict the content of the conversations. The Panel therefore holds that it has been convincingly established that V. was contacted before the Match by persons who offered him monies to manipulate its result and that V. participated in a concealed planned attempt of match fixing very shortly prior to the Match.
35. The Panel does not find the contrary suggestions and explanations, offered by the Appellants, to be impressive. The Panel in fact notes:

- i. that such conclusion is not based on the declarations of Mr X, who had indicated before the CD Body that meetings had occurred on 18 and 20 October 2009 between the criminal gang and V.;
  - ii. this conclusion is not contradicted by any of the elements brought by the Appellants (§ 31 (i), (ii), (iii) and (vi) first point above) to cast doubts on the occurrence of such meetings:
    - the team schedule for Debreceni for 20 October 2009 gave the players free time in the hotel between 4:45 pm and 6:30 pm. Therefore, contrary to P.'s testimony at the hearing, it was feasible for V. to leave the hotel and attend the meeting;
    - the statements of F. at the hearing or the statements signed by J., T. and S. only attest to F.'s whereabouts, intending to show that he could not have participated in the meetings between V. and the members of the criminal group. However, they do not address V.'s whereabouts;
    - the only statements that dealt with V.'s whereabouts were those of his wife, K., who merely said that on 18 October 2009 V. could not have *"stayed outside of Debrecen, or in the service area between Budapest and Debrecen, because we were together in Debrecen"*;
  - iii. even if these particular meetings had not taken place, the transcripts of the telephone conversations show that there were contacts between V. and the members of a criminal group in the contexts of match fixing and betting fraud. In this regard, contrary to the Appellants' submission, the transcriptions of the telephone conversations provide for reliable evidence: as already noted, they document dialogues whose content has been confirmed in the depositions rendered by the persons involved before the German authorities. In any case, they show the elements which, in the Appellants' opinion, are necessary for them *"to be acceptable as evidence"*;
  - iv. the statement of Mr Cvrtak that *"there was absolutely no fix"* made on 2 September 2010 does not contradict all the other evidence concerning the contacts with V., and can be intended to mean that at the end the Match result was not fixed;
  - v. the declarations rendered by Mr Sapina on 19 July 2010 before the German authorities indicating that he did not know who the corrupt players were referred to players "other" than the goalkeeper;
  - vi. there is no evidence of an intimidating attitude of the UEFA disciplinary inspectors in the gathering of the deposition of V., and, even if there had been such evidence, it would not be clear to the Panel in which direction such attitude could have interfered with the finding of a disciplinary responsibility of V.;
  - vii. the fear of possible reactions by the criminal gang is no excuse under the DR for a player's failure to report an illicit approach.
36. The finding that V. violated the principles of conduct set forth under Article 5 DR by failing to report the said contacts to UEFA makes it unnecessary for the Panel to express a final finding on whether or not V. actually manipulated the Match or actually received any money for agreeing to manipulate it. The offences are made out in any event.

- c) Has a disciplinary offence been committed by N.?
37. The Decisions found also N. responsible for a violation of Article 5 DR. In support of such conclusion, the Respondent, which is no longer relying on the declarations of Mr X, refers, in essence, in this arbitration only to the following elements:
- i. the telephone conversation of 20 October 2009 at 21:08:50 between Mr Ante Sapina and Mr Marijo Cvrtak, during which Mr Cvrtak said, about the Match, *“They’ve scored three before the game’s even started. Mutlin (...) is on his own against three (...) and (...) OK, he could not stop the third (...). But three (...) are around him. Do you understand?! But I can’t see the other one. I didn’t see his number. I only saw the number 17”*;
  - ii. the text message sent by Mr Marijo Cvrtak to Mr Ivan Pavic on 21 October 2009 at 20:49:43, transcribed by the German authorities as follows: *“Number 17 was at the café”*.
38. Contrary to the finding of N.’s responsibility, the Appellants submit that the elements adduced by UEFA are not sufficient to establish, on a balance of probability, that N. had been contacted in view of the Match’s manipulation. With respect to the elements brought by UEFA, the Appellants, then, point out that:
- i. the text message sent by Mr Marijo Cvrtak to Mr Ivan Pavic on 21 October 2009 at 20:49:43, transcribed by the German authorities as follows: *“Number 17 was at the café”*, should be read in the Croatian original (*“Broj 17 je bio na kavi”*) and be better translated as *“Number 17 was having a coffee”*; which means that it cannot be held to confirm that N. attended a meeting in a Budapest café with the criminal gang on the day of the Match;
  - ii. the depositions before the Panel, and chiefly of D., his roommate, indicated that it was not possible for N. to meet the criminal gang on the day of the Match.
39. The Panel finds that the elements offered by UEFA (the two ambiguous references to the jersey number of N.) are not sufficient to establish to its comfortable satisfaction that there were contacts between N. and the members of a criminal group involved in match fixing and betting fraud. As opposed to V., the involvement of N. has not been confirmed in any declaration in the German Proceedings or before the UEFA disciplinary bodies, save as in the statements of Mr X, on which UEFA no longer relies; and no mention of the name of N. can be found in the telephone conversations recorded by the German authorities.
40. Based on the available evidence, it is not possible to conclude on a balance of probability that N. violated the principles of conduct set forth under Article 5 DR. The Decisions, in the portions that held otherwise, must be set aside.
- B. *What is the appropriate sanction to be imposed on by V.?*
41. Article 15 DR lists the sanctions that can be imposed on an individual who has committed a disciplinary infringement. According to Article 17 DR, then, the determination of the type and

extent of the sanction is based on the gravity of the infringement and the degree of the offender's guilt.

42. The Appellants submit that the sanction imposed on V. by the UEFA disciplinary bodies is excessive.
43. This Panel subscribes to the CAS jurisprudence under which the measure of the sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rules can be reviewed only when the sanction is evidently and grossly disproportionate to the offence (see TAS 2004/A/547, §§ 66, 124; CAS 2004/A/690, § 86; CAS 2005/A/830, § 10.26; CAS 2005/C/976 & 986, § 143; CAS 2006/A/1175, § 90; CAS 2007/A/1217, § 12.4).
44. The Panel, in this specific case, and taking in mind the totality of its circumstances, holds the sanction imposed by the DC Body, and confirmed by the AB Decision, to be proportionate to the level of V.'s guilt and the gravity of his infringement. V. was found involved in a match fixing scandal which occurred in a major European championship. In view of the importance of the UCL, of the level of this competition, and of the sporting and financial interests at stake, the highest standards of behaviour must be demanded of all the people involved – players, managers, coaches, officials. It is vital that the integrity of the sport is maintained. In this context, any reason advanced in support of some form of mitigation is inadequate to displace the conclusions of UEFA disciplinary bodies as to the appropriate penalty for the misconduct of V.
45. The Panel therefore finds that the suspension to 30 June 2012 and the fine of EUR 10,000 is a proportionate sanction. Thus, the AB Decision in the portions relating to V. must be upheld, without any modification.

## Conclusion

46. In light of the foregoing, the Panel finds that the appeal brought by the Appellants against the AB Decision is to be dismissed with respect to the position of V. and upheld with respect to the position of N. The AB Decision is therefore to be partially modified: the suspension of V. until 30 June 2012 and the fine imposed on him of EUR 10,000 are confirmed; no sanction is imposed on N.

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

1. The appeal filed by V. against the decision issued by the UEFA Appeals Body on 8 September 2010 is dismissed. The decision issued by the UEFA Appeals Body on 8 September 2010 in the portions relating to V. is confirmed.
2. The appeal filed by N. against the decision issued by the UEFA Appeals Body on 8 September 2010 is granted. The decision issued by the UEFA Appeals Body on 8 September 2010 in the portions relating to N. is set aside.

(...)

6. All other prayers for relief are dismissed.