

CAS 2021/A/7736 Qarabağ FC v. UEFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Dr Leanne O’Leary, Solicitor and Reader in Law in Liverpool, United Kingdom

Arbitrators: Mr Emin Özkurt, Attorney-at-Law in Istanbul, Turkey
Mr Benoît Pasquier, Attorney-at-Law in Zurich, Switzerland

in the arbitration between

Qarabağ FC, Baku, Azerbaijan

Represented by Ms Gurur Gaye Günal, Attorney-at-Law, Ankara, Turkey

Appellant

and

Union des Associations Européennes de Football (UEFA), Nyon, Switzerland

Represented by Messrs Antonio Rigozzi, Angelo Rigopoulos, Attorneys-at-Law, Lévy Kaufmann-Kohler, Geneva, and William McAuliffe and Sebastian Permain, legal counsels, UEFA, Nyon, Switzerland

Respondent

I. PARTIES

1. Qarabağ FC (the “Appellant” or the “Club”) is a professional football club situated in Baku, Azerbaijan. It is affiliated to the Association of Football Federations of Azerbaijan (the “AFFA”), which, in turn, is a member of UEFA. It plays in the Azerbaijani Premier League which is the top professional league in Azerbaijan.
2. The Union des Associations Européennes de Football (the “Respondent” or “UEFA”) is the association of European member football associations incorporated under Swiss law with its registered office in Nyon, Switzerland. UEFA is the governing body of European football and is recognised as such by the Fédération Internationale de Football Association.
3. Collectively, the Appellant and the Respondent shall be referred to as “the Parties”.

II. FACTUAL BACKGROUND

A. Background Facts

4. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions, pleadings and evidence adduced at the hearing on 29 August 2023. Additional facts and allegations found in the Parties’ written submissions, pleadings and evidence 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 submissions and evidence it considers necessary to explain its reasoning.
5. On 20 October 2020, the UEFA Executive Committee decided that because of the conflict between Azerbaijan and Armenia over the disputed region of Nagorno-Karabakh, and attendant safety and security concerns, UEFA competition matches would not be played in Azerbaijan and Armenia. Instead, matches involving those countries, or clubs from those countries, would be played at alternative neutral venues until further notice. The Appellant, subsequently, arranged to stage its home games for the 2020/2021 UEFA Europa League group stage in Istanbul, Turkey.
6. On 29 October 2020, the Appellant played a UEFA Europa League home match against the Spanish club, Villarreal CF, in Istanbul, Turkey.
7. On 30 October 2020, the Appellant’s then press officer, Mr Nurlan Ibrahimov posted the following message on his Facebook page in Azerbaijani (the “Facebook Post”), which read as follows:

“We must kill Armenians. Their children, women, and elderly – it doesn’t matter: we must kill as many of them as we can. We must not pity them or feel sorry for them. If we don’t kill them, they will kill us and our children, just like they have been doing for more than 120 years. It is necessary to restore Difa and even create a group of killers. We must bring up Abdullah Chatlis, and we must dig them out of the ground and punish them like Israel. Legally negotiating with them is not going to work. Turkey tried for so

many years and it didn't work; in the end it behaved towards them in a language they understood and they wised up.

We must kill them so they don't dare to attempt strikes against our lands like Ganja and Barda. Let them know if they hit 1 of us, 100 of us will hit back –we must hit back. Don't let anyone talk to me about humanism or about not being like them. Fire burns the place where it falls. You can't put out the fire of a father who has buried his baby in a grave in Ganja or Barda by not acting like them... We must kill them to the very last one... To the very last one...”¹

8. On 1 November 2020, the Appellant published a statement on its website (the “First Statement”) which read as follows:

“We would like to state that Qarabagh football club abides by Fair-Play and No Racism and other Rules and Principles of Uefa, while at the same time standing firm in supporting territorial right and integrity of Azerbaijan. We are passionate about Football and hope to be able to play our games in our own home stadium in Qarabagh region. We believe football is the best peaceful means to bring an international awareness to the suffering of almost a million refugees that has been displaced from their own homeland. As has been stated multiple times by our President Mr Ilham Aliyev, we condemn any attack on civilians regardless of nationality and strongly condemn the current and repeated bombing and killing of innocent civilians in cities of Ganja, Berde and Terter by Armenian forces. We demand an international response to the devastation, casualty and suffering of innocent civilians as a result of these attacks.

As Qarabagh Football Club, we remain firm in our commitment to our moral, humanistic values, our dedication to belief in unity of mankind and sanctity of life. This belief finds its root in our national culture, in Poems of our great philosopher Imadeddin Nasimi and in the heart of each one of our local and international player and team member.”

9. On 2 November 2020, and pursuant to Article 31.4 of the UEFA Disciplinary Regulations (the “UEFA DR”), UEFA appointed an Ethics and Disciplinary Inspector (the “EDI”) to conduct an investigation into the circumstances surrounding the Facebook Post.

10. Also on 2 November 2020, the Appellant published a second statement on its website (the “Second Statement”), which read as follows:

“Nurlan Ibrahimov, the head of the Press Service of our Club, who was underwent psychological trauma by the news and images of the death of the innocent Azerbaijani civilians including children and women as a result of ballistic missile strikes by the Republic of Armenia to the Ganja and Barda cities of Azerbaijan, in the position of our

¹ The Post was written in the Azeri language but for the purposes of this Award is translated into English. The translation that appears here is that provided in the UEFA CEDB Decision, and referenced by the Parties in their submissions. Neither Party has challenged the accuracy of the translation in these proceedings.

state related to the nation of the aggressive hostile state and the principles of the “Qarabağ” Football Club on his Facebook page.

We would like to note that the statements written by Nurlan Ibrahimov on the Facebook social media, which he could not control his emotional feelings against the cruelty and regretted later and deleted, do not reflect the official position of “Qarabağ” Football Club and are not endorsed by our Club.

For the reason of the wrongdoing of N.Ibrahimov makes legal liability according to the legislation of the Republic of Azerbaijan, administrative proceedings have been instituted against Nurlan Ibrahimov by prosecutor authorities of the Republic of Azerbaijan and case has been sent to Court in order to get court hearing, consequently the Court has imposed an penalty to N.Ibrahimov. Additionally, according to the Internal Discipline Codex of our Club, the wrongdoing of Nurlan Ibrahimov will be heard in the Discipline Commission and imposed a relevant discipline penalty.

“Qarabağ” Football Club reiterates that the employees of our Club should refrain to share such statements on the social media in this sensitive period, adhere to the principles of humanism and fully comply with the laws of our state.”

11. Around 2 November 2020, the Club suspended Mr Ibrahimov while it investigated his conduct, before eventually terminating his employment contract.
12. On 3 November 2020, the Chairman of the UEFA Control, Ethics and Disciplinary Body (“the UEFA CEDB”) provisionally banned Mr Ibrahimov from exercising any football-related activity with immediate effect until the UEFA CEDB had completed its investigation and adjudicated on the matter.
13. On 6 November 2020, the UEFA EDI provided a report that discussed the Club’s liability under Article 8 of the UEFA DR for Mr Ibrahimov’s misconduct and requested that the UEFA CEDB:

“1) To open disciplinary proceedings against Mr Nurlan Ibrahimov for violent, racist, discriminatory, and genocidal conduct.

2) To find Mr Nurlan Ibrahimov responsible for the violation of Art. 11(1) and (2)(b), as well as of Art. 14(1) of the UEFA DR.

3) To ban Mr Nurlan Ibrahimov for life on exercising any football-related activity for the violation of Art. 11(1) and (2)(b), as well as of Art. 14(1) of the UEFA DR.

4) To open disciplinary proceedings against Qarabağ FK for the violent, racist, discriminatory, and genocidal conduct of its official, Mr Nurlan Ibrahimov.

5) To find Qarabağ FK responsible for Mr Ibrahimov’s violation of Art. 11(1) and (2)(b), as well as of Art. 14(1) of the UEFA DR.

6) To fine Qarabağ FK for Ibrahimov’s violent, racist, discriminatory, and genocidal conduct.”

14. On 9 November 2020, disciplinary proceedings were commenced against Mr Ibrahimov and the Club, which Mr Ibrahimov and the Club defended.

B. Proceedings before the UEFA Control, Ethics and Disciplinary Body

15. On 25 November 2020, following a consideration of the evidence, the UEFA CEDB concluded that Mr Ibrahimov had breached Articles 11.1, 11.2 (incidents of a non-sporting nature) and 14.1 (racist behaviour) of the UEFA DR. It also concluded that under Article 8 of the UEFA DR, the Club was responsible for Mr Ibrahimov's racist behaviour under Article 14.1 and that the Club's response to Mr Ibrahimov's behaviour breached Article 11.2(b) of the UEFA DR. The UEFA CEDB issued the following decision (the "UEFA CEDB Decision"):

"Consequently, the CEDB

decides

- 1. Mr Nurlan Ibrahimov, Qarabağ FK official (i.e. press officer) at the time of the relevant facts, is banned from exercising any football-related activity for life from the date when he was provisionally banned (i.e. 3 November 2020), for the violation of Articles 11(2)(b) and 14(1) DR.*
 - 2. To request FIFA to extend worldwide the above-mentioned life ban.*
 - 3. Qarabağ FK ensures that Mr Nurlan Ibrahimov is personally informed of this decision.*
 - 4. To fine Qarabağ FK €100,000 for the violation of Articles 11(2)(b) and 14(1) DR.*
 - 5. The above fine must be paid into the bank account indicated below within 90 days of communication of this decision."*
16. On 4 December 2020, the grounds of the decision were notified to Mr Ibrahimov and the Club.
- C. Proceedings before the UEFA Appeals Body**
17. On 7 December 2020, the Club lodged an appeal with the UEFA Appeals Body.
18. Before the Appeals Body, the Club argued:
- The Facebook Post was not written on the Club's behalf and was shared on Mr Ibrahimov's personal social media account. The Facebook Post was not a sport-related issue and the UEFA CEDB did not have jurisdiction to hear the case as Mr Ibrahimov's conduct was not linked to the Appellant and was not related to sports activity.

- Assuming the conduct was related to football activity, applying the territoriality principle, UEFA's judicial bodies did not have jurisdiction because the only competent body with jurisdiction was the AFFA. UEFA ignored the territoriality principle and commenced disciplinary proceedings before AFFA responded.
- It disputed the UEFA CEDB's conclusion that the Facebook Post required a quicker, harsher and stricter reaction from the Club. Neither the UEFA Statutes nor the UEFA DR required such a reaction and the UEFA CEDB's conclusion was contrary to the *nulla poena sine lege* principle because it took into account subjective criteria when applying Article 8 of the UEFA DR and sanctioning the Appellant.
- The Facebook Post was published on 30 October 2020 and the Club's First Statement was made on 1 November 2020 and the Second Statement on 2 November 2020. The Second Statement stated that the Club did not share Mr Ibrahimov's view and that the Club was against any type of racist or discriminatory conduct.
- Mr Ibrahimov was not the Club's legal representative and it cannot be punished for his behaviour.
- Sports disciplinary bodies were required to take into consideration the principle of legality and proportionality when determining disciplinary matters (*cf.* CAS 2018/A/5622).
- Considering the above, the Appeals Body should annul the fine imposed by the UEFA CEDB or in the event that the Appeals Body considered the Club responsible for Mr Ibrahimov's conduct, reduce the fine, which the Club submitted was disproportionate because this was a first violation. The fine specified in Article 14 of the UEFA DR in the event of recidivism was EUR 50,000 and the Club's fine should be less than that amount.

19. The UEFA EDI submitted the following reply to the Club's submissions:

- The UEFA DR applied to any breach of UEFA's Statutes, Regulations, directives or decisions and was not limited to offences relating to a sports event or sports-related activity. The misconduct captured by Articles 11.1, 11.2 and 14.1 was not limited to a UEFA match or competition. UEFA disciplinary bodies are empowered to take disciplinary action against people who are subject to UEFA's disciplinary powers, even if the misconduct is not related to a UEFA match or competition or any other sport-related activity.
- Article 2.4 of the UEFA DR expressly establishes that the UEFA DR apply in the event of the failure by a UEFA member association to prosecute or not prosecute appropriately a "*severe violation*" of UEFA's statutory objectives. The purpose of Articles 2.4 and 29.4 of the UEFA DR is to prevent serious disciplinary violations that are committed at a national level from not being prosecuted due to the passivity of a UEFA member association. The supranational scope of the offences at hand is beyond doubt, as the genocidal comments were directed against the people of

another country whose national football association, the Football Federation of Armenia, is also a UEFA member.

- The principle of strict liability described in Article 8 of the UEFA DR applies to hold the Club liable for the conduct of its officials or any other person exercising a function on the Club's behalf, even if the Club can prove the absence of fault or negligence.
- The Club did not issue any statement or take any action against Mr Ibrahimov until UEFA informed it that it was opening a disciplinary investigation. The Second Statement was ambiguous and did not vehemently condemn Mr Ibrahimov's genocidal comments.
- Pursuant to Articles 3.1(b) and 8 of the UEFA DR, it is sufficient that a club designates a person to exercise a function on its behalf. Mr Ibrahimov was the Club's public relations and press officer, and exercised an essential function on behalf of the Club in front of the media; whether he was the Club's legal representative or not is irrelevant.
- The level of fine imposed is justified and ensures the enforcement of UEFA's statutory objectives, specifically Article 2.1(b) of the UEFA Statutes because: Mr Ibrahimov's comments were extremely serious; the comments were violent, racist, discriminatory and genocidal; Mr Ibrahimov held an essential position in the Club's organisation; and the Club's reaction to the Facebook Post was weak.
- Considering the above, the Appeals Body should reject the appeal and confirm the UEFA CEDB Decision.

20. The Appeals Body by its decision dated 27 January 2021 (the "Appealed Decision") dismissed the Club's appeal as follows:

"On these grounds, the Appeals Body

decides

1. *The appeal lodged by Qarabağ FC is rejected. Consequently, the UEFA Control, Ethics and Disciplinary Body's decision of 25 November 2020 is confirmed.*
2. *The costs of the proceedings, totalling €1,000 (minus the appeal fee), are to be paid by the Appellant."*

21. The reasons for the Appealed Decision were as follows:

- The Appeals Body had competence to decide the appeal under Article 30(4) of the UEFA DR and the appeal was admissible.

- The Club did not contest the violation of Article 11.2(b) of the UEFA DR but only its responsibility for the breach of Article 14.1 of the UEFA DR, and consequently the Appeals Body confirmed the violation of Article 11.2(b) of the UEFA DR.
 - The case was about the Club's responsibility for Mr Ibrahimov's conduct and the relevant issues for determination were i) whether UEFA was competent to issue disciplinary proceedings, and if so, ii) whether the Club was responsible for Mr Ibrahimov's conduct, and if so, iii) whether the sanction imposed was disproportionate.
 - As to i), the Appeals Body concluded that UEFA was competent to deal with the matter under Articles 2.4, 3.1(b) and 4 of the UEFA DR. Pursuant to Article 2.4 of the UEFA DR, the Regulations applied to any serious violation of UEFA's statutory objectives unless the violation was otherwise prosecuted in an appropriate manner. It also noted UEFA's objective in Article 2(b) of the UEFA Statutes to promote football in "*the spirit of peace, understanding and fair play, without any discrimination on account of politics, gender, religion, race or any other reasons*". The Facebook Post was directed at the population of another UEFA member association within the context of the Nagorno-Karabakh conflict and UEFA had the power and obligation to intervene. It was not necessary for the Facebook Post to relate to a football matter as that was not a requirement of the UEFA DR. Mr Ibrahimov was a Club official at the relevant time and subject to the UEFA DR.
 - As to ii), applying the principle of strict liability "*in Articles 8 and 14.1*" of the UEFA DR, the Club shall be held liable for the conduct of its official, even if not at fault itself because strict liability applies regardless of fault (*cf* CAS 2002/A/423). Evaluating the Club's actions after the Facebook Post was published, the Appeals Body noted that the First Statement did not mention the Facebook Post, was too lenient and did not strongly condemn the Facebook Post. The Second Statement appeared to deal with the Facebook Post, stating that Mr Ibrahimov's words did not reflect the Club's official position and referred to Mr Ibrahimov's "psychological trauma" and inability to control his emotional state thereby minimising the seriousness of the Facebook Post. The Appeals Body agreed with the conclusion of the UEFA CEDB that the Facebook Post required an immediate and firm reaction, which the Club did not take. From the perception of "*the reasonable onlooker*" (*cf*. CAS 2013/A/3324), the Facebook Post was in breach of Article 14 of the UEFA DR and applying the strict liability principle, the UEFA CEDB was correct to hold the Club liable.
 - As to iii), the offence was the Club's first offence of such nature within the last three years. Considering the seriousness of the Facebook Post and applying Articles 23.1 and 23.3 of the UEFA DR, the fine of EUR 100,000 was appropriate and consistent with UEFA's strict approach to racist and discriminatory behaviour.
22. On 11 February 2021, the grounds of the Appealed Decision were notified to the Appellant.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

23. On 19 February 2021, pursuant to Articles R47 and R48 of the Code of Sports-related Arbitration (the “Code”) the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport (the “CAS”) against the Respondent and regarding the Appealed Decision. The Appellant nominated Mr Emin Özkurt as an arbitrator and requested a stay of execution of the Appealed Decision.
24. On 1 March 2021, the CAS Court Office wrote to the Parties and invited the Appellant to file an Appeal Brief and to confirm whether it wished to maintain its request for a stay of execution in view of the fact that, in Switzerland, a decision of a financial nature is not enforceable while under appeal. It also invited the Respondent to nominate an arbitrator and informed the Parties that Mr Ibrahimov had filed an appeal at CAS (CAS 2020/A/7611 *Nurlan Ibrahimov v. Union des Associations Européennes de Football* (UEFA)) and invited the Parties to inform the CAS Court Office as to whether they agreed to submit the dispute to the same Panel in accordance with R50 of the Code.
25. On 3 March 2021, the Appellant informed the CAS Court Office that it did not agree to the dispute being submitted to the same panel as CAS 2020/A/7611 and that it did not maintain its request for a stay of execution.
26. On 4 March 2021, in accordance with Article R51 of the Code, the Appellant submitted its Appeal Brief.
27. On 5 March 2021, the Respondent confirmed that it too did not agree to the matter being submitted to the same panel as CAS 2020/A/7611.
28. On 8 March 2021, the CAS Court Office confirmed that the matter would not be submitted to the same panel as CAS 2020/A/7611.
29. On 15 March 2021, the Respondent requested a stay of proceedings pending the final award in CAS 2020/A/7611 on the basis that the outcome of CAS 2020/A/7611 could affect the present proceedings.
30. On 17 March 2021, the Appellant objected to the Respondent’s request for a stay of proceedings.
31. On 22 March 2021, the CAS Court Office informed the Parties that the Respondent’s request for a stay of proceedings would be submitted to the CAS Appeals Division President (the “Division President”) or her Deputy to decide.
32. On 29 March 2021, the CAS Court Office informed the Parties that in accordance with Article R32 of the Code, the Division President had decided to suspend the present proceedings until a final award had been issued in CAS 2020/A/7611.
33. On 7 February 2023, the CAS Court Office informed the Parties that the award in CAS 2020/A/7611 had been notified and invited the Parties to confirm whether they intended to resume proceedings.

34. On 10 February 2023, the Respondent confirmed that subject only to the Appellant withdrawing the appeal, the proceedings should be resumed and a new deadline of 20 days fixed for the Respondent to file its Answer.
35. On 17 March 2023, the Appellant confirmed that it wished to continue the appeal and that it had no objection to the Respondent's request for time to file its Answer.
36. On 20 March 2023, the CAS Court Office informed the Parties that the procedure had resumed, requested that the Respondent nominate an arbitrator and invited the Respondent to submit an Answer within 20 days.
37. On 30 March 2023, the Respondent nominated Mr Benoît Pasquier as arbitrator.
38. On 17 April 2023, in accordance with Article R55 of the Code and within a previously granted extension of time, the Respondent submitted its Answer.
39. On 18 April 2023, the CAS Court Office confirmed that unless the Parties agreed or the President of the Panel ordered otherwise on the basis of exceptional circumstances, the Parties were not authorized to supplement or amend their argument nor to produce new exhibits or further evidence. The CAS Court Office invited the Parties to confirm whether they preferred a hearing to be held.
40. Still on 18 April 2023, the Appellant informed the CAS Court Office of its preference for a hearing to be held in the matter and, if necessary, a case management conference in accordance with Article R56 of the Code.
41. On 25 April 2023, the Respondent notified the CAS Court Office of its preference for a hearing not to be held and for the matter to be determined on the Parties' written submissions only.
42. On 9 May 2023, the Appellant repeated its request for a hearing to be held.
43. On 10 May 2023, the CAS Court Office issued, pursuant to Article R54 of the Code and on behalf of the Division President, the Notice of Formation of a Panel, constituted as follows:

President: Dr Leanne O'Leary, Solicitor and Reader in Law in Liverpool, United Kingdom

Arbitrators: Mr Emin Özkurt, Attorney-at-Law in Istanbul, Turkey

Mr Benoît Pasquier, Attorney-at-Law in Zurich, Switzerland
44. On 23 May 2023, in accordance with Article R56 of the Code, the CAS Court Office invited the Parties to confirm whether they preferred a case management conference to be held.
45. On 30 May 2023, both Parties replied, with the Appellant confirming that it preferred a case management conference to be held and the Respondent expressing its preference

for a case management not to be held. Pursuant to Article R56 of the Code, the Panel decided not to hold a case management conference.

46. On 1 June 2023 and pursuant to Article R57 of the Code, the CAS Court Office informed that a hearing would be held in the matter and following consultation with the Parties, a hearing was set down for 29 August 2023 in Lausanne, Switzerland.
47. On 20 June 2023, the CAS Court Office invited the Parties to confirm their attendees at the forthcoming hearing.
48. On 27 July 2023, the Respondent notified the CAS Court Office that Mr Angelo Rigopoulos, UEFA Managing Director of Integrity and Regulatory and Mr William McAuliffe, UEFA Head of Disciplinary would attend on behalf of the Respondent.
49. Still on 27 July 2023, the Appellant made an application to exclude the Facebook Post as evidence in these proceedings and informed the CAS Court Office that in light of the application to exclude the evidence, the following witnesses would attend and give evidence on behalf of the Appellant: Mr Nurlan Ibrahimov, Mr Yusif Jafarov, Mr Ali Akperov and Mr Ferid Agayev. The Appellant also requested that the witnesses provide evidence by videoconference.
50. On 4 August 2023, the Appellant informed the CAS Court Office that it objected to the Appellant's attendees at the hearing.
51. On 7 August 2023, the CAS Court Office invited the Respondent to comment on the Appellant's application to exclude the Respondent's evidence of social media content and admit additional witness evidence.
52. On 11 August 2023, the Respondent informed the CAS Court Office that it objected to the Appellant's request to exclude its evidence of social media content and also objected to the attendance of Mr Ferid Agayev as witness, but agreed to the attendance of Mr Ibrahimov. The Respondent also confirmed that its attendees at the hearing were inhouse lawyers and not witnesses.
53. On 16 August 2023, the CAS Court Office informed the Parties of the Panel's decisions pursuant to Article R56 of the Code to reject the Appellant's application to exclude the Facebook Post, to accept Mr Ibrahimov's attendance at the hearing, to exclude Mr Agayev's attendance as a witness, and to permit the Appellant's witnesses to provide evidence by video conference. The reasons for the Panel's decisions to reject the Appellant's application to exclude the Facebook Post, to accept Mr Ibrahimov's attendance at the hearing, to exclude Mr Agayev's attendance as a witness are provided at paragraphs 76 to 97 of this Award.
54. Still on 16 August 2023, the CAS Court Office forwarded the Order of Procedure to the Parties which was returned in duly signed copy by the Appellant on 22 August 2023, and by the Respondent on 16 August 2023.

55. On 22 August 2023, the Appellant informed the CAS Court Office that in light of the Panel's decision not to exclude the Respondent's evidence of social media content, Mr Ibrahimov would not be attending the hearing.
56. On 29 August 2023, a hearing took place in these proceedings in person at the CAS headquarters in Lausanne, Switzerland. Besides the Panel and Ms Andrea Sherpa-Zimmermann, CAS Counsel, the following people attended the hearing:

For the Appellant:

Mr Yusif Jafarov, Witness (via videoconference)

Mr Ali Akperov, Witness (via videoconference)

Mr Musa Hasanov, Interpreter

Ms Gurur Gaye Günal, Legal Counsel

For the Respondent:

Mr Antonio Rigozzi, Legal Counsel

Mr Eolos Rigopoulos, Legal Counsel

Mr Sebastian Permain, UEFA Disciplinary Lawyer

57. At the outset of the hearing, the Parties confirmed that they had no objections with respect to the Panel. The Panel's jurisdiction over the present dispute was also confirmed. The Appellant also informed the Panel that it maintained its objection to the admission of the social media content as evidence and exclusion of Mr Agayev's oral testimony.
58. In their opening statements, the Parties reiterated the arguments already put forward in their respective written submissions. The Appellant's witnesses, Mr Yusif Jafarov and Mr Ali Akbarov, were heard regarding the circumstances specified in the written submissions already submitted and to the other circumstances related to the dispute, and the Parties and the Panel had the full opportunity to examine and cross examine the witnesses. The Parties were each given the opportunity to present their closing submissions orally.
59. Before the hearing concluded, the Parties expressly stated that they did not have any objection to the procedure adopted by the Panel and that their rights to be heard and to be treated equally had been duly respected.

IV. SUBMISSIONS OF THE PARTIES

A. The Appellant's Position

60. The Appellant's submissions, in essence, may be summarized as follows:

- The Appellant does not challenge the CAS jurisdiction and submits that the applicable law is “*UEFA Statutes and regulations, UEFA DR, CAS Code, Swiss Law, European Law of Human Rights, Lex Sportiva, General principles of the law*”.
- The fine imposed against the Appellant should be declared null and void because UEFA did not have jurisdiction to prosecute the matter. The UEFA CEDB had no jurisdiction to hear a case that was not related to the Appellant or any sports activity. Mr Ibrahimov's comments were not a “sport-related issue”. The conduct did not take place on the pitch, was not made on the Appellant's behalf, and was an expression of an opinion made on a personal social media account. The conduct was independent of sport and its rules. The comments were not addressed to any of the Appellant's opponents or any sport-related person.
- Articles 1 and 2.6 of the UEFA Statutes state that UEFA's jurisdiction is within the scope of events and disputes related to European football and its organisations; the UEFA CEDB does not have disciplinary jurisdiction over a person's non-sport related personal activities. UEFA is not competent to judge on a non-sport private law or criminal law matter, the latter of which falls to the jurisdiction of a state's judicial authorities.
- Even if the dispute were sport-related, AFFA was the competent sports organization to prosecute the case and not UEFA. Article 33.3 of the UEFA Statutes specifies the jurisdiction of the UEFA CEDB and in conjunction with Article 2.3 of the UEFA DR UEFA's jurisdiction extends to UEFA matches and competitions. The incident occurred in Azerbaijan and is not related to a UEFA organisation, championship, or event. Pursuant to Articles 2(4) and 29(4) of the UEFA DR, AFFA should be the only sports body to commence the disciplinary proceedings, yet UEFA commenced the proceedings within a two-day period. UEFA ought to have waited for AFFA to respond or asked AFFA to take up the investigation. The Facebook Post occurred on Friday 30 October 2020. UEFA ignored the principle of territoriality and commenced the disciplinary investigation within two days, including over a weekend.
- The Appellant issued two statements; the Second Statement clearly stated that the Facebook Post represented personal statements and did not reflect the Appellant's view or opinion. The Appellant also stated strongly that it did not agree with Mr Ibrahimov's comments and that it was against racism. However, UEFA did not find this reaction to be “*immediate, harsh, strict and strong*” and yet has provided no indication as to what statements would meet the “*immediate, harsh, strict and strong*” standard. In the Appellant's view, in the case of the UEFA referee, Mr Sebastian Coltescu who made a racist remark during a match that took place in the

Champions League on 8 December 2020, UEFA's reaction was less "*immediate, harsh, strict and strong*".

- UEFA did not treat the Appellant equally when compared to an incident involving Manchester United FC and Mr Edinson Cavani who responded to a follower's congratulatory message on his Instagram account with a remark that was alleged to be racist. Mr Cavani faced disciplinary proceedings under the national football association's rules; UEFA did not initiate disciplinary proceedings. In CAS 2019/A/6367, UEFA did not punish Paris St-Germain ("PSG") for the conduct of Neymar da Silva Santos Junior ("Neymar"). Also, the UEFA investigation was initiated one week after Neymar shared his post on social media. Similarly, in Neymar's case, UEFA did not initiate a disciplinary investigation or apply the rule of strict liability, and in the case of Mr Peter Beardsley who was suspended from football for 32 weeks for racist remarks, the national football association brought proceedings, not UEFA; Mr Beardsley's club also did not get sanctioned.
- UEFA has created subjective criteria for punishing a club under Article 8 of the UEFA DR. Neither UEFA Statutes, nor the UEFA DR explain the meaning of an "*immediate, harsh, strict and strong*" reaction, which are subjective criteria and ought to be included in the UEFA DR. The Appellant issued the First Statement on 1 November 2020, one day after the Facebook Post was made, issued the Second Statement on 2 November 2020, and immediately ended Mr Ibrahimov's employment contract, but the latter point was not considered as part of an evaluation of the Appellant's response.
- The principles of proportionality and *nulla poena sine lege* are applicable to sports disciplinary proceedings (*cf.* CAS 2018/A/5622) and sports organisations "*cannot apply the relevant disciplinary judgment provisions by using the right of discretion for individual behaviours*".
- CAS jurisprudence established that the principle of strict liability can only apply if there is no one upon which to impose a sanction (*cf.* CAS 2002/A/423). UEFA has already punished Mr Ibrahimov and had "*no place*" to sanction the Club under the rule of strict liability.
- Even if liable for its employee's actions, relying on Article 14 of the UEFA DR, the fine should be no more than EUR 50,000 because it is the Appellant's first breach. The amount of EUR 100,000 is double the amount imposed for recidivism and is disproportionate. UEFA also did not consider any matters in mitigation; only aggravating circumstances, which in the Appellant's view demonstrates that UEFA was not neutral in this matter.
- In the Appeal Brief, the Appellant submitted the following requests for relief:

"For the reasons explained above and to be fully appreciated by the Court of Arbitration for Sports, by reserving all our legal rights for requesting compensation from UEFA for its unlawful decision we kindly request;

1) The acceptance of our request for hearing,

2) Acknowledging that the UEFA Appeals Body's dated, 27 January 2021 Disciplinary Case ref.nr. 34025 decision and 25 November 2020 dated CEDB's decision is unlawful, we request the removal/remission of the €100,0000 fine imposed by the CEDB against the client club."

B. The Respondent's Position

61. The Respondent's submissions, in essence, may be summarized as follows:

- The Answer was submitted in the correct form and in accordance with the relevant deadlines and should be considered admissible.
- The Respondent does not challenge the jurisdiction of the CAS to hear the present appeal or challenge the appeal's admissibility.
- The Code governs the procedure in conjunction with Articles 61 *et seq.* of the UEFA Statutes. Pursuant to Article R58 of the Code, the present dispute is governed by UEFA's Statutes, rules, and regulations, in particular edition 2020 of the UEFA DR, and Swiss law. The relevant regulations are Article 2 of the UEFA Statutes and Articles 2, 3.1, 4, 6, 8, 11, 14.1, 23 and 29.4 of the UEFA DR.
- CAS 2020/A/7611 is a final and binding decision which confirms that Mr Ibrahimov breached Articles 11.2(b) and 14.1 of the UEFA DR. Mr Ibrahimov's misconduct was contrary to Article 2(b) of the UEFA Statutes, and insulting, racist and genocidal declarations are unacceptable and have no place in football or society. UEFA was obliged to act firmly in the circumstances and the UEFA CEDB imposed a life ban from any football-related activity on Mr Ibrahimov which is the harshest sanction that can be imposed on individuals under the UEFA DR. The seriousness of the offence committed by Mr Ibrahimov must be kept in mind when assessing the Appellant's responsibility.
- UEFA is competent to deal with the present case. The Appellant has not submitted any evidence to show that the AFFA or the competent authorities in Azerbaijan had initiated any form of proceedings against Mr Ibrahimov. Pursuant to Articles 2.4, 3.1(b) and 4 of the UEFA DR, the material, territorial, personal, and temporal scope of the UEFA DR are present thereby providing UEFA's disciplinary bodies with competence to deal with the matter.
- Article 2.1 applies to *any breach* of UEFA's Statutes, regulations, directives, or decisions regardless of whether the incident occurs on or off the pitch, and further certain offences do not require a connection to an action or incident that occurred on the pitch. The commission of offences under Article 11.2(b) and Article 14 of the UEFA DR do not require a connection to a sport event or sport-related activity and UEFA's disciplinary bodies are fully empowered to take disciplinary action

against insulting, racist or discriminatory conduct committed by a person who is subject to the UEFA DR. The Facebook Post was published on the day following a UEFA Europa League home match against Villarreal CF and during the Club's continuing 2020/21 UEFA Europa League campaign and must be considered as "related to football".

- Mr Ibrahimov's statements were directed against the population of another UEFA member association; the supranational dimension of the Facebook Post is clear and UEFA, as the European football regulator has the power to intervene. UEFA is not obliged to request or wait for one of its member associations to prosecute such a serious infringement, particularly when the infringement is contrary to UEFA's statutory objectives. Articles 2.4 and 29.4 of the UEFA DR apply should one of UEFA's member associations fail to prosecute, or does not prosecute appropriately, a serious violation of UEFA's statutory objectives. Despite the seriousness of the matter and the media attention it received, AFFA did not react or demonstrate an intention to prosecute the case. The Post was published on Mr Ibrahimov's personal Facebook page in which he publicly identified himself as a Club official, and his profile picture and background photo showed him in front of the Appellant's stadium and wearing the Appellant's logo. Mr Ibrahimov was the Appellant's press officer and an official at the time of the incident and he was subject to UEFA's disciplinary jurisdiction.
- The principle of strict liability is set out in Article 8 of the UEFA DR. Member associations and clubs are responsible for the conduct of their players, officials, members, supporters, and any other person exercising a function at a match at the request of the association or club, including any breach of the UEFA DR. It is an important regulatory mechanism which aids UEFA to achieve its statutory objects. It encourages clubs to identify risks and ensure individuals comply with UEFA rules and regulations and enables UEFA to hold clubs accountable for an individual's misconduct that may harm the public's perception of UEFA and the sport of football. The concept complies with fairness and public policy and has been constantly endorsed by CAS (*cf.* CAS 2013/A/3324 and 3369, para 9.24 and cases cited therein).
- The UEFA disciplinary bodies correctly concluded that all criteria were present under Article 8 of the UEFA DR to trigger the Appellant's responsibility for Mr. Ibrahimov's conduct. The Appellant is affiliated to AFFA, which in turn is a UEFA member association, and is bound by the UEFA DR. Mr. Ibrahimov infringed Articles 11.2(b) and 14.1 of the UEFA DR and the misconduct has been confirmed in a final and binding decision. At the time of the incident, Mr. Ibrahimov was employed as the Appellant's press officer and a Club official. He was in the presence of colleagues from the Appellant when he published the Facebook Post. The infringement was particularly serious and one that UEFA could not ignore.
- The Appellant refers to cases to support its position that UEFA has allegedly not acted as strongly against other individuals; the cases to which the Appellant refers are not comparable to the present case. Neymar was sanctioned for directing abusive language at a referee and infringing Article 15(d) of the UEFA DR. Mr.

Coltescu was sanctioned for inappropriate behaviour during a UEFA competition match to which he had been appointed and for infringing Article 11.1 of the UEFA DR and Article 6.1 of the General Terms and Conditions for Referees. Neither of these two cases involved conduct that was violent, racist, discriminatory, and called for genocide and which was directed to the public at large. The cases of Mr. Cavani and Mr. Beardsley were dealt with at a national level and involved comments that did not compare to those that Mr. Ibrahimov made.

- Pursuant to Swiss law, associations, such as UEFA, benefit from autonomy and have a considerable margin of appreciation regarding the sanctions imposed for breaches of their regulations. The Appellant’s response to the Facebook Post was inadequate. The First Statement did not expressly address and condemn the Facebook Post, and the Appellant ignored the Post by making vague and general comments. It was only after the Appellant was informed that UEFA had appointed an Ethics and Disciplinary Officer to investigate the matter, that it published the Second Statement, in which the Appellant justified Mr. Ibrahimov’s conduct on the basis that he had suffered “*psychological trauma*” and “*could not control his emotional feelings*”. UEFA submits there is no justification for a call for genocide. This was an incident of misconduct committed by a senior official and not a junior employee. The Appellant’s reaction was weak, belated, not spontaneous, too lenient, and not the one expected from a club that regularly participates in UEFA’s flagship competitions.
- The UEFA disciplinary bodies did not breach the principle of *nulla poena sine lege*. It is not necessary for a definition of a “strict, harsh and immediate reaction” to be provided in the UEFA DR. These words were used by UEFA’s disciplinary bodies to describe and evaluate the Appellant’s reaction to the Post and determine its degree of responsibility and did not breach the principle.
- There are no mitigating circumstances applicable to the case and all elements point towards aggravating circumstances. The UEFA CEDB considered all the facts of the case and considered that in accordance with Articles 25.1(d) and 25.2 of the UEFA DR, the absence of recidivism could not count as mitigating factors. Neither could the inadequate measures taken by the Appellant be considered a mitigating circumstance. It also noted that it was the Appellant’s first offence and that is why it did not impose sporting sanctions e.g., exclusion from the competition, deduction of points, closure of Club’s stadium (*cf.* CAS 2014/A/3628; CAS 2014/A/3625; and CAS 2013/A/3256). The UEFA did not impose the harshest sanction possible. The fine imposed is within the level prescribed in Article 6.3 of the UEFA DR. It correctly and proportionately reflects the seriousness of the offence, accords with UEFA’s strict policy against discrimination and racism, sends a strong message to the football community and serves as a deterrent and preventative measure. A reduction would undermine UEFA’s efforts to counter racism and adequately address abuse on social media.
- In the Answer, the Respondent submitted the following requests for relief:

“Based on the foregoing, UEFA respectfully requests CAS to issue an award:

- (a) *Rejecting the Appellant’s appeal.*
- (b) *Confirming the decision rendered by the UEFA Appeals Body on 27 January 2021.*
- (c) *The parties shall bear their own legal fees and other expenses incurred with these proceedings.”*

V. JURISDICTION

62. Article R47.1 of the Code provides that:

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

63. Pursuant to Article 62.1 of the UEFA Statutes:

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

64. The Appellant relies on Articles 62.1 and 63 of the UEFA Statutes as conferring jurisdiction on the CAS. The Respondent does not challenge the jurisdiction. The Parties also agreed at the outset of the hearing that there were no objections to the jurisdiction of the CAS when requested to offer their views by the Panel and the jurisdiction is further confirmed by the Parties’ signatures on the Order of Procedure.

65. Accordingly, on the basis of the above, the Panel is satisfied that it has jurisdiction to adjudicate the present dispute.

VI. ADMISSIBILITY

66. Article R49 of the Code provides as follows:

“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against”.

67. According to Articles 62.3 and 62.4 of the UEFA Statutes:

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

4. An appeal before the CAS may only be brought after UEFA's internal procedures and remedies have been exhausted."

68. The Appellant did not make submissions regarding the appeal's admissibility. The Respondent does not contest the admissibility of the appeal.
69. The Panel observes that the Appeals Body rendered the Appealed Decision on 27 January 2021 and that the grounds were notified to the Appellant on 11 February 2021. It notes that the UEFA Statutes prescribe a deadline of 10 days from the date of receipt to file an appeal against a decision made by a UEFA organ and therefore the 10-day time limit prevails over the default 21-day time limit outlined in Article R49 of the Code.
70. The Panel notes that the Appellant filed its Statement of Appeal on 19 February 2021, within the 10-day time limit and that there appears to have been no other channels for appeal internally. The Statement of Appeal also complies with the requirements of Article R48 of the Code.
71. Accordingly, on the basis of the above, the Panel is satisfied that the Appeal was filed in time and is admissible.

VII. APPLICABLE LAW

72. Pursuant to Article R58 of the Code, the Panel is required to decide the dispute:

"[According] to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision."
73. The Appellant submits that the applicable law is the "UEFA Statutes and regulations, UEFA DR, CAS Code, Swiss Law, European Law of Human Rights, Lex Sportiva, General principles of the law". The Respondent submits that the UEFA Statutes, rules and regulations, in particular the UEFA DR (edition 2020), and additionally Swiss law, are applicable.
74. The Panel notes that the Appealed Decision was rendered by the Appeals Body on 27 January 2021 and that at the time the appeal was filed, the 2020 edition of the UEFA Statutes was in effect. The incident to which the disciplinary proceedings relate occurred on 30 October 2020 and at the relevant time the 2020 edition of the UEFA DR was in effect.
75. Accordingly, on the basis of the Parties' agreement to the applicable law, the Panel considers that the UEFA Statutes (2020 edition), the UEFA DR (2020 edition) and any other relevant UEFA regulations constitute the applicable law to the matter at hand. Swiss law applies subsidiarily.

VIII. OTHER PROCEDURAL MATTERS

76. On 27 July 2023, the Appellant made an application to exclude social media content submitted as evidence by the Respondent in these proceedings. It also informed the CAS Court Office that the following witnesses would attend the hearing and give evidence on behalf of the Appellant: Mr Nurlan Ibrahimov, Mr Yusif Jafarov, Mr Ali Akperov and Mr Ferid Agayev. The Appellant had previously indicated in its Appeal Brief that two witnesses would provide evidence: Mr Yusif Jafarov and Mr Ali Akperov.
77. The Appellant provided the following reasons in support of its application to exclude the social media content, namely that the evidence:
- Lacked proper authentication and infringed Mr Ibrahimov’s privacy rights under the General Data Protection Regulation because Mr Ibrahimov’s Facebook account was private and not publicly available at the time that UEFA obtained the screenshots that were now submitted as evidence. The unauthorized collection or use of data from Mr Ibrahimov’s private account violated his privacy rights and rendered the evidence unlawful as it was not obtained by court order or by order of any other relevant judicial authority; and
 - The method by which the evidence was obtained was unlawful and under Swiss procedural law, illegally obtained evidence, including evidence collected in violation of privacy and data protection laws, could be declared inadmissible in court proceedings. Article 141 of the Swiss Code of Criminal Procedure provides that evidence obtained by unauthorized means or without proper legal authorization is inadmissible.
78. The Appellant further submitted that in these circumstances it was therefore “*crucial[ly] important to listen to Mr Nurlan Ibrahimov’s statement*”.
79. On 11 August 2023, the Respondent notified of its objection to the Appellant’s application to exclude the social media evidence for the following reasons:
- The Facebook Post was made publicly available by Mr Ibrahimov on his Facebook account and circulated widely in social media and print media.
 - UEFA did not accept Mr Ibrahimov’s account that it was limited to only “*thousands of people*” and wholly supported the reasoning of the CAS panel in CAS 2020/A/7611 *Ibrahimov v UEFA* that the Facebook Post was a “*public message intended for wider consumption*”.
 - The Facebook Post was, and remains, in the public domain, was not illegally obtained and no objection was raised to its use in related proceedings.
80. The Respondent also confirmed that despite not having been informed of Mr Ibrahimov’s attendance as a witness, it nevertheless agreed to him attending the hearing in relation to issues surrounding the Facebook Post because his evidence might be helpful to the Panel. The Respondent, however, objected to Mr Ferid Agayev as a

witness because the Appellant never referred to Mr Agayev as a witness in its Appeal Brief nor did it provide a brief summary of his expected testimony as required under Article R51.2 of the Code. Furthermore, the Appellant had not notified of any exceptional circumstances that could be relevant to the admission of his witness testimony.

81. The Panel recalls that Article R57.3 of the Code provides it with the discretion to “*exclude evidence presented by the parties if it was available to them or could reasonably have been discovered by them before the challenged decision was rendered. Articles R44.2 and R44.3 shall also apply*”.
82. Regarding the Appellant’s application to exclude the Respondent’s evidence of “*social media content*”, which appears to relate to the Respondent’s evidence of the Facebook Post and Mr Ibrahimov’s Facebook profile, the Panel notes that the Facebook Post and Mr Ibrahimov’s Facebook profile are not new pieces of evidence submitted by the Respondent for these proceedings, but was evidence submitted to and considered by the UEFA CEDB and the UEFA Appeals Body. Pursuant to Article R57 of the Code, the Panel has the power to exclude evidence in certain circumstances. However, the Panel notes that those circumstances do not apply to the present proceedings because the evidence was available during the UEFA CEDB proceedings and the Club’s appeal to the UEFA Appeals Body.
83. The Panel also recalls Article R56 of the Code, which states that:

“*Unless the parties agree otherwise 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, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer.*”
84. The Panel observes that the decisions of the UEFA CEDB and the Appeals Body do not disclose an objection to the evidence during those proceedings, and that the Appellant’s argument regarding the method by which the Respondent came to have a copy of the Facebook Post and Mr Ibrahimov’s Facebook profile is a new argument that was not previously raised in the Appeal Brief. The Panel notes also that the Respondent’s Answer and exhibits were filed on 17 April 2023 and that the Appellant waited until 27 July 2023 to make this application. It has not provided an explanation or disclosed any exceptional circumstances as to why it delayed with raising the argument earlier in these proceedings or during the previous disciplinary proceedings and when considering that it has known about the Facebook Post and Mr Ibrahimov’s Facebook profile since at least 1 November 2020. The Panel notes that the Respondent has not expressly objected to the admission of the new argument but has objected to the application to exclude the social media content as evidence. The Respondent has also agreed to Mr Ibrahimov attending to provide evidence regarding the Facebook Post.
85. The Panel recalls that pursuant to Article R57 of the Code it has the full power to consider the facts and the law and to hear the present proceedings *de novo*. It observes that Article 44.1 of the UEFA DR provides that:

“Any type of evidence may be used during disciplinary investigations and proceedings, provided that human dignity is not violated.”

86. The Appellant has not referred to Article 44.1 of the UEFA DR or alleged specifically that Mr Ibrahimov’s *human dignity* was violated.
87. The Panel further notes that the UEFA DR do not expressly permit or prohibit the use of illegally obtained evidence. Accordingly, it falls to the Panel to consider whether the evidence should be excluded or not under Swiss law.
88. The Panel observes that arbitral tribunals are not bound by the same rules of evidence as criminal and civil courts (*cf.* CAS 2011/A/2425, paras 18 - 24), and that, in any event, Swiss law does not prohibit outright the admission of illegally obtained evidence in legal proceedings (*cf.* Article 152.2 of the Swiss Code of Civil Procedure and Article 141 of the Swiss Code of Criminal Procedure). Nevertheless, the award of an arbitral tribunal with its seat in Switzerland, such as the CAS, may be set aside under Article 190(2)(1)(e) of the Private International Law Act, if the arbitral tribunal admits illegally obtained evidence in breach of procedural public policy.
89. The admission of illegally obtained evidence does not breach procedural public policy, if the need to discover the truth in a proceeding outweighs the protection of the right that was allegedly infringed (*cf.* SFT 4A_362/2013 and 4A_448/2013). The established practice of CAS panels is, therefore, to engage in a balancing exercise to evaluate the relevant interests and determine whether the evidence is admissible or not (*cf.* CAS 2019/A/6344, CAS 2019/A/6665, CAS 2011/A/2426, CAS 2011/A/2425). Matters such as the nature of the violation, the interest in discerning the truth, the conduct of the victim, the legitimate interests of the parties and the possibility of acquiring the same evidence in a legitimate manner are some of the factors to be considered as part of the balancing test; the list is not exhaustive (*cf.* CAS 2019/A/6665, para 95).
90. Mr Ibrahimov is not a party to these proceedings, although, the Appellant has notified, at a late stage, that it intends to call Mr Nurlan Ibrahimov as a witness to provide evidence of the circumstances surrounding the Facebook Post and how it was obtained, and the Respondent has agreed to his attendance. The Panel notes that the Respondent denies that the social media content was illegally obtained, that there is evidence that the Facebook Post and Mr Ibrahimov’s Facebook profile appear to have been circulated by other social media users and is in the public domain. The Panel makes no finding regarding the legality or illegality of the evidence since all the evidence upon which it would make such a finding, has not been submitted. However, even if the Panel were to accept that the Facebook Post and Mr Ibrahimov’s Facebook profile were obtained in breach of Mr Ibrahimov’s privacy, the Panel considers that the balance of interests lies firmly with the admission of the social media content and that the application to exclude the evidence should be rejected for the following reasons.
91. First, as the Panel has previously determined, the Appellant did not raise the argument within the deadline prescribed in the Code. Secondly, the Respondent’s Answer and exhibits were filed on 17 April 2023 and the Appellant’s application to exclude the evidence was made on 27 July 2023. It is not entirely clear to the Panel why the

Appellant waited almost two months to request the exclusion of evidence which was submitted as part of these proceedings on 17 April 2023, and which the Respondent has known about for considerably longer, the Facebook Post having first been published on 30 October 2020. The Panel considers that the delay with challenging the admissibility of the evidence for two and a half years demonstrates a lack of interest on the Appellant's part of defending its position on this basis and is a factor that the Panel may properly take into consideration when balancing the interests and determining the admissibility of the Facebook Post and Mr Ibrahimov's Facebook profile (*cf.* SFT 4A_448/2013, para 3.2.2). The Panel determines that the Appellant's delay with raising the argument, the Respondent's procedural rights and the interests of finding the truth outweigh any alleged breach of Mr Ibrahimov's privacy in the present case.

92. Accordingly, for all of the above reasons, the Panel rejects the Appellant's application to exclude the evidence of the Facebook Post and Mr Ibrahimov's Facebook profile.
93. Regarding the late admission of Mr Agayev's witness testimony, the Panel observes that Article R51 of the Code provides:

“Within ten days following the expiry of the time limit for the appeal, the Appellant shall file with the CAS Court Office a brief stating the facts and legal arguments giving rise to the appeal, together with all exhibits and specification of other evidence upon which it intends to rely [...].”

In its written submissions, the Appellant shall specify the name(s) of any witnesses, including a brief summary of their expected testimony, and the name(s) of any experts, stating their area of expertise, it intends to call and state any other evidentiary measure which it requests. The witness statements, if any, shall be filed together with the appeal brief, unless the President of the Panel decides otherwise.”

94. The Panel notes that the Appellant referred only to witness testimony from Mr Yusif Jafarov and Mr Ali Akberov in its Appeal Brief and submitted witness statements for each of those witnesses. However, it did not indicate that Mr Agayev would provide evidence, as required pursuant to Article R51 of the Code. The Appellant's letter of 27 July 2023 did not disclose a summary of the evidence that Mr Agayev would provide or provide an explanation for the delay with notifying of his attendance.
95. While the Panel appreciates the importance of oral testimony for the Appellant to put its case, that importance needs to be balanced against the Respondent's procedural rights. The timely production of witness evidence is required under the Code to enable an opposing party to prepare fully for a hearing. The Panel notes the Respondent's compliance with the Code rules, that it objects to the inclusion of Mr Agayev's witness testimony, and further observes that there appear to be no exceptional circumstances under Article R56 of the Code which permit the Appellant to supplement the information provided in the Appeal Brief with oral evidence from Mr Agayev.
96. Accordingly, the Panel finds that the Mr Agayev's evidence is inadmissible and determines that it is excluded from the hearing on 29 August 2023.

97. The Panel’s decisions regarding the procedural matters raised in this section of the Award were notified to the Parties on 16 August 2023. Following that notification, the Appellant informed the CAS Court Office that Mr Ibrahimov would not attend the hearing.

IX. MERITS

98. These proceedings involve an appeal against liability for a disciplinary sanction imposed by the UEFA CEDB against the Club for an employee’s misconduct. The misconduct involved the publication of an extremely offensive and discriminatory Facebook Post by the Club’s press officer and official, Mr Ibrahimov, on his personal Facebook account. Mr Ibrahimov was found to have breached Articles 11.2(b) and 14.1 of the UEFA DR and was banned for life from all football activities. His appeal against the life ban was subsequently dismissed by a CAS Panel in a final and binding decision.

99. The applicable UEFA regulations relating to the misconduct are Article 11.2(b) and Article 14.1. Article 11.2(b) UEFA DR sets out general principles of conduct as follows:

“1. Member associations and clubs, as well as their players, officials and members, and all persons assigned by UEFA to exercise a function, must respect the Laws of the Game, as well as UEFA’s Statutes, regulations, directives and decisions, and comply with the principles of ethical conduct, loyalty, integrity and sportsmanship.

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

...

b) whose conduct is insulting or otherwise violates the basic rules of decent conduct;

...

3. Breaches of the above mentioned principles and rules are punished by means of disciplinary measures”.

100. Article 14.1 of the UEFA DR relates to racism and other discriminatory conduct and provides that:

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

2. If one or more of a member association or club’s supporters engage in the behaviour described in paragraph 1, the member association or club responsible is punished with a minimum of a partial stadium closure.

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

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

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

101. The Facebook Post was not published on the Club’s social media account but by Mr Ibrahimov personally on his own Facebook account. The profile photo on Mr Ibrahimov’s personal Facebook account showed him wearing the Club’s uniform, and was superimposed on a picture of the Club’s stadium. On the basis of the principle of strict liability in Article 8 of the UEFA Regulations, the UEFA CEDB declared the Club responsible for Mr Ibrahimov’s misconduct under Article 14(1), and found the Club liable for a breach of Article 11(2)(b) because its response to Mr Ibrahimov’s conduct violated the rules of decent conduct. It imposed a sanction against the Club of EUR100,000, which was upheld on appeal to the Appeals Body. The Club now appeals against liability and the sanction.
102. In light of the Parties’ respective submissions, the Panel considers that the issues for determination are three-fold, namely:
 - a) Did UEFA have the jurisdiction to bring disciplinary proceedings against the Club regarding the Facebook Post?
 - b) If so, is the Club liable under the principle of strict liability for both offences committed by Mr Ibrahimov under Article 11(2)(b) and Article 14(1)?
 - c) If so, is the sanction imposed against the Club by UEFA disproportionate?
103. In dealing with each of these issues, the Panel recalls that:

“[I]n CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them (see also article 8 of the Swiss Civil Code, ATF 123 III 60, ATF 130 III 417). The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some fact and persuade the deciding body, it must actively substantiate its allegations with convincing evidence” (e.g. CAS 2009/A/1810 & 1811, para 18 and CAS 2020/A/6796, para 98).

104. Furthermore, the Panel observes that pursuant to Article R57 of the Code, it has the power to undertake a full review of the facts and the law, more commonly known as a *de novo* power of review. A denial of due process at the lower-level proceedings (if any) is cured by the CAS proceedings, a principle that is well-established in CAS jurisprudence (CAS 2016/A/4648, para 74; CAS 2012/A/2913, para 87; CAS 2009/A/1880-1881 paras 142-146 CAS 98/208, para 10; and CAS/98/208, para 10).

105. With that in mind, the Panel now turns to a consideration of the first issue.

A. Did UEFA have the jurisdiction to bring disciplinary proceedings against the Club regarding the Facebook Post?

106. The Appellant disputes UEFA’s jurisdiction to bring the disciplinary proceedings in the present case because Mr Ibrahimov’s misconduct was not “*sport-related*”. It submits that the Facebook Post was published on a personal Facebook account, was independent of football and its rules, did not relate to any sports activity and was not addressed to any of the Appellant’s opponents or any other person in sport. The Appellant further asserts that even if the Facebook Post were to be considered “*sport-related*”, then the competent organisation to prosecute the disciplinary offence was AFFA and not UEFA.

107. The Respondent rejects the Appellant’s arguments and submits that it had jurisdiction. Mr Ibrahimov’s discriminatory conduct fell within the material, territorial and temporal scope of the UEFA DR and UEFA’s disciplinary bodies were competent to investigate and adjudicate the misconduct, which was subsequently confirmed to have occurred, in a final and binding CAS decision.

108. The Panel observes that UEFA’s disciplinary jurisdiction is set out in Articles 2, 3 and 4 of the UEFA DR and defined in terms of material, personal and temporal scope. The material scope refers to the subject matter to which the UEFA DR apply and Article 2 provides:

“1. These regulations apply to any breach of UEFA’s Statutes, regulations, directives or decisions, with the exception of any breach of the UEFA Club Licencing and Financial Fair Play Regulations....

...

3. These regulations apply to every match and competition organised by UEFA.

4. They also apply to any serious violation of UEFA’s statutory objectives unless that violation is otherwise prosecuted in an appropriate manner by one of UEFA’s member associations.” (emphasis added)

109. Article 3.1 of the UEFA DR lists the following entities and people as being subject to disciplinary proceedings:

a. all member associations and their officials (i.e. all persons assigned by a member association to exercise a function);

- b. all clubs and their officials (i.e. all persons assigned by a club to exercise a function);
- c. all match officials;
- d. all players;
- e. all persons elected, ratified or assigned by UEFA to exercise a function.

2. The above-mentioned entities and persons are subject to UEFA's disciplinary powers. They are bound by and recognise UEFA's Statutes, regulations, directives and decisions, as well as the Laws of the Game as issued by the international Football Association board (IFAB)." (emphasis added)

110. The temporal scope or the period of time during which the conduct must have occurred to fall within the scope of the UEFA DR is defined in Article 4 as follows:

"1. These regulations apply to all those who fall under UEFA's jurisdiction on the day the alleged disciplinary offence is committed.

...".

111. The Panel observes that this dispute relates to the Club's liability for Mr Ibrahimov's misconduct under the strict liability principle provided in Article 8 of the UEFA DR, an issue that is discussed in paragraphs 119 to 132 of this Award. Insofar as the Club argues that UEFA did not have jurisdiction to bring proceedings against Mr Ibrahimov, the Panel observes that Mr Ibrahimov's misconduct has been confirmed in a final and binding CAS decision. The allegation of strict liability against the Club derives from Mr Ibrahimov's confirmed misconduct, and the Panel rejects the Club's arguments regarding UEFA's competence to bring proceedings against Mr Ibrahimov, as irrelevant to the subject matter of these proceedings, since the decision regarding Mr Ibrahimov is final and binding.
112. Insofar as the Club argues that UEFA did not have jurisdiction to bring proceedings against it, the Panel observes that a Club official breached the UEFA DR, that pursuant to Article 3.1(b) of the UEFA DR, the Club may be subject to disciplinary proceedings, and that on the day that Mr Ibrahimov's misconduct occurred, the Club was a member of AFFA, which in turn is affiliated to UEFA, was also a participant in a UEFA club competition, and fell within UEFA's jurisdiction. On that basis, the Panel finds that the material, personal and temporal scope of the UEFA DR are satisfied and UEFA had jurisdiction to bring disciplinary proceedings against the Club.
113. Additionally, the Club refers to the "principle of territoriality" and submits that UEFA breached the principle when it commenced disciplinary proceedings because the competent organisation to prosecute the disciplinary offence was AFFA and not UEFA. The Club relies on Articles 2.4 and 29.4 of the UEFA DR to claim that the misconduct occurred at a national level, that UEFA did not grant AFFA sufficient time to prosecute the matter and that it did not ask AFFA to take action thereby infringing the principle

of territoriality. UEFA rejects the Appellant's contentions and submits that the supranational dimension of the Facebook Post was clear, that it had the power and obligation to intervene, and that it is not obliged to request or wait for one of its member associations to bring disciplinary proceedings before commencing its own proceedings.

114. The Panel recalls Article 2 and Article 29 of the UEFA DR, the latter of which provides in particular:

“3. The Control, Ethics and Disciplinary Body has jurisdiction to rule on disciplinary and ethical issues in all other matters which fall within its competence under UEFA's Statutes and regulations....

4. The Control, Ethics and Disciplinary Body also has jurisdiction in the event of a UEFA member association and/or its members failing to prosecute or prosecuting in an inappropriate manner, a serious violation of UEFA's statutory objectives.”

115. A national association will usually have in place disciplinary rules and a disciplinary procedure to sanction misconduct that occurs within its jurisdiction. The Panel also observes that it is an obligation of UEFA membership that a national association has in place a regulatory framework that strictly sanctions discriminatory conduct (UEFA Statutes, Article 7bis.7) and that AFFA very likely had disciplinary rules in place to prosecute Mr Ibrahimov's misconduct, although no evidence of AFFA's disciplinary rules and procedure was provided to the Panel.
116. Despite the applicability of disciplinary rules of a national association and pursuant to Articles 2 and 29 of the UEFA DR, the Panel considers that UEFA clearly retains an overriding jurisdiction to prosecute *a serious violation of its statutory objectives*, such as a breach of Article 2(b) of the UEFA Statutes, if the national association fails to prosecute or prosecutes the misconduct in an inappropriate manner. Since there is no evidence before the Panel that AFFA contemplated or commenced proceedings against the Club, the Panel finds that UEFA had the competence to initiate its own proceedings for a breach of the UEFA DR.
117. The Panel also rejects the Club's submission that UEFA ought to have waited for AFFA to respond or that UEFA ought to have contacted AFFA before commencing proceedings. The Panel notes that the Facebook Post was published in the evening of Friday 30 October 2020 and UEFA appointed an EDI to investigate on Monday 2 November 2020. The Panel observes that the Facebook Post appears to have been circulating on social media, that the Club was continuing its participation through the group stages of the 2020/21 UEFA Europa League competition, with a match later in the week, and that Mr Ibrahimov's position as press officer meant that he likely had access to the Club's social media accounts from which similar discriminatory posts could be made, a point that was confirmed in evidence by Mr Akperov at the hearing. In the absence of any indication from AFFA, or indeed the Club, that prompt action was being taken, the Panel considers that UEFA was obliged to act swiftly to investigate and prevent any repetition of the conduct. The Panel has not been referred to any legal authority that creates an obligation on UEFA to request, or to wait for, a national member association to bring proceedings before it commences its own, and in the

circumstances the Panel considers that there was no impediment to UEFA acting as it did; if at all, UEFA was obliged to act.

118. Having determined that UEFA had jurisdiction to bring disciplinary proceedings against the Club, the issue now turns to the Club's liability for Mr Ibrahimov's conduct under Article 8 of the UEFA DR and the principle of strict liability.

B. Is the Club liable under the principle of strict liability for the offence committed by its now former employee, Mr Ibrahimov?

119. The Appellant denies that it is liable for Mr Ibrahimov's conduct. It submits that: a) it was not responsible for the Facebook Post which was made by Mr Ibrahimov on his personal social media account and not made on behalf of the Appellant and that UEFA's disciplinary bodies "*created subjective criteria for punishing a Club under Article 8*" by introducing the requirement for the Club's reaction to be "*immediate, harsh, strict and strong*", which is not included anywhere in the UEFA DR and breaches the principle of *nulla poena sine lege*; b) that the principle of strict liability applies only in cases where the person who committed the prohibited conduct cannot be identified e.g. in the situation of an unidentified spectator (*cf.* CAS 2002/A/423) and since UEFA has already punished Mr Ibrahimov, it had "*no place*" to sanction the Club under the principle of strict liability; and c) by opting to punish the Club, UEFA treated the Club differently when compared to other disciplinary proceedings involving social media posts made by players (e.g. Mr Edinson Cavani, Neymar da Silva Santos Junior ("Neymar") and Mr Peter Beardsley) because in these cases the clubs with whom the individuals were employed were not subject to disciplinary proceedings.

120. The Respondent rejects the Appellant's submissions and, a) submits that the Appellant is liable because the criteria of Article 8 have been established and UEFA's disciplinary bodies rightfully made use of their power of discretion to hold the Appellant responsible for Mr Ibrahimov's misconduct and that a definition of "*strict, harsh and immediate reaction*" is not required in the UEFA DR because "*these notions were used by UEFA's disciplinary bodies to describe and evaluate the Appellant's reaction to the Post to determine its degree of responsibility*"; b) denies that Article 8 only applies when the perpetrator of the conduct is unidentifiable and asserts that the discriminatory conduct was so serious that it could not be left ignored and required a strict reaction from UEFA; and c) submits that the cases to which the Appellant refers are not comparable to the present case.

a) Analysis under Article 8 of the UEFA DR

121. Article 8 of the UEFA DR provides that:

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

122. The principle of strict liability under Article 8 of the UEFA DR has deterrent and preventative purposes. Holding a member association or club to account for the conduct of members, players, officials or supporters or any other person exercising a function on behalf of the member association or club, encourages national associations and football clubs to take reasonable steps to prevent the commission of a prohibited act and deters others from engaging in the prohibited conduct.
123. The principle of strict liability is an important mechanism that assists UEFA to achieve its statutory objectives, protects UEFA's reputation and protects the reputation of football generally. National associations and football clubs are in a position to influence behaviour, and, specifically in the context of discrimination, to create an environment that promotes anti-discrimination and fosters inclusion through, for example: engaging in education and awareness campaigns to spread the anti-discrimination message; identifying risks of discriminatory conduct arising and taking reasonable steps to remove those risks; implementing policies, rules and regulations that prohibit discrimination; acting quickly and decisively when discriminatory conduct arises; and imposing stringent sanctions when required, all of which contributes to reinforcing the anti-discrimination message in football. It is established CAS jurisprudence that the strict liability principle complies with the principle of fairness and public policy (*cf.* CAS 2013/A/3324 and 3369, para 9.24).
124. The Panel accepts that the Club did not publish the Facebook Post for which Mr Ibrahimov was subsequently found to have breached Articles 11.2(b) and 14.1 of the UEFA DR, nor did Mr Ibrahimov publish it on the Club's behalf, facts which the Respondent does not challenge in these proceedings.
125. However, the Panel notes that the Club is bound by the same rules of conduct as Mr Ibrahimov, and Article 8 of the UEFA DR clearly provides that the Club may be subject to disciplinary measures *if an official breaches a rule of conduct to which the Club is also bound even if the Club can show that it was not at fault or negligent*. The Panel determines that in light of the purpose of Article 8 and applying a literal interpretation of the wording contained in it, and despite the fact the Club had no involvement in publishing the Facebook Post, the Club is liable for Mr Ibrahimov's misconduct as he was an official of the Club at the time his misconduct occurred.
126. The Club asserts that UEFA's disciplinary bodies "*created subjective criteria for punishing a Club under Article 8*" by introducing the requirement for the Club's reaction to the prohibited conduct to be "*immediate, harsh, strict and strong*", which is not defined anywhere in the UEFA DR and breaches the principle of *nulla poena sine lege*. The Panel notes that the Club's arguments in this regard arise from a misreading of the UEFA disciplinary bodies' decisions and rejects the argument that a breach of the *nulla poena sine lege* principle arises.
127. The Panel observes that the UEFA CEDB did not find the Club liable on the basis of strict liability for Mr Ibrahimov's misconduct under both Article 11.2(b) and 14.1 of the UEFA DR, but instead found the Club liable on the basis of strict liability for Mr Ibrahimov's misconduct under Article 14.1, and directly liable for misconduct under Article 11.2(b) of the UEFA DR because its reaction to Mr Ibrahimov's misconduct

required a “quicker, harsher and stricter reaction”. The pertinent paragraphs are as follows:

“C. The responsibility of the club for the post published by Mr. Ibrahimov

...

31. *According to the above and taking into consideration that by posting the post, Article 14(1) DR has clearly and undisputedly been violated by the club’s official, the CEDB concludes that the club, in application of Article 8 DR, must be punished accordingly for the racist behaviour of its official.*
32. *Furthermore, the CDB recalls that, according to the EDI’s report, the club did not issue any statement nor took any action against Mr Ibrahimov until UEFA informed it of the investigation. Moreover, the CEDB notes that, according to the EDI’s report, the club statement of 2 November 2020 is ambiguous and does not vehemently condemn the words of Mr Ibrahimov.*
33. *After analysing the statements published on the club’s website, the CEDB agrees with the EDI’s position. The CEDB emphasises that Mr Ibrahimov published the post on 30 October 2020 but the club, instead of immediately dissociating the post of its official from the club’s position, stated on 1 November 2020 that “Qarabagh football club abides by Fair-Play and No Racism and other rules and Principles of Uefa, while at the same time standing firm in supporting territorial right and integrity of Azerbaijan”. It was only in its statement of 2 November 2020 (i.e. the day in which disciplinary proceedings were opened against the club and Mr Nurlan Ibrahimov) when the club published another statement on its website stating that the content of the post was not endorsed by the club and that Mr. Ibrahimov could not control his feelings against the cruelty of war.*
34. *The CEDB considers that the answer expected from the club after the serious and intolerable message posted by the official would have required a quicker, harsher and stricter reaction. In this respect, it is recalled that the official called for genocide and the reaction of the club was first to say that it supported the territorial right and integrity of Azerbaijan and then to try to justify the reaction of Mr Ibrahimov while stating that it was not the position of the club, instead of strongly condemning the words published by its official.*
35. *As stated above, these types of messages have absolutely no place in football and the reaction expected from a club participating in UEFA competitions was to take an immediately strong message against the official. However, the club reacted late and not harshly enough. Consequently, the CEDB considers that the behaviour of the club constitutes a clear breach of the general principles of conduct and the basic rules of decent conduct.*

36. Accordingly, the CEDB concludes that the behaviour of the club clearly constitutes a violation of Article 11(2)(b) DR in connection with article 11(1) DR and the club must be punished accordingly.” (emphasis added)
128. The Panel also observes that at the outset of its proceedings, the Appeals Body confirmed the Club’s liability for the direct violation of Article 11.2(b) of the UEFA DR because it appears that the Club did not lodge an appeal against that finding. In relation to the Club’s liability for Mr Ibrahimov’s breach of Article 14.1 of the UEFA DR, the Appeals Body determined the following:
- “ b) *If the answer to question (a) above is affirmative, is the Appellant responsible for the comments posted by Mr. Ibrahimov?*
38. *Applying the principle of strict liability as described in Articles 8 and 14(1) DR, the Appellant shall be held liable for the conduct of its official, even if it is not at fault itself. Indeed, it has long been established in CAS jurisprudence that strict liability applies regardless of fault (cf. CAS 2002/A/423 PSV Eindhoven). In this respect, the Appeals Body emphasises that UEFA has a wide scope to consider whether or not a club shall be held responsible for the behaviour of its officials.*
39. *In the present case, the Appeals Body notes the Appellant’s argument, stating that the CEDB wrongly considered the Appellant responsible for Mr Ibrahimov’s behaviour, as no explanation of “strict, harsh, and immediate reaction” is made in the UEFA Statutes or DR, considering this against the nulla poena sine lege principle. In this respect, the Appeals Body considers that it is not necessary that a definition or explanation of ‘strict, harsh, and immediate reaction’ exists in the DR. Nevertheless, the Appeals Body considers it necessary to analyse the reaction of the Appellant to Mr Ibrahimov’s post to evaluate its level of responsibility.*
40. *The Appeals Body notes that the post was published on the Friday, 30 October 2020. The following first statement of the Appellant was published on 1 November 2020 (the “First Statement”):*
- ...
41. *After carefully reading the First Statement, the Appeals Body notes that the Appellant did not make any specific mention of the post of Mr Ibrahimov. In this regard, the Appeals Body considers that this statement is lenient and does not strongly condemn the post, which called for a genocide against the Armenian population.*
42. *Furthermore, the Appeals Body notes that on 2 November 2020, after the opening of disciplinary proceedings against Mr Ibrahimov and the Appellant, the Appellant published a second statement on its website (the “Second Statement”):*

...

43. *Regarding the Second Statement, the Appeals Body considers that the Appellant appears to deal with Mr Ibrahimov's words, recalling that they do not reflect the official position of the Appellant but at the same time, trying to justify and minimise the seriousness of Mr Ibrahimov's statements saying that Mr Ibrahimov "was underwent psychological trauma [...]" and "could not control his emotional feelings [...]."*
44. *Having considered both of the Appellant's statements, the Appeals Body agrees with the CEDB's conclusion when it stated that "the answer expected from the club after the serious and intolerable message posted by the official would have required a quicker, harsher and stricter reaction". The Appeals Body recalls that Mr Ibrahimov called for a genocide; such statements are completely unacceptable- irrespective of whether or not they are related to football- must not be tolerated and require an immediate and firm reaction, which clearly was not undertaken by the Appellant.*
45. *With this being clarified, the Appeal Body recalls the decision in CAS 2013/A/3324 GNK Dinamo v. UEFA in which the following conclusion was reached by the panel (emphasis added):*
- '9.13. In the Panel's view the test of whether or not there has been an insult qualifying for sanctions under Article 14 UEFA DR, is the perception of the reasonable onlooker. It is in that sense objective not subjective [...]*
- 9.14. [...] [i]n the law, context is everything [...]so to determine whether words, chance, gestures or other behaviour constitute racial insults all the circumstances must be considered; who is saying what to (or about) whom, when, what, how and against what background."*
46. *Considering the above, the Appeals Body concludes from the perception of the reasonable onlooker, there is no doubt that the post was in breach of Article 14 DR and, therefore, in application of the principle of strict liability, as established in Articles 8 and 14(1) DR, the CEED was correct in deciding to hold the Appellant responsible for Mr Ibrahimov's post.* (emphasis added)
129. When determining the Club's liability under Article 8 of the UEFA DR and in a section of the decision titled, "The responsibility of the club for the post published by Mr. Ibrahimov", the UEFA CEDB evaluated the Club's response to Mr Ibrahimov's misconduct, and found the Club committed misconduct under Article 11.2(b) of the UEFA DR as its response breached the basic rules of decent conduct, which was confirmed by the Appeals Body. The Panel considers that the UEFA CEDB's consideration of the Club's direct liability for misconduct has introduced confusion into these proceedings. If the Club's breach of Article 11.2(b) of the UEFA DR was an additional reason to apply the strict liability principle, then that ought to have been clearly explained in the decision; if it were a separate allegation, as the Panel considers it was, then it ought to have been expressed clearly in a separate section to avoid the

confusion that has arisen. The analysis under Article 8 of the UEFA DR adopted by the Appeals Body also evaluates the Club's "*level of responsibility*" before confirming that the UEFA CEDB was correct to hold the Club responsible for Mr Ibrahimov's breach of Article 14.1 of the UEFA DR.

130. The Panel does not agree with the approach adopted by either of the UEFA disciplinary bodies to determine the liability of the Club. As highlighted above, in a case such as the present one where the liability of the official for the prohibited conduct has been clearly established, applying a literal interpretation of the wording in Article 8 of the UEFA DR, will hold the club or national association liable for the official's misconduct. The Panel considers that the Club's actions taken immediately after the prohibited conduct occurred and an evaluation of the Club's "*level of responsibility*" are irrelevant to establishing liability under Article 8 of the UEFA DR, and are factors more properly considered when determining the disciplinary measure or sanction, which UEFA's disciplinary bodies have a discretion to apply.
131. Furthermore, a fair disciplinary procedure requires that a club knows all allegations that it is required to defend in advance of any hearing so that it can properly prepare its case. The Panel observes that the UEFA EDI's Report discussed the Club's liability in terms of Article 8 of the UEFA DR only and the Club's response to Mr Ibrahimov's conduct as relevant to the issue of sanction. The UEFA EDI Report recommended that UEFA open disciplinary proceedings against the Club for the violent, racist, discriminatory, and genocidal conduct of its official, find the Club responsible for Mr Ibrahimov's violation of Article 11.1 and 11.2(b), as well as of Article 14.1 of the UEFA DR, and fine the Club for Mr Ibrahimov's violent, racist, discriminatory, and genocidal conduct. The UEFA letter dated 9 November 2020, informing the Club that disciplinary proceedings had been initiated, expressed the allegations against the Club as "*incidents of a non-sporting nature Article 11(2)(b) in connection with 11(1) DR and Article 14(1) DR*" but did not mention Article 8 of the UEFA DR. The Club has defended all proceedings on the basis that the allegation against it was one of strict liability; UEFA has presented its case to this Panel on the basis that the allegation against the Club was one of strict liability.
132. The Panel finds that UEFA did not clearly communicate to the Club, in advance of the determination by the UEFA CEDB, that in addition to responding to an allegation that it was responsible under Article 8 of the UEFA DR for Mr Ibrahimov's conduct, the Club was also facing an allegation that its own response to Mr Ibrahimov's conduct fell below the basic rules of decent conduct and breached Article 11.2(b) of the UEFA DR, in as many words. Fairness is an underlying principle of all disciplinary proceedings and the Panel considers that even though the facts may have sustained it, holding the Club directly liable under Article 11.2(b) of the UEFA DR was procedurally unfair because the allegation was not clearly communicated in advance. This determination has no practical consequence in the present proceedings because of the Panel's *de novo* power of review, and the Panel's findings regarding strict liability.

b) *Liability under Article 8 of the UEFA DR arises only if the perpetrator of the prohibited conduct is unidentifiable*

133. The Appellant refers the Panel to TAS 2002/A/423 as authority for the proposition that the strict liability principle applies only if the perpetrator of the prohibited conduct cannot be identified. TAS 2002/A/423 concerned disciplinary proceedings brought by UEFA against PSV Eindhoven in respect of spectator conduct that occurred during a Champions League match between PSV Eindhoven and Arsenal FC on 25 September 2002. During the match, spectators in the PSV Eindhoven stadium made racist noises and threw objects onto the field, and PSV Eindhoven was subsequently held liable for the spectators' conduct under the principle of strict liability outlined in the (then) Article 6 of the UEFA DR and fined CHF30,000, which was increased on appeal to CHF50,000 by the Appeals Body. PSV Eindhoven's appeal to CAS was partially upheld and the fine reduced to CHF30,000. The Panel considers that TAS 2002/A/423 is authority for the proposition that a club may be held responsible for the acts of third parties, and that such rule is not contrary to Swiss law (*cf.* TAS 2002/A/423, paras 12- 18), and not authority for the argument that the strict liability principle applies only if the prohibited conduct is committed by someone who is unidentifiable, and the Panel rejects the Club's submission in that regard.
134. As the Respondent submits, and the Panel accepts, Article 8 of the UEFA DR holds a national association or club liable for conduct committed by certain listed people or entities, namely: *a member, player, official, supporter or any other person exercising a function on behalf of the national association or club*. Ordinarily those people or entities will be identifiable, however, the Panel accepts that in certain situations, and despite the best investigative efforts, the person or entity who committed the prohibited conduct may not be identifiable. UEFA may still seek to hold the club or national association accountable under Article 8 of the UEFA DR for the prohibited conduct of unidentifiable third parties provided the third party falls within the list set out in Article 8 of the UEFA DR (*cf.* CAS 2018/A/5734, para 217).
135. The Panel also rejects the Club's contention that UEFA had "no place" to sanction the Club under the principle of strict liability because it had already sanctioned Mr Ibrahimov. The Panel recalls that pursuant to Swiss law, associations, such as UEFA, have the autonomy to enact disciplinary rules and enforce standards of conduct that assist it to achieve its objectives (*cf.* Article 63 of the Swiss Civil Code; CAS 2005/C/976 & 986, paras 125 – 127 and 142) and accepts UEFA's submission that the discriminatory conduct was so serious that it could not be left ignored and required a reaction.

c) *UEFA treated the Club unequally compared to other professional clubs in comparable situations*

136. The Club asserts that UEFA treated it unequally when compared to the treatment of professional clubs in incidents involving: Mr Cavani, Neymar and Mr Beardsley. The Club submits that none of the clubs that employed these people at the time their misconduct occurred were held to account by UEFA under Article 8 of the UEFA DR,

and in Neymar's case, UEFA only commenced a disciplinary investigation against Neymar after one week.

137. Based on the information available to it, the Panel does not consider the cases to be comparable to the present one. Mr Cavani's case involved disciplinary proceedings brought by the Football Association (the "FA"), the national association for football in England and Wales. He was charged with an aggravated breach of an FA disciplinary rule in respect of a message that he posted on his personal Instagram account and which used a racially offensive word. The FA Regulatory Commission suspended Mr Cavani for three matches, imposed a fine of £100,000, and ordered him to attend a mandatory face-to-face education programme (*FA v Edinson Cavani*, FA Regulatory Commission, 31 December 2020, para 39). This case was purely a domestic matter.
138. The FA brought similar misconduct charges against Mr Beardsley, a former player and football coach, for racist remarks that he made on three occasions towards young players while he was a coach at Newcastle Football Club. The FA Regulatory Commission suspended Mr Beardsley from all football and football-related activity for 32 weeks, ordered him to attend a mandatory education course, and to pay costs (*FA v Peter Beardsley*, FA Regulatory Commission, 18 September 2019, para 144). The Panel considers that these national level disciplinary proceedings are not comparable to the present case because the factual circumstances, disciplinary rules and charging standards applied, and the sanctions imposed, are materially different. The cases were not connected to a UEFA competition or match and the misconduct appears to have been prosecuted satisfactorily at a national level and without the need for UEFA to assert its overriding jurisdiction.
139. The proceedings brought against Neymar did fall within UEFA's disciplinary jurisdiction. After a UEFA Champions League match between PSG and Manchester United, the result of which eliminated PSG from the tournament, Neymar posted a message on his personal Instagram account that was abusive towards the match referee. Disciplinary proceedings were brought against Neymar for a violation of Article 15.1(d) of the UEFA DR, and Neymar was subsequently sanctioned with a two-match ban (*cf.* CAS 2019/A/6367). The Panel observes that Neymar was not sanctioned for racism and other discriminatory conduct under Article 14.1 of the UEFA DR. No information was provided to the Panel from which it might draw a conclusion regarding the absence of proceedings against PSG or any delay (if in fact one existed) with initiating an investigation. Based on the available information, the Panel considers that Neymar's case is also not comparable to the present one.
140. Accordingly, the Panel rejects the Club's claim of unequal treatment.

e) Conclusion

141. For the reasons set out above, the Panel determines that pursuant to Article 8 of the UEFA DR, the Club is liable for Mr Ibrahimov's misconduct. The Panel now turns to the final issue of sanction.

C. Is the sanction imposed against the Club by UEFA disproportionate?

142. The Club submits that the fine of EUR 100,000 is disproportionate because the Appeals Body did not properly take into account mitigating factors and considered only aggravating factors. It relies on Article 14 of the UEFA DR and submits that this is its first offence and the fine should be less than the amount of EUR 50,000 which is the amount provided in Article 14.3 of the UEFA DR for a second offence.
143. The Respondent disputes that the fine is disproportionate and submits that imposing a fine of EUR 100,000 is justified and proportionate in view of the Club’s inadequate reaction to the Facebook Post, which was “*belated, not spontaneous and too lenient*”. The Respondent further submits that there are no mitigating factors.
144. The Panel observes that pursuant to Article 23 of the UEFA DR:
- “1. *The competent UEFA Disciplinary Body determines the type and extent of the disciplinary measures to be imposed in accordance with the objective and subject of elements of the offence, taking account of both aggravating and mitigating circumstances.*
- ...
3. *Disciplinary measures can be reduced or increased by the competent disciplinary body on the basis of the circumstances of the specific case. [...]*”
145. The Panel recalls the numerous different disciplinary measures that may be imposed on a club that are listed in Article 6.1 of the UEFA DR, and include a fine, and the playing of a match behind closed doors, amongst others. A fine imposed against a club must not be less than EUR 100 or more than EUR 1,000,000 (UEFA DR, Article 6.3). Disciplinary measures may also be combined (UEFA DR, Article 6.4). Annex A of the UEFA DR contains a list of standard disciplinary measures for certain first and second offences which a UEFA Disciplinary Body may consider when rendering a decision, although the list is not relevant to the present case. Recidivism is specifically expressed to be an aggravating circumstance in Article 25.2 of the UEFA DR.
146. The Panel acknowledges that in circumstances such as the present case, where the decision in a dispute is a disciplinary sanction imposed for conduct that breaches a sports association’s rules, there is a line of consistent CAS authority that provides that a disciplinary sanction may only be reviewed when it is “*evidently and grossly disproportionate to the offence*” (cf. CAS 2019/A/6239, para 133; CAS 2013/A/3139 para. 114; CAS 2012/A/2762 para. 122;). This test is arguably modified, however, by other well-recognised CAS jurisprudence, which confirms that, “*whenever an association uses its discretion to impose a sanction, CAS will have regard to that association’s expertise but, if having done so, the CAS panel considers nonetheless that the sanction is disproportionate, it must, given its de novo powers of review, be free to say so and apply the appropriate sanction*” (cf. CAS 2015/A/4338, para. 51; CAS 2018/A/5977, para 178; and CAS 2017/A/5003, para 274). While this Panel will not

interfere lightly with UEFA's disciplinary bodies' exercise of discretion, it considers that established CAS jurisprudence confirms that it is not prevented from doing so.

147. In cases such as the present one in which a club or national association is held liable under the principle of strict liability for an official's misconduct, UEFA's disciplinary bodies, have the discretion to apply a sanction. The way in which a club can argue for a reduced sanction, or avoid sanction altogether, is to demonstrate to UEFA's disciplinary bodies that it took all reasonable steps to prevent the discriminatory conduct arising and that it reacted promptly and effectively when it occurred. Evidence of appropriate social media policies and anti-discrimination policies, education and training on anti-discrimination and regular reinforcement of the anti-discrimination message, a practice of sanctioning strictly any instance of discrimination that arises and strongly condemning discriminatory conduct are some examples of the reasonable steps that a club can take to manage the risks of social media misuse and prevent discriminatory conduct; the list is not exhaustive.
148. When determining the sanction, the Panel considers that the UEFA CEDB took into account relevant factors, including all the factors raised by the Club, namely: the seriousness of the words posted by Mr Ibrahimov, his position as the Club's media officer and his relationship with the press, and the Club's weak response to Mr Ibrahimov's conduct. On the basis that the Club had not been punished in the previous three years for a breach of Article 11.2(b) or Article 14.1, which would have counted as recidivism and be an aggravating circumstance, the UEFA CEDB, decided against imposing a sporting sanction such as exclusion from the competition, deduction of points or closure of the Club's stadium. It did not consider the measures taken against the Club i.e. Mr Ibrahimov's dismissal on 2 November 2020 as a mitigating circumstance because it believed that "*the way how the club has tackled this case was not appropriate at all*". Taking into consideration these circumstances, the UEFA CEDB determined "*it appropriate to fine the club €100,000 for the violation of Article 11(2)(b) DR in connection with 11(1) DR as well as Article 14(1) DR*".
149. The Appeals Body, which has the full power to review the facts and the law (Article 23.3 of the UEFA DR) noted that this was the Club's first offence "*of such nature within the last three years*", the Club's position that any fine should be less than EUR 50,000 because of the application of Article 14.3(a) of the UEFA DR (an argument the Appeals Body did not accept), the seriousness of Mr Ibrahimov's comments, and, "*the circumstances of this case as outlined above*" before concluding, "*in application of Articles 23(1) and 23(3) DR, to fine the Appellant €100,000 for the racist conduct of Mr Ibrahimov is appropriate in the case at hand and remains consistent with UEFA's strict approach towards racist and discriminatory behaviour.*" Although the Appealed Decision appears not to have considered Mr Ibrahimov's dismissal when determining the sanction, the Panel notes that it is not expressly referred to in the Appealed Decision or in the Club's grounds for appeal.
150. Both UEFA disciplinary bodies placed significant weight on the Club's immediate response to the Facebook Post, specifically the fact that the Club delayed issuing a statement and that when it did, the First and Second Statements did not condemn outright the content of the Facebook Post. The Club disputes the UEFA disciplinary

bodies' assessment of the statements' content, emphasising that the incident happened on a Friday evening, with an intervening weekend, and not on a business day, which delayed the Club's response and submitting that UEFA's reaction to its referee, Mr Sebastian Coltescu who made a racist remark during a match that took place in the Champions League on 8 December 2020, was not strong either.

151. The Facebook Post was a horrendous statement and the Panel considers that it was the Club's responsibility to condemn the Facebook Post outright, in the clearest possible terms, and distance the Club, its supporters and the sport of football from Mr Ibrahimov's views. The Facebook Post was circulating on social media and the Panel accepts the Respondent's position that it warranted an immediate response. The fact that there was an intervening weekend in the ordinary business sense is irrelevant because football is an industry that continues to operate over a weekend, particularly during the season. The Panel considers that it was reasonable for UEFA to expect the Club to respond more quickly than it did to the horrendous statement.
152. The Panel does not find it helpful to compare the Club's response to a statement that calls for genocide, with UEFA's response to Mr Coltescu's racial remark. The Panel has not been provided with all details of the incident regarding Mr Coltescu but from the available information, the Panel observes that Mr Coltescu's situation is materially different and that it is the Club's response which is at issue in the present case.
153. Article 14.3(a) provides that:
- “The following disciplinary measures apply in the event of recidivism:*
- a. a second offence is punished with one match played behind closed doors and a fine of €50,000;*
- [...]”.*
154. The Panel does not accept the Club's argument that the fine amount is restricted to less than EUR 50,000 because of Article 14.3(a) of the UEFA DR. The provision clearly applies in cases of recidivism, of which the Club's situation was not, and cannot be read as limiting a first offence to a fine of under EUR 50,000. The Panel considers that Article 6 of the UEFA DR is the applicable regulation to apply and that the only applicable limitation to the UEFA disciplinary bodies' assessment of the fine amount was the range of EUR 100 to EUR 1,000,000 that is stipulated in Article 6.3 of the UEFA DR.
155. The Panel has not been referred to any other disciplinary cases which could provide guidance in the present circumstances to determine the proportionality of the fine. It observes also that neither of the UEFA disciplinary bodies provided an explanation as to how the amount of EUR 100,000 was determined in light of the range available under Article 6.3 of the UEFA DR. For example, there is no mention of disciplinary sanctions imposed in other relevant cases of comparable severity to demonstrate the proportionality and consistency of the fine amount; nor is there an indication from the UEFA CEDB of situations in which a lower or higher fine might have been imposed.

156. Nevertheless, the Panel observes that within a range of EUR 100 to EUR 1,000,000 the fine amount of EUR 100,000 falls towards the lower end. When considering the severity of the Facebook Post's content, the Club's actions in response, UEFA's statutory objective in Article 2(b) of the UEFA Statutes, its legitimate policy of adopting a zero-tolerance approach to discrimination, and racism in particular, the Panel concludes that the fine amount is proportionate, and finds no reason to interfere with the discretion of UEFA's disciplinary bodies to impose the sanction.
157. Finally, in the circumstances of the present case, where the range of fine is wide and there is no specific fine amount prescribed in the UEFA DR, the Panel considers that it would have been helpful had the UEFA CEDB provided a more detailed explanation of how the fine amount was determined. The Panel emphasises that the absence of an explanation does not affect the Panel's conclusion that the fine was proportionate in the present case. However, the Panel considers that an explanation of how a fine amount is determined enables a party to better understand the sanction imposed, to evaluate the merits and success of any appeal, and provides guidance on decision-making to other clubs and associations that supports a sanction's deterrent effect.

D. Conclusion

158. For the reasons outlined above, the Panel determines that the Club is responsible under Article 8 of the UEFA DR for the misconduct of its official, Mr Ibrahimov, and that a sanction of a fine of EUR 100,000 is proportionate in the circumstances.
159. Accordingly, the Panel dismisses the Club's appeal; all other prayers for relief are also dismissed.

X. COSTS

(...).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Qarabağ FC on 22 February 2021 against the decision of the UEFA Appeals Body dated 27 January 2021 is dismissed.
2. The decision rendered by the UEFA Appeals Body on 27 January 2021 is confirmed.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 16 November 2023

THE COURT OF ARBITRATION FOR SPORT

Leanne O’Leary
President of the Panel

Emin Özkurt
Arbitrator

Benoît Pasquier
Arbitrator