

CAS 2024/A/10574 Sportsklubben Brann v. Union des Associations Européennes de Football (UEFA)

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Dr Leanne O’Leary, Solicitor in Liverpool, United Kingdom
Arbitrators: Mr Eirik Monsen, Attorney-at-law in Oslo, Norway
Mr Massimo Coccia, Professor and Attorney-at-law in Rome, Italy

in the arbitration between

Sportsklubben Brann, Bergen, Norway

Represented by Mr Jan Magne Isaksen and Mr Erland Aarli, Attorneys-at-law of CMS Kluge Advokatfirma AS in Bergen, Norway

Appellant

and

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

Represented by Mr Emanuel Cortada and Mr Basil Kupferschmied, Attorneys-at-law of Bär & Karrer Ltd in Zurich, Switzerland

Respondent

I. PARTIES

1. Sportsklubben Brann (the “Club” or the “Appellant”) is a professional football club situated in Bergen, in Norway. It is affiliated to the Norges Fotballforbund (the “NFF”), which, in turn, is a UEFA member association.
2. UEFA (the “Respondent”) is an 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, the international federation for football.
3. The Appellant and Respondent are collectively referred to as the “Parties”.

II. INTRODUCTION

4. This is an appeal against a decision of the UEFA Appeals Body to uphold a sanction of EUR 5,000 imposed by the UEFA Control, Ethics and Disciplinary Body (“CEDB”) against the Appellant for a breach of Article 16(2)(e) of the UEFA Disciplinary Regulations (the “DR”), which makes a club liable for the use by its supporters of *“gestures, words, objects or any other means to transmit a provocative message that is not fit for a sports event, particularly provocative messages that are of a political, ideological, religious or offensive nature”*.
5. These proceedings arise from an incident that occurred during a UEFA Women’s Champions League 2023/2024 match on 31 January 2024, in which the Appellant’s supporters chanted “UEFA MAFIA” for approximately 20 seconds in response to the referee’s decision to award a free kick to the opposing team for a foul committed by one of the Appellant’s players.
6. The Appellant does not dispute the facts; it does, however, dispute that there has been a breach of Article 16(2)(e) DR. Its position is that the chant was an innocent, satirical outburst, directed to the most powerful organisation in European football, which may be characterised as a spontaneous and subjective expression of frustration, and which is protected by the right of freedom of expression. The Respondent, on the other hand, asserts that the chant is a prime example of a highly offensive and defamatory message that is not fit for a sports event and clearly breaches Article 16(2)(e) DR.

III. FACTUAL BACKGROUND

A. Background Facts

7. Below is a summary of the relevant facts and allegations based on the Parties’ written and oral submissions, pleadings and evidence adduced at the hearing on 2 September 2024. 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.

8. On 31 January 2024, in a UEFA Women's Champions League 2023/2024 match between the Appellant and SKN St. Pölten Frauen, in Bergen, Norway, at minute 30 of the first half, a group of the Appellant's supporters chanted, "UEFA MAFIA" for approximately 20 seconds (the "Incident"). The UEFA Match Delegate Report recorded the Incident as follows:

Discriminatory behaviour (home team) - banners, chanting, etc.
☒ yes ☐ no
<i>The atmosphere during the match was excellent. General public was mainly families and only 10 VIP guests from the visiting team attended the game. The hard core fans were all at the "Family stand" -North stand. They remained standing up in their seated stand the whole match. Generally speaking, they were cheering and supporting their team; however, they constantly booed the away team and the referee based on "unfavorable" sporting actions or decisions. They started shouting "UEFA Mafia" because of a foul against a local team player at min 30' of the first half (chanting lasted around 20 secs.).</i>

B. Proceedings before the Control Ethics and Disciplinary Body

9. On 1 February 2024, UEFA wrote to the Club and informed it that based on the UEFA Match Delegate Report, disciplinary proceedings had been opened against the Club and the matter was referred to the CEDB to consider an alleged breach of Article 16(2)(e) DR. The letter described the disciplinary allegation as "*Provocative message of an offensive nature (illicit chants) Article 16(2)(e)*". The letter enclosed the UEFA Match Delegate Report and invited the Club to submit any statement or evidence in support of its defence to the UEFA Disciplinary Unit within six days of receiving the letter.
10. The Club did not submit any statements or evidence in its defence.
11. On 28 February 2024, following a consideration of the available evidence, the CEDB concluded that the chant "UEFA MAFIA" was provocative and offensive and "*not fit for a sports event*", and based on the principle of strict liability, the Club was liable for infringing Article 16(2)(e) DR. The CEDB issued the following decision:

"The Control, Ethics and Disciplinary Body decides:

- 1. To fine SK Brann €5,000 for transmitting a provocative message of an offensive nature.*
 - 2. The above fine must be paid into the bank account indicated below within 90 days of communication of this decision."*
12. On 5 March 2024, the Club was notified of the grounds for the decision.

C. Proceedings before the UEFA Appeals Body

13. On 7 March 2024, the Club informed UEFA of its intention to appeal.
14. On 11 March 2024, the Club submitted its grounds for appeal. Before the Appeals Body it argued the following:
 - It admitted the Incident and stressed that it did not condone its supporters' actions.
 - However, it did not accept the Incident warranted a sanction. The case of *Caster Semenya v Switzerland* (Application no. 10934/21) confirmed that the Court of Arbitration for Sport ("CAS") was obliged to apply the European Court of Human Rights (the "ECHR") where relevant to the matter at hand when resolving conflicts that arise out of a sports federation's regulations. UEFA was obliged, therefore, to adhere to the minimum standards protecting freedom of expression outlined in Article 10 ECHR when enforcing Article 16(2) DR.
 - The CEDB had failed to explain how the spontaneous chants that extended over a short duration qualified as "provocative and offensive" when interpreted in the light of Article 10 ECHR and the European Court of Human Rights ("ECtHR") case law. Also, who or what did the chants provoke or offend, and why was it necessary to sanction the chants in a democratic society? The ECtHR case law requires that expressions must be interpreted in their context and according to how an ordinary person would interpret them in that context. The ECtHR also distinguishes between factual statements which require proof and value judgments that do not.
 - The spontaneous chants could not be interpreted as factual statements that imply that UEFA represents the Mafia or a similar criminal organisation. Interpreted in the light of their context, which was a football match where the supporters were "*highly engaged on behalf of their respective teams*" and had an emotional involvement in what was occurring on the field, they were "*expressions of subjective frustration, value judgments and of a satirical nature*". They should be interpreted as "*rather innocent*", the interpretation being that the supporters could not believe that their team was not favoured in a specific incident on the field. An ordinary person would not seriously consider the chants as expressing anything else.
 - The ECtHR has emphasised in its decision of *Handyside v United Kingdom* (Application no. 5493/72) that Article 10 ECHR "*is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population*". The Appellant submitted that the spontaneous chants of supporters could not reasonably be interpreted as offending, shocking or disturbing anything or anyone.
 - If UEFA itself took offence, legal entities do not enjoy the same protection against insults as natural persons do under the ECHR (*Uj v Hungary* (Application no. 23954/10)). Also, it was problematic from a freedom of expression perspective that UEFA's own disciplinary bodies sanction expressions which UEFA may find

insulting on its behalf. In the national context in Norway neither the clubs nor the NFF reacted to local supporters who regularly chant, “*We hate the NFF*”, or similar chants when referees’ decisions go against their teams.

- The sanction in the present case is not “*necessary in a democratic society*” (Article 10(2) ECHR) which according to ECtHR case law requires the existence of a “*pressing social need*” to limit the supporters’ freedom of expression. Sanctioning the Club in circumstances that are contrary to the ECHR is also contrary to the interests of the sport itself because it creates a bad impression of powerful sports federations in the eyes of the supporters and general public.
- The Club was the only one in Norway and one of the few in Europe who had created a strong supporter culture around its women’s football team, selling out the stadium in eight minutes and having 200 away supporters attend a game in Prague and the Club had worked hard to create this commitment. The extensive work done by the Club was not given sufficient consideration as a mitigating factor. The Club worked hard with local communities and supporter groups to engage in dialogue around challenging activity and a sanction imposed for legitimate expressions would present a major setback to its work.

15. The Appeals Body by its decision dated 25 March 2024 (the “Appealed Decision”) dismissed the Club’s appeal as follows:

“The Appeals Body

decides

1. *The appeal lodged by SK Brann is rejected. Consequently, the UEFA Control, Ethics and Disciplinary Body’s decision of 28 February 2024 is confirmed.*
2. *The costs of the proceedings, totalling €1,000 are to be paid by the Appellant. The amount is set off against the appeal fee already paid.”*

16. The reasons for the Appealed Decision may be summarised as follows:

- The Appeals Body had competence to decide the appeal under Article 30(4) DR, and the Chairman of the Appeals Body was competent to decide the case as a judge sitting alone (Article 30(3)(b) DR). The appeal was filed in time and was admissible.
- Articles 6(5) 16(2), 23, 25 and 45 DR were relevant to the case.
- UEFA disciplinary bodies are independent and have the capacity to independently analyse whether the chants were in breach of Article 16(2) DR irrespective of whom the chants were directed towards.
- The Appellant admitted the facts and did not challenge the UEFA Match Delegate Report but challenged the interpretation of the chants as provocative or offensive messages unfit for a sports event and within the scope of Article 16(2)(e) DR.

- Freedom of speech does not comprise explicit insults, lacking any substantive opinion, used only to offend an individual or group of people. Chants such as “UEFA MAFIA” that were made by the Club’s supporters are clearly offensive, have no place at UEFA competition matches and constitute a message that is not fit for a sports event. They serve no legitimate purpose and call into question the integrity of the competition and competition organiser by associating it with a criminal organisation. The Appeals Body considered that the chant “UEFA MAFIA” could not be justified based on freedom of expression in Article 10 ECHR.
- This determination is consistent with the UEFA disciplinary bodies’ longstanding practice of determining that banners or chants of “UEFA MAFIA” constitute a clear breach of Article 16(2)(e) DR (e.g. Disciplinary Case no. 34912, CEDB 19 November 2021, PSV Eindhoven; Disciplinary Case no. 36332, Appeals Body 21 October 2022, Malmö FF; Disciplinary Case no. 37994, CEDB 12 December 2023, FK Crvena Zvezda).
- The offensive nature of the chant is established in the eyes of a reasonable and objective observer who would consider the chant to be aimed at insulting UEFA and offensive and to fall under the scope of Article 16(2)(e) DR.
- UEFA aims to promote football without tolerating the transmission of messages deemed unfit for football matches. It does not matter if the offensive message is addressed to an individual or an entity such as a football club, national association or any other association, including UEFA. If the transmitted message is of an offensive nature, it will always be considered a breach of Article 16(2)(e) DR.
- There was no reason why the Appeals Body should depart from the constant practice of the UEFA disciplinary bodies and pursuant to the principle of strict liability, the Club was responsible for its supporters’ conduct and liable for the breach of Article 16(2)(e) DR.
- On the issue of sanction, and pursuant to Article 23 DR, the competent disciplinary body determines the type and extent of the disciplinary measure to impose taking into consideration any mitigating and aggravating circumstances. The Appeals Body noted that the CEDB: considered the Appellant’s previous record and the fact the Club had not been punished for violating Article 16(2)(e) DR within the past two years (Article 25(1)(c) DR); applied the standard jurisprudence for a first infringement of Article 16(2)(e) DR (Article 6(5) DR and Annex A(I) DR) which is EUR 10,000; and in line with established CEDB jurisprudence, reduced the fine by 50% because the Incident occurred during a women’s football competition.
- The Appeals Body acknowledged that the Club had a strong supporter base for its women’s football team and the Club’s efforts to create a positive relationship with supporters to ensure dialogue and cooperation but considered that such a factor was not a mitigating circumstance. As there were no mitigating circumstances advanced, the Appeals Body held that the sanction of EUR 5,000 was the standard sanction imposed in line with the UEFA disciplinary bodies’ established jurisprudence for a breach of Article 16(2)(e) DR and was proportionate.

- The Appeals Body rejected the appeal and ordered the Club to pay costs of EUR 1,000.
17. On 8 May 2024, UEFA communicated the grounds for the Appealed Decision to the Club.

D. Other Disciplinary Proceedings

18. In addition to the present proceedings, the Panel notes that on 23 April 2024, UEFA fined the Club EUR 5,000 in respect of an incident that occurred during a UEFA Women's Champions League Quarter-finals match between the Appellant and FC Barcelona, played on 20 March 2024 in Bergen, Norway, when the Club's supporters held up a banner reading "UEFA MAFIA" and held up a larger banner mimicking a bank cheque, which read, "*UEFA MAFIA – Five thousand Euros – Using Freedom of Speech*". The Club has appealed the UEFA CEDB decision of 23 April 2024, and the appeal has been stayed pending the outcome of these proceedings.
19. On 5 August 2024, UEFA notified the Club of the commencement of disciplinary proceedings in relation to chants of "UEFA MAFIA" at a UEFA Conference League 2024/25 match played in Bergen between the Club and Go Ahead Eagles on 1 August 2024. The proceedings have been stayed pending the outcome of this appeal.
20. Neither of these other disciplinary proceedings are the subject of the present dispute.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

21. On 18 May 2024, the Club filed a Statement of Appeal with the CAS pursuant to Article R48 of the Code of Sports-related Arbitration (the "Code") against the Respondent in relation to the Appealed Decision. The Appellant nominated Mr Eirik Monsen, Attorney-at-law in Oslo, Norway as arbitrator.
22. On 22 May 2024, the CAS Court Office acknowledged receipt of the Statement of Appeal, invited the Appellant to file the Appeal Brief within ten days, and invited the Respondent to nominate an arbitrator.
23. On 28 May 2024, in accordance with Article R51 of the Code, the Appellant filed the Appeal Brief.
24. On 31 May 2024, the Respondent informed the CAS Court Office that it nominated Mr Massimo Coccia, Professor and Attorney-at-law in Rome, Italy as arbitrator.
25. On 26 June 2024, the CAS Court Office informed the parties that pursuant to Article R54 of the Code, the Panel had been appointed as follows:

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

Arbitrators: Mr Eirik Monsen, Attorney-at-law in Oslo, Norway

Mr Massimo Coccia, Professor and Attorney-at-law in Rome, Italy

26. On 18 July 2024, in accordance with Article R55 of the Code and within a previously granted extension of time, the Respondent submitted its Answer.
27. Still on 18 July 2024, the CAS Court Office informed the Parties that unless the Parties agreed or the President of the Panel ordered otherwise on the basis of exceptional circumstances, pursuant to Article R56 of the Code, the Parties were not authorised to supplement or amend their requests or their argument, nor to produce new exhibits or specify further evidence. The CAS Court Office also invited the Parties to inform of their preference for a hearing and a case management conference to be held.
28. On 22 July 2024, the CAS Court Office informed the Parties that pursuant to Article R57 of the Code, the Panel had decided to hold a hearing by videoconference. Following further consultation with the Parties, the proceedings were set down for a hearing by videoconference on 2 September 2024.
29. On 2 August 2024, the CAS Court Office informed the Parties that the Panel had decided that a case management conference was not required and invited the Parties to agree on a tentative hearing schedule. At the Appellant's request, it also confirmed that the Parties could make submissions on costs at the hearing and reminded the Parties of Article R65.3 of the Code which provides the Panel with a discretion to award a contribution towards the prevailing party's costs.
30. On 5 August 2024, the CAS Court Office invited the Parties to sign the Order of Procedure, which was returned in duly signed copy by the Respondent on 6 August 2024, and by the Appellant on 7 August 2024, respectively.
31. On 6 August 2024, the Appellant informed the CAS Court Office of its request to call an expert witness, Professor Morten Hammerborg from the Western Norway University of Applied Sciences, who would provide evidence on the historical and contemporary use of the term 'mafia' in Norway and in Bergen in particular (the "Expert Witness Request").
32. On 7 August 2024, the Appellant informed the CAS Court Office of UEFA's intention to commence a third set of disciplinary proceedings against the Club following allegations that the Appellant's supporters had chanted "UEFA MAFIA" during a match on 1 August 2024. The Appellant provided three documents that related to the disciplinary proceedings against the Club and sought their admission to the file ("Request to Admit Additional Documents").
33. Still on 7 August 2024, the CAS Court Office invited the Respondent to comment on the Appellant's Expert Witness Request and the Request to Admit Additional Documents.
34. Also on 7 August 2024, the Respondent informed the CAS Court Office of its objection to the Appellant's Expert Witness Request.

35. On 8 August 2024, the Appellant provided an unsolicited reply to the Respondent's objection to the Expert Witness Request, which was not admitted to the file.
36. On 19 August 2024, the Respondent informed the CAS Court Office of its objection to the Appellant's Request to Admit Additional Documents.
37. On 20 August 2024 and pursuant to Article R56 of the Code, the Panel rejected the Expert Witness Request and accepted the Appellant's Request to Admit Additional Documents to the file. The reasons for these decisions are outlined further in this Award.
38. On 30 August 2024, the Appellant informed the CAS Court Office of its request to present an outline of its submissions by way of a presentation during the hearing, which it assured did not contain any new submissions or information. It did not submit a copy of the presentation.
39. On 2 September 2024, a hearing was held by way of videoconference. Besides the Panel and Mr Antonio de Quesada, Head of Arbitration and CAS Legal Counsel, the following people were in attendance:

Appellant:

Mr Aslak Sverdrup, Chairman of the Board
Mr Christian Kalvenes, Chief Executive Officer
Mr Jan Magne Isaksen, Legal Counsel
Mr Erland Aarli, Legal Counsel

Respondent:

Mr Martin Bauer, Legal Counsel, UEFA Integrity and Regulatory
Mr Emanuel Cortada, Legal Counsel
Mr Saverio Lembo, Legal Counsel

40. At the outset of the hearing, the Parties confirmed that they had no objections with respect to the Panel and confirmed that they accepted the jurisdiction of the CAS to decide the dispute.
41. As a preliminary issue, the Respondent raised an objection to the Appellant's late request to present an outline of its submissions, emphasising that it had not been provided with a copy of the presentation in advance. Following a consideration of the Parties' positions, the Panel permitted the Appellant's presentation subject to the Respondent's right to raise an objection to any new information that appeared on the presentation slides.
42. The Parties were then given the opportunity to present their cases, to make submissions and arguments, and to answer the Panel's questions. The Appellant's Chairman of the Board made a statement on the Club's behalf. No objection was raised by the Respondent to information contained on the Appellant's slide presentation.

43. 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.

V. SUBMISSIONS OF THE PARTIES

44. The following outline is a summary of the Parties' arguments, submissions and oral witness testimony which the Panel considers relevant to decide the present dispute and does not necessarily comprise each and every contention put forward by the Parties. The Panel has, nonetheless, carefully considered all the submissions made by the Parties, even if no express reference has been made in the following summary. The Parties written and oral submissions, documentary and oral evidence and the content of the Appealed Decision were all taken into consideration.

A. The Appellant's Position

45. The Club's submissions, in essence, may be summarised as follows:
- Article 14(1) and Article 16(2)(e) DR are necessary rules that safeguard important values when applied correctly. Offensive messages which convey racism, homophobia or discrimination in other forms have no place at a sports event and should be sanctioned appropriately. The supporters' chant, however, is of an entirely different nature. The chants should be regarded as an "*innocent and obviously satirical outburst of dissatisfaction by engaged supporters*." They cannot reasonably be interpreted as factual statements or allegations but rather should be viewed as "*spontaneous and subjective expressions of frustration*". The Appellant disputes that there has been a breach of Article 16(2)(e) DR and that the chants constitute "*provocative messages*" of an "*offensive nature*".
 - The UEFA disciplinary bodies failed to apply the appropriate threshold for their assessment of whether the chants can reasonably be considered "offensive" and not protected by the supporters' right to freedom of expression; in particular, the UEFA disciplinary bodies failed to assess the chants in their context, which a reasonable onlooker would interpret as not provocative or offensive.
 - The burden of proof lies on UEFA to establish the breach of Article 16(2)(e) DR (CAS 2022/A/8651, para. 147) and the required standard of proof is comfortable satisfaction (Article 24(2) DR). The Panel must assess whether it is comfortably satisfied that the messages conveyed were offensive and not protected by the general right of freedom of expression.
 - The Appealed Decision is contrary to the established case law of both the ECtHR and CAS, the latter of which affords significant latitude for expressions that can be considered critical of powerful sports organisations. The Appeals Body erroneously stated that if "*the transmitted message was of an offensive nature, it will always be considered a breach of Article 16(2)(e) DR*" (Appealed Decision, para. 28) but that contradicts the ECtHR case law which has consistently maintained that the right to

freedom of expression also covers expressions that may be found offensive (*Handyside v The United Kingdom* (Application no. 5493/72, para. 49).

- The Appeals Body also wrongly stated that it was “*not decisive if the offensive message was addressed to an individual or a legal entity, such as a football club, national association, or any other association, including UEFA*”. This is incompatible with the ECtHR position that the reputation of a legal entity does not receive the same protection as an individual’s reputation or rights; the limits of criticism are much wider in the case of companies who inevitably and knowingly lay themselves open to close scrutiny of their acts (*Steel and Morris v The United Kingdom* (Application no. 78873/13), para. 94; *UJ v Hungary* (Application no. 23954/10), para. 23).
- The ECtHR has also held that when assessing whether interference with the freedom of expression is justifiable, the expression(s) must be assessed based on both the nature of the statements and the context in which they are made (*Miljević v Croatia* (Application no. 68317/13), para. 68). Care should be taken prior to any interference with an artist’s freedom of expression or anyone else who uses expression that are satirical in nature, including in the context of satirical expressions related to matters of public interest in the sporting world (cf: *Eon v France* (Application no. 26118/10), para. 60; *Nikowitz and Verlagsgruppe News GmBh v Austria* (Application no. 5266/03), para. 25; *Wingrove v The United Kingdom* (Application no. 17319/90), para. 58; *Halet v Luxembourg* (Application no. 21884/18), para. 202).
- Considering the ECtHR case law, the CAS must assess the chants in light of the fact that: i) freedom of expression applies also to protect offensive expressions; ii) protection of the reputation of a legal entity does not have the same strength as the protection of the reputation or rights of individuals; iii) it is necessary to distinguish between factual statements and value judgments; iv) expressions must be assessed in light of the context in which they were made; v) particular care should be taken when assessing expressions of a satirical nature; and vi) there must be a high threshold for interference with the right of freedom of expression relating to a matter of public interest, including in the sports world.
- CAS has consistently confirmed the importance of protecting the right to freedom of speech and afforded a wide margin to permit criticism of individuals and organisations of authority in the sports community, even if the criticism is not founded on materially correct facts (cf: CAS 2014/A/3516, para. 116; CAS 2010/A/2298, para. 33).
- Article 16(2)(e) DR should be interpreted and enforced in accordance with the CAS jurisprudence related to Article 14 DR which prohibits “insults” of “*the human dignity of a person or groups of persons on whatever grounds, including skin colour, race, religion, ethnic origin, gender or sexual orientation*”. CAS has repeatedly maintained that whether a message qualifies for sanction under Article 14 DR needs to be determined in-light of the so-called “reasonable onlooker test” (cf: CAS 2013/A/3324 & 3369, paras. 9.13 and 9.14; CAS 2022/A/9708, para. 3).

If the question of whether chants of “UEFA MAFIA” cannot be defended by the general right of freedom of expression, then it must be answered through an assessment of an objective test in the eyes of the reasonable onlooker, considering the context in which the messages were conveyed including that of the transmitter and recipient of the message, in which manner and under what circumstances. The UEFA disciplinary bodies failed to properly assess the chants in their context; the Appeals Body did not apply the reasonable onlooker test.

- The chant, “*We hate the NFF*”, is regularly heard during Norwegian club football matches as a reaction to referee decisions against supporters’ teams. No “reasonable onlooker” with ‘all available and obtainable information’ would interpret these messages as conveying actual hatred or incitements against the NFF – including the NFF – but would view them as spontaneous and subjective messages of frustration aimed at a specific referee decision. These innocent forms of expressing dissatisfaction with a referee decision are a healthy part of most sports with audience engagement. The recipient of the message is the most powerful organisation in European football, and in accordance with longstanding jurisprudence, should tolerate a wide margin of criticism of its own organisation prior to deeming messages aimed towards it as offensive, unacceptable and void of protection by freedom of expression.
- The chants of “UEFA MAFIA” cannot be interpreted reasonably with complete disregard to the corruption scandals that UEFA has been the subject of previously e.g. the 2009 betting scandal arising from the UEFA European League and the UEFA Champions League which led to sanctions and investigations against several referees; the 2015 investigation by the Swiss Office of the Attorney General into payments made to then UEFA President Michel Platini by then FIFA President Sepp Blatter which resulted in official fraud charges in Switzerland in 2021, which they were subsequently acquitted of in 2022; and the 2017 European Parliament Committee of Inquiry into Money Laundering which investigated tax evasion in football and accused UEFA and FIFA officials of being “enablers” of a corrupt system. Any reasonably informed and enthusiastic football supporter will have some knowledge of these much-publicized events and considering that historically the chant has been used frequently as a criticism against UEFA, this term may easily “spring to mind” for reasonably informed football supporters (Appeal Brief, p. 10).
- UEFA’s enforcement of disciplinary regulations which infringe a supporter’s right to freedom of expression and are perceived as harsher than those applying in all other aspects of society, will not change the behaviour of the supporters, but instead lead to more protests. This has already occurred when, following the CEDB decision, the Club’s supporters, held up a large banner at a UEFA Women’s Champions League quarter-finals match between the Club and FC Barcelona on 20 March 2024, which stated “*UEFA Mafia*”, and also a large banner mimicking a bank cheque stating ‘*UEFA Mafia – Five thousand Euros – Using Freedom of Speech*’, and resulted in further disciplinary proceedings against the Club, and a fine of EUR 5,000 for a breach of Article 16(2)(e) DR. An appeal is stayed pending the outcome of the present proceedings. Any attempt by the Club to intervene with

its supporters would likely be sanctioned by Norwegian courts as an unwarranted violation of the supporters' freedom of expression.

- The sanction imposed is not proportionate. Although the fine is half the amount for a similar violation occurring during the men's competition, the Appellant notes that the prize money on offer in the women's game is several hundred times lower than in men's football. The Club's men's and women's teams have separate budgets and a fine of EUR 5,000 represents 10% of the total prize money which the Club received and is disproportionately harsh. The Appeals Body also failed to consider mitigating circumstances, namely the extensive work that the Club has done to create a strong supporter culture around its women's team and the sanction may prove a setback to these efforts.
- The Appellant submits that a breach of Article 16(2)(e) DR has not occurred and that in any case, any sanction should be reduced to a warning which the Panel is entitled to do pursuant to Article R57 of the Code.
- In the Appeal Brief, the Club submitted the following requests for relief:

"The Appellant hereby submits its request for relief as follows:

1. *The decision rendered by the UEFA Appeals Body on 8 May 2024 is overturned, and the UEFA Control, Ethics and Disciplinary Body's decision on 28 February 2024 is annulled.*
2. *SK Brann is acquitted of paying the costs of the appeal proceedings before the UEFA Appeals Body.*
3. *To rule UEFA to cover the costs of the case."*

B. The Respondent's Position

46. UEFA's submissions, in essence, may be summarised as follows:

- The relevant rules and regulations are clearly outlined in Articles 5, 16(2)(e), 23(1), 6(5) and Annex A of the DR. They unambiguously state that provocative messages made by a club's supporters that are not fit for a sports event may be subject to a sanction of EUR 10,000. The Appellant was correctly sanctioned for the manifest violation of Article 16(2)(e) DR by its supporters; the fine imposed was not only proportionate, but lenient.
- The facts are undisputed. The term "Mafia" is used in everyday language to refer to a criminal organisation involved in, *inter alia*, murder, extortion, human trafficking, robbery, smuggling and money laundering, amongst other criminal activities, which represents the highest level of criminality. Article 260ter of the Swiss Criminal Code is commonly referred to as the "mafia-article" (Marc Engler, Basler Kommentar StGB/JStG, 2019, Art 260ter, N2) and likens criminal organisations such as the mafia with terrorist organisations and severely punishes anyone who participates in or supports such organisations. The term "Mafia" is

highly defamatory, and the organisation referred to is considered highly criminal. The chants are a serious affront towards UEFA and its stakeholders; to compare UEFA to an organised criminal organisation is “*outrageous*”.

- The chants were made as a direct reaction to a referee call. The Appellant’s supporters imply that the referee and her team are corrupt and active participants in a criminal organisation, which makes the chants even more “*serious and offensive*”.
- The Appellant tries to downplay the seriousness of the chants by stating that they were an “*innocent and obviously satirical outburst of dissatisfaction amongst engaged supporters*”, but this is the wrong assumption to make. The Appellant relies erroneously on the ECtHR case law and alleges there is no violation of Article 16(2)(e) DR and that the Appeals Body applied a wrong threshold in its assessment. However, the infringement of Article 16(2)(e) DR could not be clearer.
- There is longstanding CEDB jurisprudence that chanting “Mafia” or holding a banner with the word constitutes a violation of Article 16(2)(e) DR. None of the sanctions imposed in these cases were challenged, which demonstrates that there is a clear consensus among European football clubs that using the word ‘mafia’ either in a banner or in a chant is a provocative message of an offensive nature that is not fit for a sports event and should be subject to sanction.
- The Appellant’s reliance on Article 10 ECHR is manifestly wrong. The purpose of human rights in the ECHR is to protect individuals against state actions; it is not construed to apply directly to private relations between private individuals and entities (Kaufmann-Kohler/Malinverni, Legal Opinion on the Conformity of certain provisions of the Draft World Anti-Doping Code with commonly accepted Principles of International Law, 2003, para. 63; CAS 2016/A/4697, para. 97). The ECHR cannot be applied to a sport disciplinary dispute involving two private entities as in the present case (CAS 2009/A/1957, para. 14; CAS 2008/A/1513, para. 9; CAS 2009/A/1957, paras. 14-19; TAS 2011/A/2433, para. 23; TAS 2012/A/2862, paras. 105-107; SFT 127 III 429).
- The application of human rights to sports organisations would only be possible if the sports organisation has integrated the ECHR in its rules and regulations, which UEFA has not done. The UEFA Human Rights Commitment 2021 states that UEFA recognizes the importance of the ECHR but does not integrate the ECHR in its rules. The Universal Declaration of Human Rights is not a legally binding instrument; it represents a commitment by its Member States and cannot create legal obligations.
- The case of *Semenya v Switzerland* (10934/21) to which the Appellant refers does not apply because: i) it is still before the Grand Chamber of the ECtHR and is not yet final and binding (see Article 44 ECHR); ii) also the horizontal direct effect of the ECHR was not clear in the case as the ECtHR stated at para. 3.4; iii) the facts are different to the present case and involved a very particular issue of non-discrimination, which is the only human right, according to the Swiss Federal Constitution has to some extent a direct horizontal effect between private individuals; and iv) the *Semenya* case concerned whether Switzerland, as a state,

violated the ECHR and not the question of whether a private association, such as UEFA, did.

- Article 16 SFC also does not apply because it can only be relied on in a dispute between an individual and the State; it is not applicable between private individuals (see also Article 35(2) SFC).
- The jurisprudence cited by the Appellant is irrelevant because the ECHR is not applicable to a sport disciplinary procedure conducted within the frame of Swiss association law. All the ECtHR cases that the Appellant cited required the ECtHR to balance primarily criminal law (state/public) interests against an individual's freedom of speech. In the present case, no public or state interests are at stake, but instead the private interests of UEFA, and it has been established that, "*an association – based on the special legal relationship – may impose stricter duties on its members than the duties imposed on citizens by criminal law*" (CAS 2018/A/6007, para. 94).
- *Handyside v The United Kingdom* is factually different because it concerned a book that was considered obscene, and UEFA is neither a State nor a sector of the population. *UJ v Hungary*, *Freitas Rangel v Portugal*, and *Steel and Morris v The United Kingdom*, involved either a state-owned corporation or a public company, and UEFA is neither, the underlying facts and means of communication are also different. In *Wingrove v The United Kingdom* the ECtHR held that the infringement on the right to freedom of expression was lawful because distribution of the video, which was the subject of the case, would violate the criminal law. *Halet v Luxembourg* involved whistleblowing and the disclosure of several hundred advance tax rulings and tax returns, entirely different facts with different public interests at stake.
- The CAS jurisprudence that the Appellant cites is also irrelevant. The cases concern the rules of different associations, rules of a different nature, with different circumstances and in which different expressions/opinions were made. CAS 2014/A/3516 concerned less severe accusations and the CAS panel in that case stated that freedom of speech is subject to limitations imposed by law and that although the criticism was not founded on materially correct facts, it must be made in good faith (CAS 2014/A/3516, para. 116). The Appellant's supporters brought into disrepute the organizer of an event without any good faith intention. UEFA does not contest that there is latitude to express criticism of a federation and its leadership (CAS 2010/A/2298, para. 33), but that does not mean that criticism that implies a high degree of organized criminality should be tolerated. The expression used in CAS 2010/A/2298, namely "tyranny" is less severe than the allegation of being the "mafia", which is a criminal organization clearly defined in Article 260ter of the Swiss Criminal Code. The AIBA rule at issue in CAS 2010/A/2298 is not the same as Article 16(2)(e) DR, and the CAS panel concluded that the allegation that the AIBA President was corrupt was "*beyond the bounds of acceptable criticism*" (CAS 2010/A/2298, para. 35) because it accused the leader of a federation of substantial criminality, which applies also to the more serious allegation in the present case.

- The Appeals Committee was correct in its assessment because: i) it rightly emphasized that for a violation of Article 16(2)(e) DR to arise, the addressee of the message as an individual or legal entity is not decisive, but rather the focus is on the transmission of a provocative message that is not fit for a sports event and the sender of the message and not the recipient; ii) legal entities still enjoy some protection even if the limits of acceptable criticism are wider; iii) the allegation is of a serious and offensive nature and exceeds the boundaries of freedom of speech; iv) expressing dissatisfaction with a refereeing decision by implying that the event organizer and the referee are corrupt is unfit for a sports event; v) the chant does not touch on a debate on a matter of public interest; vi) the assertion that UEFA has been involved in corruption contradicts the Appellant's position and is strenuously denied; vii) the fact that supporters of other clubs have used the same chant or message on a banner does not justify the Appellant's supporters' conduct and in any event UEFA has always rightfully sanctioned clubs that have been found to use the chant; and viii) a reasonable and objective onlooker would certainly interpret the chant as a suggestion that the referee and her team are corrupt.
- A restriction on the Appellant's freedom of speech would in any event be justified because UEFA, as an association constituted under Swiss law, has the power to impose disciplinary sanctions on its members. The Appellant has voluntarily submitted itself to the regulations through its participation in the Women's Champions League, under which it agreed to adhere to the applicable rules and regulations (*cf.* CAS 2013/A/3324 & 3369, para. 9.18). UEFA's interest in sanctioning unwarranted, gratuitous, provocative and offensive messages in a sports stadium to promote tolerance and mutual respect at sports events, outweighs the freedom of speech of the Appellant's supporters.
- The sanction is proportionate. UEFA has a discretion when deciding on the sanction to impose and CAS panels shall give a certain level of deference to decisions of sports governing bodies in respect of the proportionality of sanctions (*cf.* CAS 2016/A/4595, para. 60). CAS reviews disciplinary sanctions with "*self-restraint*" and only if a sanction is "*grossly and evidently disproportionate*" (*cf.* CAS 2021/A/8014, para. 44; CAS 2018/A/6239, para. 110; CAS 2016/A/4595, para. 60). The fine imposed of EUR 5,000 was "*very small*" and is proportionate when considering the seriousness of the violation. The sanction amount does not depend on the amount of prize money for a match. In any event the total prize money received by the Appellant during the 2023/2024 season was EUR 857,000 and the sanction represents 0.58% of the total prize money received. The Appeals Body considered as a mitigating factor the Appellant's effort in building a strong relationship with its supporters, but the factor does not mitigate the degree of fault. Uniformity in sanctions reinforces the principle of equal treatment and any fine lower than the one imposed would result in the Appellant being treated more favourably than other clubs who committed the same offence.
- Sanctioning a club for use of the chant is in line with the general public's sense of justice because there is a clear consensus between European football clubs that the chant or banners displaying the chant constitute a violation of the rules as demonstrated by the absence of an appeal from any other club that has been fined

in the same circumstances. UEFA's rules and regulations are not unilaterally drafted but are the result of lengthy discussions among European football stakeholders. Setting aside the sanction would create a dangerous precedent and emphasise that such inappropriate behaviour is accepted and that a stadium can be a place for verbal and physical violence. It would potentially encourage future misconduct because the Appellant's supporters would perceive a lack of consequences for their actions.

- In the Answer, UEFA submitted the following requests for relief:

“On behalf of UEFA, the undersigned respectfully request this honourable Panel:

- 1. To dismiss the Appeal of Appellant in the proceedings CAS 2024/A/10574 Sportsklubben Brann v UEFA in its entirety and to confirm the Appealed Decision.*
- 2. In any event, to order Appellant to pay an amount of at least CHF 30'000 as contribution to the costs and expenses incurred by UEFA.”*

VI. JURISDICTION

47. Article R47 of the Code provides that:

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

48. Pursuant to Article 62.1 of the UEFA Statutes (2021 edition):

“1. 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.

...”

49. The Appellant relies on Article 62.1 of the UEFA Statutes and Article R47 of the Code, as conferring jurisdiction on the CAS. The Respondent agreed at the outset of the hearing that there were no objections to the jurisdiction of the CAS when requested to offer its views by the Panel and the jurisdiction is further confirmed by the Parties' signatures on the Order of Procedure.
50. Accordingly, for the above reasons, the Panel is satisfied that it has jurisdiction to adjudicate the present dispute.

VII. ADMISSIBILITY

51. Article R49 of the Code provides that:

“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. [...]”

52. According to Articles 62.3 and 62.4 of the UEFA Statutes (2021 edition):

“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.”

53. The Appellant submits that the UEFA Statutes provide a time limit of ten days to file an appeal, that the Statement of Appeal was filed in time on 18 May 2024 and that the Appeal Brief was filed in due form and time on 28 May 2024. It submits that the appeal is admissible. The Respondent does not contest the admissibility of the appeal.

54. The Panel observes that the Appeals Body rendered the Appealed Decision on 25 March 2024 and at the Appellant’s request provided the Appealed Decision with grounds on 8 May 2024. The Panel also notes that the UEFA Statutes prescribe a deadline of 10 days to file an appeal against a decision made by a UEFA organ and that the 10-day time limit prevails over the default 21-day time outlined in Article R49 of the Code.

55. The Panel further observes that the Appellant filed its Statement of Appeal on 18 May 2024, within the deadline of 10 days, 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.

56. Accordingly, for the above reasons, the Panel is satisfied that the Appeal was filed in time and is admissible.

VIII. APPLICABLE LAW

57. Article R58 of the Code provides as follows:

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

58. The Appellant submits that the Panel should primarily apply the relevant regulations of UEFA, and that “*Swiss law, and the ECHR where applicable, applies subsidiarily to fill a possible gap in the various regulations of UEFA*”. It asserts that the Panel is required to consider Article 10 ECHR and its jurisprudence when interpreting Article 16(2)(e) DR to determine the threshold of acceptable expression.
59. The Respondent submits that the UEFA Statutes, Rules and Regulations and subsidiarily Swiss law are applicable. It disputed that Article 10 ECHR applied at all because the ECHR is not directly applicable between private entities such as the Appellant and UEFA (*cf.* CAS 2009/A/1957, para. 15; CAS 2006/A/1146, p. 10; CAS 2016/A/4697, para. 97; CAS 2012/A/2862, para. 105-107; Article 36 Swiss Federal Constitution; SFT 129 III 35, para. 5.2; SFT 135 I 154, para. 2.1), although during the hearing the Respondent agreed that the Panel may consider Article 10 ECHR when interpreting Article 16(2)(e) DR.
60. The Panel notes that the Appealed Decision was rendered by the Appeals Body on 25 March 2024 and that at the time the appeal was filed, the 2021 edition of the UEFA Statutes was in effect. Furthermore, since the merits of the dispute touch on a disciplinary matter, the 2022 edition of the UEFA Disciplinary Regulations that was in effect at the time the matter arose is also relevant.
61. Accordingly, the Panel considers that the UEFA Statutes (2021 edition), UEFA DR (2022 edition) and other UEFA regulations constitute the applicable law to the matter at hand. Swiss law applies subsidiarily. Additionally, and when relevant for the discussion on the merits of this case, the Panel will consider Article 10 ECHR and its jurisprudence as part of a discussion on the merits.

IX. OTHER PROCEDURAL MATTERS

62. During the present proceedings, two further procedural matters arose, namely:
- a. The Expert Witness Request; and
 - b. The Request to Admit Additional Documents.

63. These procedural matters are addressed in the paragraphs below.

A. The Expert Witness Request

64. On 6 August 2024 and after the Appeal Brief and Answer had been submitted, the Appellant informed the CAS Court Office of its request to call Professor Morten Hammerborg from the Western Norway University of Applied Sciences to provide expert testimony on the historical and contemporary usage of the term ‘mafia’ in Norway. In support of the request, the Appellant submitted the following:
- Based on the Answer, it was evident that the Respondent had failed to take into consideration, and was not aware of, the context in which the chanting occurred. The Respondent clearly did not appreciate that the term ‘mafia’ had a vastly different meaning and connotation in Norway and in Bergen in particular, where

the chants were made and where the term is used to describe something other than the criminal organization known in Italy as the Mafia.

- Prior to submission of the Answer, neither of the Respondent's disciplinary bodies had indicated how they interpreted the chants as "*provocative*" or "*offensive*" and that, based on the account provided in the Answer, it was apparent that the Respondent was not aware of relevant linguistic and cultural differences, and that the disciplinary proceedings were based, at least in part, on a misunderstanding.
 - The Appellant assumes that the Respondent shares the Appellant's wish for the proceedings and the Panel's assessment of the case to be based on all the relevant facts and to avoid proceedings that are based on an apparent misunderstanding of language and cultural differences and urged the Respondent to agree to the admission of the expert testimony.
65. Still on 6 August 2024, the CAS Court Office invited the Respondent to comment on the Expert Witness Request, which it did on 7 August 2024, recording its objection to the Expert Witness Request.
66. In support of its objection, the Respondent submitted the following:
- The Appeal Brief and Answer were filed some time ago and pursuant to Article R56 of the Code, the parties are not authorized to supplement or amend their requests or their arguments after the submission of the appeal brief and the answer. A further round of submissions is not foreseen in the Code and was not ordered by the Panel. The Appellant's Expert Witness Request included lengthy paragraphs containing arguments and should be dismissed.
 - The Appellant would have time to respond to the Respondent's arguments at the hearing on 2 September 2024.
 - The arguments raised in the Expert Witness Request are "*wrong*". The Appealed Decision and the documents on file show that it has been argued from the very beginning that the term 'mafia' can be and must be understood only as an allegation of organized criminal behaviour. The Appealed Decision very clearly states in paragraph 25 that, "*[s]uch messages serve no legitimate purpose, but rather call into question the integrity of the competition and competition organiser by associating it with allegations of organized criminal behaviour*". There are no exceptional circumstances which prevented the Appellant from an earlier filing, and which justify the belated admission of expert witness testimony.
 - Article R44.2 of the Code when read together with Article R57 of the Code expressly states that the parties "*may only call such witnesses and experts which they have specified in their written submissions*". The Appellant has not called nor mentioned any witnesses and experts in the Appeal Brief and the belated request should be rejected on this basis alone.

- Under Swiss law, the legal interpretation of a term is not a matter of fact but a matter of law. The Panel is “*certainly well equipped to perform its legal work*” without the assistance of a Professor of History.

67. The Panel recalls Article R51 of the Code which provides that:

“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 names(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.”

68. Article R56 of the Code provides 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 authorised 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. ...”

69. Article R56 of the Code serves the purpose of ensuring the efficient and rapid resolution of CAS appeal proceedings; thus, the Parties are required to specify all the evidence on which they intend to rely to prove their case in the Appeal Brief and the Answer. There is a consistent line of CAS jurisprudence that provides for a strict interpretation of the scope of “*exceptional circumstances*” under Article R56 of the Code (*cf.* 2020/A/6994, para. 102 and CAS 2017/A/5369, para. 133). The Swiss Federal Tribunal has concluded previously that a party’s right to be heard is not infringed when a CAS panel denies the submission of new evidence, if that new evidence is submitted outside a prescribed time limit (SFT 4A_312/2012, SFT 4A_576/2012 and SFT 5 4A_274/2013).

70. The Panel observes that Article R51 of the Code requires the Appellant to specify the names of any witnesses and include a brief summary of their expected testimony when it files its Appeal Brief and that the application of Article R56 of the Code precludes the Appellant from adding to its witness list unless the Respondent agrees, which it does not, or the President of the Panel agrees to admit the witnesses on the basis of exceptional circumstances. The Panel notes that the CAS Court Office reminded the Parties of Article R56 of the Code on 18 July 2024, after the Answer had been filed.

71. The Panel observes that the Appellant did not comply with the requirements of Article R51 of the Code insofar as it did not identify Professor Morten Hammerborg’s name as a witness in the Appeal Brief or include a summary of his testimony. Furthermore, the Appellant’s reason for the late request was that it had only appreciated how the Respondent interpreted the chant, after receipt of the Answer. The Panel does not accept

that this reason is an exceptional circumstance which justifies admitting Professor Hammerborg's evidence at this late stage because the Respondent's position regarding the chant's meaning would have been clear to the Appellant when it received the written grounds of the Appealed Decision on 8 May 2024, and there was time for the Appellant to identify Professor Hammerborg as a witness and provide a summary of his evidence in the Appeal Brief.

72. For all these reasons, the Panel determines that there are no exceptional circumstances to admit the expert witness testimony of Professor Hammerborg pursuant to Article R56 of the Code. The Panel's decision was communicated to the Parties on 20 August 2024.

B. The Request to Admit Additional Documents

73. On 7 August 2024, the Appellant made a request to admit documents relating to new disciplinary proceedings commenced by the Respondent against the Club in response to chants of "UEFA MAFIA" at a UEFA Conference League 2024/25 match played in Bergen between the Club and Go Ahead Eagles on 1 August 2024. The documents consisted of the UEFA Match Delegate Report dated 1 August 2024, an additional report by the UEFA Match Delegate dated 1 August 2024 and a letter from UEFA to the Club dated 5 August 2024 confirming that disciplinary proceedings had been commenced. In the Appellant's view it was *"evident that the matter of "UEFA MAFIA" [had] developed into a protest action by Brann-supporters, against what they perceive as attempts by UEFA to limit their freedom of speech."*
74. On 19 August 2024, the Respondent objected to the admission of the additional documents for the following reasons:
- The documents' admission was precluded by Article R56 of the Code;
 - The CAS Court Office informed the Parties on 18 July 2024 that they were not authorized to supplement or amend their requests or their argument, or to produce new evidence;
 - The Appellant had failed to offer any reasons to justify the admission of the documents;
 - The Appellant appeared to be expanding the scope of the present CAS appeal proceedings to *"other future, new, potential decisions of UEFA or of any other body"* which the Panel did not have jurisdiction to consider;
 - The new disciplinary proceedings were *"i) instigated due to the Appellant's potential (repeated) violation of the Rules and Regulations of UEFA and in accordance with normal practice, and ii) [were] on hold pending a decision in the present proceedings"*; and
 - To blame UEFA for the chanting was *"nonsensical"*.
75. The Panel notes that the additional documents came into existence after these proceedings were commenced and contain new information about additional

disciplinary proceedings against the Club, which the Panel does not have jurisdiction to consider, and which are on hold pending the Panel's decision in these proceedings.

76. The Panel notes that Article R56 of the Code does not define “*exceptional circumstances*”. It notes also the CAS jurisprudence which establishes that a document containing a new fact or “*a real novum*” and which is submitted late, may, nevertheless, be admitted to the file (cf: CAS 2017/A/4946, para. 57 and CAS 2020/A/6994, paras. 103-104).
77. The Panel observes that paragraph 2.7.2 of the Appeal Brief refers to a pattern of behaviour of the Club's supporters and that the additional documents contain new information about disciplinary proceedings commenced against the Club because of its supporters allegedly chanting the same chant during a UEFA competition match on 1 August 2024. The new information was clearly not in existence at the time the Appeal Brief was filed. The Panel notes that the Appellant did not delay, submitting the additional documents to the CAS Court Office within two days of UEFA's disciplinary letter dated 5 August 2024, and that the Respondent will have the opportunity to make submissions on the additional documents, should it wish to, at the hearing.
78. Accordingly, for all the above reasons, the Panel admits the additional documents to the file. The Panel's decision was communicated to the Parties on 20 August 2024.

X. MERITS

79. UEFA is a private association constituted under Swiss association law and has considerable latitude to prescribe disciplinary regulations that apply to its competitions. The Parties do not dispute that UEFA may adopt disciplinary regulations that prevent and deter behaviour, including certain forms of expression such as football chanting for the legitimate purposes of maintaining public safety and public order, during and around a football match. The Appellant agreed to be bound by and observe the UEFA DR as a condition of its admission to the UEFA Women's Champion League 2023/2024 when it signed the Competition Admission Criteria Form on 13 May 2023, and it does not dispute that it is subject to UEFA's disciplinary jurisdiction.
80. However, the Parties are in dispute regarding precisely where the threshold of acceptable expression lies under Article 16(2)(e) DR. Both Parties accept that there are provocative messages that should and can be sanctioned under Article 16(2)(e) DR but dispute where to draw the line in relation to the chant of “UEFA MAFIA”, which the Respondent alleges, and the Appellant denies, is a “*provocative message of an offensive nature*” in the circumstances of the present case.
81. Having considered the Parties' submissions, the following questions require determination:
 - a) In the circumstances of the present case, is the chant “UEFA MAFIA” a *provocative message of an offensive nature* and therefore conduct that is prohibited under Article 16(2)(e) DR?

- b) If yes, is the disciplinary sanction a justifiable infringement of the supporters' freedom of expression under Article 10 ECHR?

82. 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).

83. The Panel also recalls that the burden of proving the offence under Article 16(2)(e) DR lies on UEFA and that pursuant to Article 24(2) DR, the requisite standard of proof is that of comfortable satisfaction.

84. The Panel acknowledges that in circumstances such as the present case, where the decision in dispute is a disciplinary sanction imposed for conduct that breaches a sports association's rules, there is a line of consistent CAS authority which 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).

85. While this Panel will not interfere lightly with UEFA's disciplinary bodies' exercise of discretion, relying on its *de novo* power of review and established CAS jurisprudence, the Panel considers that it is not prevented from doing so.

A. In the circumstances of the present case, is the chant “UEFA MAFIA” a provocative message of an offensive nature that falls within the scope of Article 16(2)(e) DR?

86. The UEFA DR do not expressly proscribe the chant of “UEFA MAFIA” at a football match; instead, whether such chant is permissible falls to be determined under Article 16(2)(e) DR. Article 16(2) DR holds a club strictly liable for supporters' behaviour if certain proscribed conduct arises during or around a football match. The Club does not dispute the principle of strict liability in the present case; it does, however, dispute that Article 16(2)(e) DR was breached at all.

87. Article 16 provides as follows:

“Article 16 Order and security at UEFA competition matches

1. *Host clubs and national associations are responsible for order and security inside and around the stadium before, during and after matches. All associations and clubs shall comply with the obligations as defined in the UEFA Safety and Security Regulations. They are liable for incidents of any kind and may be subject to disciplinary measures and directives unless they can prove that they have not been negligent in any way in the organisation of the match.*
 2. *However, all associations and clubs are liable for the following inappropriate behaviour on the part of their supporters and may be subject to disciplinary measures and directives even if they can prove the absence of any negligence in relation to the organisation of the match:*
 - a. *the invasion of the field of play;*
 - b. *the throwing of objects potentially endangering the physical integrity of others present at the match or impacting the orderly running of the match;*
 - c. *the lighting of fireworks or any other objects;*
 - d. *the use of laser pointers or similar electronic devices;*
 - e. *the use of gestures, words, objects or any other means to transmit a provocative message that is not fit for a sports event, particularly provocative messages that are of a political, ideological, religious or offensive nature;*
 - f. *acts of damage;*
 - g. *causing a disturbance during national anthems;*
 - h. *any other kind of crowd disturbance (such as lack of order or discipline) observed inside or around the stadium before, during or after the match.”*
88. UEFA has the legitimate regulatory interest of securing public safety and preventing disorder or improper conduct during a football match, which it does through the behavioural standards prescribed in Article 16 DR. The purpose of Article 16 DR is: to maintain order and security at UEFA competition matches by punishing supporter behaviour that threatens public order and security in and around a stadium or which disrupts a match; and to deter future inappropriate behaviour, by holding clubs to account through disciplinary proceedings and imposing strong sanctions. The threat of sanctions encourages a club to engage with supporters on the issue of supporter behaviour.
89. UEFA exercises a discretion when determining the types of expression that are the subject of disciplinary proceedings and some examples of messages transmitted at a sports event that it has not prosecuted are: *“You only care about money”*; *“Match de prestige”*; *Horaires d’amateur*” - *“Welcome to UEFA”*; *“No to matches behind closed doors”*; *“Twenty is Plenty – The only reasonable price cap”*; *“C’est l’heure de la pyro”*

or “*We care about the richest*” (Answer, para. 59). When determining whether to prosecute conduct that arises in a transnational European football competition, UEFA will be guided by universal standards of conduct and its regulatory experience of assessing safety and public order at its competitions. The Panel accepts that deference should be afforded to UEFA’s discretion of determining which types of messages are “provocative” and “not fit for a sports event”, because of its regulatory experience, although UEFA’s assessment of the type of expression that is to be prosecuted must be in line with the provision’s regulatory purpose and applicable legal standards.

90. The UEFA DR do not define the word “*provocative*” or provide examples of a “*provocative message*” or one that may be considered as “*not fit for a sports event*”. The provision contemplates that provocative messages that are “*political, ideological, religious or offensive in nature*” are not fit for a sports event, although the way the provision is drafted, the list of provocative messages in Article 16(2)(e) DR is not exhaustive and a *provocative message* could be one which is not political, ideological, religious or offensive in nature; the word *particularly* emphasises those types of messages as examples of provocative messages that may be sanctioned, but there may be others too.

91. The Panel was not referred to any CAS jurisprudence arising under Article 16(2)(e) DR that could offer guidance on the test to apply under that provision. It was, however, referred to cases decided under Article 14 DR and cases decided under other sports regulations which drew upon the reasonable onlooker test to ascertain whether the conduct concerned could be considered to infringe a sport’s disciplinary rules. In CAS 2013/A/3324 & 3369, a case that considered whether a football chant that referred to a club chairman as a “gypsy” was a racial insult that qualified for sanction under Article 14 DR, the CAS Panel assessed whether the offence was established based on the reasonable onlooker test and at paragraph 9.14 stated:

“Further, as a senior English judge, Lord Steyn, once said ‘in the law, context is everything’ [Daly v Secretary of State for Home Department 2001 2 AC S32 (28)] so to determine if words, chants, 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.” (emphasis added).

92. More recently, in CAS 2022/A/9708, a case that considered whether a flag that was displayed at a football match was an insult to human dignity on racial grounds, the Sole Arbitrator summarised the cases under Article 14 DR in which the reasonable onlooker test has been developed, and concluded that:

“[The] “reasonable and objective onlooker” is not an average fan or “normal person” watching a match. Instead – as the panel in the case 2019/A/6547 has rightly put it – the test is the assessment of a reasonable and well-informed person assessing – ex post – the facts before him or her in light of all available and obtainable information.”

93. Both the Appellant and the Respondent referred to the reasonable onlooker test in their submissions and neither disputed the test’s application. The Panel also notes that the

Appeals Body referred to the “*reasonable and objective observer*” test (Appealed Decision, para. 27) which is another label to attach to the reasonable onlooker test.

94. For the above reasons, the Panel holds that the reasonable onlooker test applies to determine objectively in the context in which they were made, whether gestures, words, objects or other means transmitted at a UEFA competition match constitute a provocative message that is not fit for a sports event pursuant to Article 16(2)(e) DR. This is consistent with the principle established in e.g. *Miljević v Croatia* (ECtHR Application No. 68317/13, para. 68) that an expression must be assessed in light of its nature and in the context in which it is made.
95. Neither party addressed the Panel on the characteristics that should be ascribed to the reasonable onlooker in the present case. Nevertheless, the Panel considers that based on the above reference from CAS 2022/A/9708, with further reference to CAS 2019/A/6547, the reasonable onlooker would be a person equipped with a general knowledge of European football and be well-informed of the totality of the case circumstances.
96. In the present case, the Panel must assess whether the reasonable onlooker would consider a chant of “UEFA MAFIA” that lasted for approximately 20 seconds and was made by a group of Norwegian football supporters in response to a referee’s decision that went against their team to be “*a provocative message of an offensive nature that is unfit for a sports event*”.
97. The Parties dispute the meaning of the chant in the context in which it was used. It is undisputed that the term UEFA quite clearly and unambiguously refers to the Respondent; what is disputed is the meaning of the word ‘mafia’ and the term’s overall offensiveness and provocativeness in the context in which it was used.
98. The Respondent submits that the term ‘mafia’ is “*used in everyday language to refer to an organised criminal organisation, involved in, inter alia, murder, extortion, human trafficking, robbery, smuggling, money laundering*” and that it stands for the highest level of criminality” (Answer, para. 45). The Respondent’s primary position is that the supporters were chanting that UEFA is a criminal organisation and implying that anyone who supports UEFA is part of the ‘mafia’, which is “*highly defamatory*”, and “*offensive*” and “*definitely not fit for a sports event*” (Answer, para. 48).
99. At the hearing, the Respondent directed the Panel to the definition of ‘mafia’ in the Oxford English Dictionary, which provides as follows:
 1. *the Mafia: an organised international body of criminals, operating in Italy and the US and having a complex behavioural code.*
 2. *mafia: any organised group resembling the mafia in its way of operating.*
 3. *mafia: a group regarded as exerting a hidden, sinister influence.*

100. The Respondent submitted that its dictionary definition was not too dissimilar to the dictionary definition advanced by the Appellant and that all definitions of the term were unacceptable criticism against the Respondent; it was not a “*compliment*” or “*positive*” to be accused of being a “*mafioso*”.
101. The Appellant referred the Panel to the Cambridge English Dictionary meaning, which provides as follows:
- “1. *Mafia: a criminal organisation that began in Sicily and is active in Italy and the US.*
2. *mafia: a close group of people who are involved in similar activities and who help and protect each other; sometimes to the disadvantage of others*”.
102. The Appellant submits that it is the English language meaning of the word ‘mafia’ that is used in English-speaking countries or countries where English is spoken as a second language and not a meaning that is specific to Norway, which is relevant to determine the chant’s meaning. The Appellant submits that UEFA wrongly asserts that the only possible meaning to attribute to the term is that the chant is a factual statement that UEFA is a criminal organisation, that the context is irrelevant and that simply using the term is unacceptable. It submits that the chant can only reasonably be interpreted in the second meaning of the term and when assessed in its context, the question for the Panel to determine is whether that meaning exceeds the threshold in Article 16(2)(e) DR.
103. Neither Party led any expert evidence regarding the English meaning of the Italian word ‘mafia’ in the context in which the Club’s supporters used it. There was no direct evidence before the Panel regarding the genesis of the chant or how it has developed as a chant amongst football supporters or any witness testimony from which the Panel might have been able to derive factors that would assist it to ascertain objectively the meaning of the word in the context in which it was used.
104. The only evidence before the Panel from which it could draw a conclusion regarding the meaning of the chant was the UEFA Match Delegate Report. Considering the purpose of the UEFA Match Delegate Report as being limited to reporting on certain occurrences at a match, it is not surprising that the Report records only that the chant occurred at the 30th minute of the first half, a fact which is not in dispute. The UEFA Match Delegate wrote the chant as ‘UEFA Mafia’, spelt with a capital ‘M’, which denotes a proper noun and would be consistent with a meaning of the term as a criminal organisation, but the majority of the Panel finds that the UEFA Match Delegate Report offers no assistance regarding the meaning of the chant to which it can attach any weight because it is a written record of an oral chant, the meaning of which is disputed, and is unaccompanied by direct witness testimony.
105. UEFA submitted reports of previous UEFA disciplinary cases as evidence of a consistent practice of prosecuting clubs or national associations whose supporters use the expression in some form, whether as a chant or displayed on a banner at UEFA competition matches. The majority of the Panel observes that the reasoning in these UEFA disciplinary body decisions, and the Appealed Decision, however, does not discuss the different English meanings of the word ‘mafia’ and proceeds on the

assumption that there is only one meaning to attribute to the chant, and that is the meaning that UEFA is a criminal organisation in accordance with the first meaning of the term (see *supra* at para.102), which is consistent with UEFA's position in these proceedings.

106. In obvious criminal contexts, an English speaker using the term 'mafia' would be understood to refer directly to a criminal organisation, in line with the first meaning of the term. However, the majority of the Panel is of the view that English speakers also use the term 'mafia' outside a criminal context to refer to a group of like-minded people or a tight-knit group of people who control a particular situation, in line with the second meaning of the term. The latter use of the term does not necessarily refer to or necessarily imply an involvement in criminal activity. The context in which the term is used will be paramount to determining its meaning.
107. A football match is not a criminal context, UEFA is clearly not a criminal organisation, and those associated with UEFA, such as a referee, are not affiliated to the mob, i.e. *mafiosi*. However, the majority of the Panel is not persuaded by the Respondent's submissions that the objective meaning to attribute to the chant in the context of this particular football match in Norway – where, according to the UEFA Match Delegate, the "*atmosphere during the match was excellent*" and the "*general public was mainly families*" (see *supra* at para. 8) – is the one that it submits. Instead, the majority of the Panel finds that the objective meaning to attribute to the chant during this specific match and in the present context is one that is consistent with the second meaning of the term in English, namely: UEFA is a tight-knit group of like-minded people who control football. Nonetheless, the majority of the Panel accepts that this meaning is pejorative and not complimentary, and in certain contexts may fall on a spectrum of offensiveness.
108. The Respondent submitted at the hearing that the reasonable onlooker upon hearing the chant would "*ascertain that the referee was corrupt, the match was fixed and that UEFA had pre-defined who was going to win or lose*". The majority of the Panel has previously emphasized that there is no evidence to support an objective meaning of the chant that UEFA is a criminal organisation, and the majority of the Panel is not persuaded that the reasonable onlooker would attribute that meaning to the chant in the context in which it was expressed. The chant arose in the 30th minute of a football match, lasted approximately 20 seconds and was triggered by a referee decision that went against the supporters' team. It was a short and isolated expression of frustration, which was inappropriate but there is no evidence that it provoked a stronger crowd reaction or that it was repeated. The UEFA Match Delegate Report records that the atmosphere during the match was "*excellent*", that the Club's supporters "*were cheering and supporting their team*" and that "*they constantly booed the away team and the referee based on unfavourable decisions*". The majority of the Panel considers that the chant was a fleeting reaction to a referee decision that the Club's supporters evidently perceived to be unfair. Whether the referee's decision was correct or not is irrelevant; what is relevant is that the supporters disagreed with the decision and expressed their dissatisfaction through the spontaneous chant. The majority of the Panel therefore accepts the Appellant's submission that the chant was "*a spontaneous and subjective expression of frustration, a feeling quite common to the world of football supporters*". It rejects the Appellant's additional submission that the chant was triggered by another event or was

an expression that formed part of a debate of wider public interest, for which there is no evidence before the Panel.

109. The purpose of Article 16 DR is to maintain order and security at UEFA competition matches by punishing supporter behaviour that threatens public safety and security in and around a stadium or which disrupts a match, whether or not that actually occurs. A provocative message in the context of Article 16(2)(e) DR will be a message that elicits or incites a reaction from supporters that poses a threat to public order and safety in or around the stadium, whether in fact that threat materialises. The majority of the Panel determines that the reasonable onlooker would consider that the short, isolated and fleeting football chant of the Norwegian fans directed to UEFA in all the circumstances of the present case constitutes an inappropriate expression of frustration, but does not fall within the category of provocative messages of an offensive nature that would encourage football supporters from either team to engage in aggressive, disruptive behaviour or threaten order and security in the stadium, within the scope of Article 16 (2)(e) DR. The majority of the Panel finds support for this view in the UEFA Match Delegate Report which recorded the atmosphere during the match as “*excellent*” and did not report on any security concerns arising as a consequence of the chant.
110. The majority of the Panel’s conclusion does not mean that the chant “UEFA MAFIA” can never be a provocative message of an offensive nature. Football supporters have a responsibility to others in and around the stadium to ensure that their behaviour, including chanting, meets universally accepted standards of behaviour and does not disrupt a match or its enjoyment for others.
111. UEFA submitted during the hearing that a finding in favour of the Club would provide a licence to football supporters to increase the offensiveness of their chanting on the understanding that their chanting would be immune from disciplinary proceedings. The Panel emphasises that this decision does not prevent UEFA from exercising its disciplinary powers when football supporters chant messages that are provocative and unfit for a sports event, particularly those that convey offensive, racist, or other discriminatory messages and which cause disorder or threaten public safety and order in a stadium. In the circumstances of these disciplinary proceedings, however, and on the evidence available, the majority of the Panel is not persuaded to the level of comfortable satisfaction that the disciplinary offence has been proved, and that the Appellant should be sanctioned for the behaviour of its fans. The majority of the Panel determines, therefore, that no breach of Article 16(2)(e) DR arises.

B. Conclusion

112. The majority of the Panel has concluded that in the circumstances of this particular case an offence under Article 16(2)(e) DR does not arise and the Club is not strictly liable for its supporters’ conduct. It follows, therefore, that it is not necessary to conduct the balancing exercise and ascertain whether the disciplinary sanction is a justifiable incursion on the supporters’ right of freedom of expression under Article 10(2) ECHR.
113. Accordingly, for the reasons set out above the Appealed Decision is set aside and the appeal is upheld. All further or different motions or prayers for relief are dismissed.

XI. COSTS

(...).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Sportsklubben Brann on 18 May 2024 is upheld.
2. The decision of the UEFA Appeals Committee dated 25 March 2024 is set aside in its entirety.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Operative Part notified on 28 March 2025

Award with grounds notified on 31 March 2025

THE COURT OF ARBITRATION FOR SPORT

Dr Leanne O’Leary
President of the Panel

Mr Eirik Monsen
Arbitrator

Prof. Massimo Coccia
Arbitrator