



Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2016/A/4434 Fenerbahçe SK v. UEFA, FC Shakhtar Donetsk and Mr. Frederico “Fred” Rodrigues de Paula Santos

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr. Clifford J. **Hendel**, Attorney-at-Law, Madrid, Spain

Arbitrators: The Hon. Michael J. **Beloff** M.A., Q.C., Barrister, London, United Kingdom

Mr. José Juan **Pintó**, Attorney-at-Law, Barcelona, Spain

between

Fenerbahçe Spor Kulübü, Istanbul, Turkey

Represented by Messrs. Christian Keidel and Alexander Engelhard, Martens Rechtsanwälte, Munich, Germany

as Appellant

and

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

Represented by Dr. Emilio García, Head of UEFA Disciplinary and Integrity, Nyon, Switzerland

as First Respondent

FC Shakhtar Donetsk, Donetsk, Ukraine

Represented by Mr. Juan de Dios Crespo Pérez, Ruiz-Huerta & Crespo, Valencia, Spain

as Second Respondent

Frederico “Fred” Rodrigues de Paula Santos, Donetsk, Ukraine

Represented by Mr. Marcos Motta, Bichara e Motta, Rio de Janeiro, Brazil

as Third Respondent

I. PARTIES

1. Fenerbahçe Spor Kulübü ("Fenerbahçe" or "Appellant") is a professional football club with headquarters in Istanbul, Turkey. Fenerbahçe is registered with the Turkish Football Federation which in turn is affiliated to UEFA.
2. Union des Associations Européennes de Football ("UEFA" or "First Respondent") is an association under Swiss law with its registered office in Nyon, Switzerland. UEFA is the governing body of football at the European level. It exercises regulatory, supervisory and disciplinary functions over national federations, clubs, officials and players in Europe. UEFA organises and conducts international football competitions and tournaments at the European level, which include the UEFA Champions League (the "UCL").
3. FC Shakhtar Donetsk ("Shakhtar" or "Second Respondent") is a professional football club in Donetsk, Ukraine. Shakhtar is registered with the Football Federation of Ukraine which in turn is affiliated to UEFA.
4. Frederico "Fred" Rodrigues de Paula Santos ("Player" or "Third Respondent") is a professional football player of Brazilian nationality, currently playing for Shakhtar.

II. FACTUAL BACKGROUND AND PROCEEDINGS BEFORE UEFA PRIOR TO THE FILING OF THE STATEMENT OF APPEAL WITH THE COURT OF ARBITRATION FOR SPORT

5. Below is a summary of the main relevant facts and allegations based on Parties' written submissions, pleadings and evidence adduced during these proceedings. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.
6. Between 11 June and 4 July 2015, the "Copa América" competition, organized and administered by the South American Football Confederation ("CONMEBOL"), was held in Chile. Player was a member of the Brazilian national team at this competition, and played in Brazil's first two matches.
7. On 27 July 2015, news articles reported that during the Copa América Player had tested positive in an "A" sample for hydrochlorothiazide ("HCT"). HCT is a specified substance under category S5 (Diuretics and Masking Agents) of the 2015 WADA List of Prohibited Substances and Methods.
8. On 28 July 2015, Fenerbahçe and Shakhtar played the first leg of the Third Qualifying Round of the UCL 2015/2016 competition in Istanbul.
9. According to press reports, not themselves in issue in this proceeding, Shakhtar and UEFA were aware of the positive A-sample before the 28 July 2015 match, and UEFA had informally and verbally advised Shakhtar through its coach not to field Player.

10. Player was fielded for nearly the entire match, which ended in a 0-0 draw.
11. On 29 July 2015, Fenerbahçe submitted to UEFA a formal protest (the "First Protest") of the first leg match, asserting that the positive test results in the Copa América should have resulted in Player's provisional suspension and thus Shakhtar had fielded an ineligible player and should be deemed to have forfeited the match by a score of 0-3.
12. On 3 August 2015, the UEFA Control, Ethics and Disciplinary Body ("CEDB") issued a decision without grounds rejecting Fenerbahçe's First Protest.
13. On 4 August 2015, and after becoming aware of press reports indicating that Player's B-sample had also tested positive, Fenerbahçe requested CONMEBOL, FIFA and UEFA to provisionally suspend Player until a final decision was taken on his anti-doping rule violation, so that he would not be fielded in the second leg of the UCL Third Qualifying Round to be played in Lviv, Ukraine.
14. On 5 August 2015, notwithstanding that request, Player was fielded for the second leg match, which was won by Shakhtar 3-0.
15. Shakhtar accordingly advanced to the Play-Off Round of the UCL 2015/2016 competition, while Fenerbahçe was eliminated from the competition. Pursuant to pertinent UEFA regulations, a club advancing to the Play-Off Round of the UCL 2015/2016 competition was guaranteed to receive € 2 million if it won the Play-Off Round (and advanced further to the Group Stage, as Shakhtar did) and € 3 million if it lost the Play-Off Round.
16. On 6 August 2015, Fenerbahçe submitted to UEFA a formal protest (the "Second Protest") of the second leg match.
17. On 18 August 2015, before receiving the grounds of the decision concerning its First Protest, Fenerbahçe appealed that decision to UEFA's Appeals Body.
18. On 9 September 2015, Fenerbahçe was notified of the decision with grounds of the CEDB of 13 August 2015 rejecting the Second Protest on the basis of "*the same reasoning and conclusion*" as in its earlier (albeit without grounds) rejection of the First Protest, such reasoning and conclusion being stated "*to be reproduced insofar as they are fully relevant for the current proceedings*".
19. On 17 September 2015, Fenerbahçe filed an appeal with the UEFA Appeals Body regarding its Second Protest.
20. On 26 November 2015, the UEFA Appeals Body issued the Appealed Decision which upheld the decision of the UEFA CEDB regarding the First Protest. The grounds of the Appealed Decision were notified to Fenerbahçe on 26 January 2016.
21. In its relevant parts the Appealed Decision reads as follows:

"In summary, FC Shakhtar Donetsk fielded a player who was not serving a suspension imposed against him for an anti-doping violation, as well as no

request has been done by FIFA whatsoever regarding the extension of any decision as to suspend the player Frederico "Fred" Rodrigues.

Bearing all of the above in mind, this UEFA disciplinary body concluded that the player was eligible to play the Champions League 2015/2016 match between Fenerbahçe SK and FC Shakhtar Donetsk."

22. On 14 December 2015, i.e., three weeks after the Appealed Decision had been taken, CONMEBOL issued a disciplinary decision against Player, banning him retroactively for one (1) year for his anti-doping rule violation as from 26 June 2015.
23. On 3 February 2016, Fenerbahçe's counsel requested FIFA to provide him with a copy of the disciplinary decision taken by CONMEBOL and to be informed whether Player had appealed the CONMEBOL decision.
24. On 5 February 2016, FIFA informed Fenerbahçe's counsel that Player's doping offence fell under the competence of CONMEBOL and that Fenerbahçe, not being a party in the CONMEBOL proceedings, did not have a right to receive the requested information. At the same time, Fenerbahçe's counsel was informed by FIFA that the Chairman of the FIFA Disciplinary Committee had decided to extend the sanction imposed on Player by CONMEBOL to have worldwide effect as from 27 June 2015, and covering all types of matches, including domestic, international, friendly and official fixtures. The FIFA press release of 5 February 2016 reads as follows:

"The chairman of the FIFA Disciplinary Committee has decided to extend the sanction imposed on 14 December 2015 by the disciplinary committee of the South American Football Confederation (CONMEBOL) on the Brazilian player Frederico Rodrigues de Paula Santos for an anti-doping rule violation to have worldwide effect in accordance with article 136 ff. of the FIFA Disciplinary Code¹.

As a consequence, Mr Rodrigues de Paula Santos is suspended worldwide for one (1) year as of 27 June 2015 in accordance with the terms of the decision passed by the disciplinary committee of CONMEBOL. This suspension covers all types of matches, including domestic, international, friendly and official fixtures.

¹ Articles 136.1 and 136.2 of the FIFA Disciplinary Code provide as follows:

"136.1 If the infringement is serious, in particular but not limited to doping (cf. art. 63), unlawfully influencing match results (cf. art. 69), misconduct against match officials (cf. art. 49), forgery and falsification (cf. art. 61) or violation of the rules governing age limits (cf. art. 68 a), the associations, confederations, and other organising sports bodies shall request FIFA to extend the sanctions they have imposed so as to have worldwide effect.

136.2 Any doping-related legally binding sanction imposed by another international sports association, national anti-doping organisation or any other state body that complies with fundamental legal principles shall automatically be adopted by FIFA and, provided that the requirements described hereunder are met, may in principle be extended by FIFA to have worldwide effect."

Mr Rodrigues de Paula Santos, his club FC Shakhtar Donetsk, the CBF, the Football Federation of Ukraine, CONMEBOL and UEFA have today all been notified of the decision of the chairman of the FIFA Disciplinary Committee."

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

25. On 5 February 2016, Fenerbahçe filed its Statement of Appeal with the CAS, requesting (on grounds of procedural efficiency, in view of a possible further appeal) suspension of the time limit for the submission of its Appeal Brief in this proceeding (involving the First Protest) until UEFA's Appeals Body had resolved the appeal of the Second Protest. In the Statement of Appeal, Appellant named the Hon. Michael J. Beloff M.A., Q.C. as its arbitrator.
26. On 11 February 2016, after an invitation of 9 February 2016 from the CAS Court Office to comment on Fenerbahçe's request (and suspending until further notice the time limit for the submission of the Appeal Brief), First and Second Respondents separately advised that UEFA had decided on that day to suspend the proceedings before its Appeals Body concerning the Second Protest due to the pendency of the present CAS appeal of the First Protest. In its letter, Second Respondent nominated Mr. José Juan Pintó as its arbitrator and proposed that the other Respondents agree to such nomination.
27. On 12 February 2016, the CAS Court Office accordingly reinstated the time for the submission of the Appeal Brief.
28. On 16 February 2016, desirous of having UEFA review the matter in light of all relevant facts, including the "*new and substantive fact*" of retroactive sanction imposed by CONMEBOL on 15 December 2015 and its worldwide extension imposed by FIFA on 5 February 2016, Fenerbahçe filed a request with UEFA to re-open the proceedings involving the First Protest, inasmuch as the Appealed Decision had been decided (on 26 November 2015) before the CONMEBOL sanction was imposed (15 December 2015) and before FIFA gave the same worldwide extension (5 February 2016). Fenerbahçe simultaneously filed a request with CAS to suspend the time limit for the submission of its Appeal Brief in this proceeding pending UEFA's decision on the request to re-open.
29. On 18 February 2016, invited by the CAS Court Office to comment on Fenerbahçe's request, First and Second Respondents separately advised their opposition to the suspension, on grounds, *inter alia*, that UEFA decision was final, the *de novo* nature of the CAS review under R57 would allow appropriate consideration of any and all new and substantive facts not available before UEFA at the time of the Appealed Decision, and the sanction could not in any event be applied retroactively at UEFA level. In its letter, First Respondent agreed to the nomination of Mr. José Juan Pintó as arbitrator as proposed by Second Respondent.
30. On 1 March 2016, the CAS Appeals Division President decided not to suspend the present proceedings.
31. On 10 March 2016, after requesting without objection from Respondents a short extension of the time for filing, Fenerbahçe submitted its Appeal Brief. Because

Appellant did not have the benefit of UEFA's views on the question of the retroactive suspension as ordered by CONMEBOL in December and extended worldwide by FIFA in February, it requested a second round of submissions in order to respond to UEFA's arguments relating to this issue.

32. On 21 March 2016, Third Respondent agreed to the nomination of Mr. José Juan Pintó as arbitrator as proposed initially by Second Respondent and agreed by First Respondent.
33. On 18 April 2016, the CAS Court Office confirmed the appointment of Mr. Clifford J. Hendel as President of the Panel, with Michael J. Beloff Q.C. and José Juan Pintó as arbitrators, and transmitted to them the case file.
34. On 25 April 2016, each of First and Second Respondents submitted their Answers to Appellant's Appeal Brief.
35. On 26 April 2016, Third Respondent requested the suspension of these proceedings (and of the time limit for his Answer) due to the fact that, on grounds of asserted new scientific evidence, he had lodged a request with CONMEBOL for the review of the 14 December 2015 decision imposing the disciplinary sanction. The letter noted that the request for review had been initially rejected but that grounds had been requested and an appeal was contemplated in due course, after the grounds had been received and analyzed.
36. On 27 April 2016, the CAS Court Office invited comment on Third Respondent's request for suspension. In the following days, First Respondent objected for lack of sufficient grounds and likely lack of standing of Third Respondent in these proceedings, Second Respondent accepted the request and Appellant objected on grounds that a mere stated intention to challenge a decision is insufficient to suspend the present proceedings and that the scientific evidence asserted was far-fetched. Appellant also reserved its right to comment on the proceedings CAS 2016/A/4438, referred to in First Respondent's Answer, pursuant to which WADA was challenging the CONMEBOL sanction on Player.
37. On 13 May 2016, the CAS Court Office advised the parties that the Panel had decided to dismiss Third Respondent's request to suspend the proceedings, and established a time limit of 18 May 2016 for his Answer.
38. On 18 May 2016, Third Respondent submitted his Answer, which included an objection as to his position in these proceedings.
39. After being invited on 23 May 2016 by the CAS Court Office to advise their views as to the holding of a hearing in this matter, each of the Respondents indicated that such was unnecessary. Appellant, however, requested by letter of 30 May 2016 that a hearing be held due to the complexity of the case and in accordance with the full exercise of its right to be heard.
40. By letter of 7 June 2016, the CAS Court Office advised the Parties that the Panel had determined to hold a hearing, having understood that Appellant's initial request for a

second round of submissions had become moot, and invited the other Parties to comment on Third Respondent's jurisdictional objection.

41. On 16 June 2016 and 17 June 2016, respectively, Appellant and Second Respondent submitted their views on Third Respondent's objection as to his position in these proceedings.
42. On 7 September 2016, the CAS Court Office on behalf of the President of the Panel, issued an order of procedure which was duly accepted and countersigned by each of the Parties.
43. On 15 September 2016, a hearing was held at the CAS Court Offices in Lausanne, Switzerland. The Panel was assisted at the hearing by Mr. Daniele Boccucci, counsel to CAS. The following persons attended the hearing:
 - (i) for Appellant: Mr. Christian Keidel, counsel
Mr. Yiğit Cem Coşkun, in-house counsel
 - (ii) for First Respondent: Mr. Carlos Schneider, disciplinary lawyer
Dr. Martin Bauer, disciplinary lawyer
Mr. Luca Mak, disciplinary lawyer
 - (iii) for Second Respondent: Mr. Juan de Dios Crespo, counsel
Mr. Andrey Kharitonchuk, in-house counsel
Mr. Enric Ripoll, counsel
Mr. Arjun Savant, intern
 - (iv) for Third Respondent: Mr. Bichara Abidão Neto, counsel
Mr. Stefano Malvestio, counsel
44. At the hearing the Parties made submissions through counsel in support of their respective cases and responded to questions posed by the Panel. At the outset of the hearing, the Parties confirmed their satisfaction with the composition of the Panel, and at the conclusion stated that they had no objection in respect of their right to be heard and to be treated equally in these proceedings.
45. On various dates in late September 2016 and early October 2016, in accordance with the Panel's instructions at the hearing, and within the set deadline (as later extended) the Parties filed their respective statements of costs.

IV. THE POSITIONS OF THE PARTIES

46. The following summary of the Parties' positions is illustrative only and does not necessarily comprise every contention put forward by the Parties. The Panel has however, carefully considered for the purposes of the legal analysis which follows, all the submissions made by the Parties, whether or not specific reference is made to them below.

A. Position of Appellant (save as to the matter of Third Respondent's objection on his position in these proceedings)²

47. In its Statement of Appeal, Appellant sought the following relief:

- I. to lift the UEFA Appeals Body decision dated 26 November 2015;*
- II. to declare the Player Frederico "Fred" Rodrigues de Paula Santos ineligible for the match played on 28 July 2015, between Fenerbahçe SK and FC Shakhtar Donetsk in Istanbul, Turkey (1st leg match of Third Qualifying Round for the UEFA Champions League 2015/16);*
- III. to accept Fenerbahçe SK's protest filed with UEFA on 29 July 2015; and, consequently, to declare the match between Fenerbahçe SK and FC Shakhtar Donetsk in the UEFA Champions League Third Qualifying Round (1st Leg) held on 28 July 2015 forfeit in the favour of Fenerbahçe SK and that FC Shakhtar Donetsk is deemed to have lost the match by 0-3;*
- IV. to order UEFA to pay to Fenerbahçe SK the amount payable according to the UEFA circular letter issued before the season 2015/2016 on the basis of Articles 59.03, 59.04 of the Regulations of the UEFA Champions League 2015-18 Cycle for winning the Third Qualifying Round for the UEFA Champions League 2015/16 in the amount of EUR 2,000,000 if the prayer for relief under V. is entertained and in the amount of EUR 3,000,000 if the prayer for relief under V. is dismissed;*
- V. to reinstate Fenerbahçe SK in the UEFA Champions League 2015/2016;*
- VI. to order FC Shakhtar Donetsk and UEFA, jointly and severally, to bear the costs of the proceedings held before the UEFA Control, Ethics, and Disciplinary Body, the UEFA Appeals Body and the CAS; and*
- VII. to order FC Shakhtar Donetsk and UEFA, jointly and severally, to pay Fenerbahçe SK a contribution towards its legal fees and other expenses incurred in connection with the proceedings held before the UEFA Control, Ethics, and Disciplinary Body, the UEFA Appeals Body and CAS."*

48. In its Appeal Brief, Appellant eliminated requests IV and V set forth in the Statement of Appeal (seeking, respectively, financial compensation from UEFA and reinstatement in the UCL 2015/2016), and sought the following relief:

- I. to annul the UEFA Appeals Body decision dated 26 November 2015;*
- II. to declare the Player Frederico "Fred" Rodrigues de Paula Santos was suspended for UEFA competitions as of 27 June 2015 in accordance with the terms of the decision passed by the disciplinary committee of CONMEBOL on 14 December 2015 and by FIFA on 5 February 2016 in this matter;*
- III. To accept Fenerbahçe SK's protest filed with UEFA on 29 July 2015; and, consequently, to declare the match between Fenerbahçe SK and FC Shakhtar*

² Appellant's position on Third Respondent's objection is set out at the end of this Section IV.

Donetsk in the UEFA Champions League Third Qualifying Round (1st Leg) held on 28 July 2015 forfeit in the favour of Fenerbahçe SK and that FC Shakhtar Donetsk is deemed to have lost the match by 0-3;

- IV. to order FC Shakhtar Donetsk and UEFA, jointly and severally, to bear the costs of the proceedings held before the UEFA Control, Ethics, and Disciplinary Body, the UEFA Appeals Body and the CAS; and*
- V. to order FC Shakhtar Donetsk and UEFA, jointly and severally, to pay Fenerbahçe SK a contribution towards its legal fees and other expenses incurred in connection with the proceedings held before the UEFA Control, Ethics, and Disciplinary Body, the UEFA Appeals Body and CAS."*

49. In its pleadings at the hearing, Appellant submitted as an alternative prayer for relief a request to suspend these proceedings pending resolution of the parallel proceedings CAS/2016/A/4438 involving WADA's appeal of the CONMEBOL sanction, which (according to First and Third Respondent in their respective Answers) have been stayed pending the outcome of Third Respondent's request for revision of the CONMEBOL decision referred to above.
50. Appellant's principal argument in this appeal (unavailable to it in the proceedings before UEFA leading to the Appealed Decision of 26 November 2015) derives from the retroactive suspension imposed on Player by CONMEBOL's Disciplinary Committee on 14 December 2015 and extended worldwide by FIFA on 5 February 2016, suspending Player for one year as from 27 June 2015 (one month before the first leg of the protested UCL Third Qualifying Round match with Shakhtar), and covering all types of matches.
51. Appellant asserts that a retroactive sanction, i.e., one which establishes a period of ineligibility starting from a date earlier than the sanctioning decision itself, cannot be treated differently from a non-retroactive sanction for purposes of the applicable UEFA rules regarding forfeiture of matches for fielding suspended players. Specifically, Appellant affirms that by fielding on 28 July 2015 a (retroactively) suspended player, Shakhtar must forfeit the match for violation of Article 21.2 of the UEFA Disciplinary Rules ("UEFA DR"), providing as follows:

"A match is declared forfeit if a player who has been suspended following a disciplinary decision participates in the match."
52. Appellant insists that applicable FIFA and UEFA regulations (in particular, Article 66.4 of the UEFA DR, providing that *"In so far as they are compatible with UEFA's rules, measures taken by a government body or another sporting body in relation to doping are recognised by UEFA"*) require UEFA to recognize the worldwide, retroactive sanction *"as is"*, and that failing to recognize its retroactive element would effectively reduce the suspension at the European level.
53. This, continues Appellant, would ignore the consequences set out in Article 28.1 of the FIFA Anti-Doping Regulation ("FIFA ADR") (which reproduces virtually verbatim the text of article 10.11 of the WADA Code 2015), which provides plainly as follows:

“[a]ll competitive results achieved during the Period of Ineligibility including retroactive ineligibility, shall be disqualified” (emphasis supplied).

54. In essence, as argued by Appellant at the hearing, “*retroactive means retroactive*”; accordingly, Player was (albeit “only” retroactively) ineligible when the 28 July 2015 match was played, and thus Shakhtar violated Article 21.2 of the UEFA DR by fielding him and accordingly should suffer the forfeiture of the match in consequence, just as would have been the case had Player been actually serving a suspension at the time the match was played.
55. Finally, Appellant notes that no other club which played against Shakhtar in the UCL 2015/2016 had protested a match or appealed the results of a match on the basis of Player’s participation and hence dismisses the argument (which it refers to as an *argumentum ad absurdum*) of First and Second Respondents that granting Appellant’s request in this case would retroactively re-open all matches and all competitions in which Player participated subsequent to 26 June 2015, to the detriment of the good and proper administration of the relevant competitions. At the hearing, Appellant acknowledged that “*full restitution is impossible*” (i.e., re-opening the entire results of the UCL 2015/2016 competition, but an eventual claim for damages (which could only be evaluated and brought if both the First and Second Protests were ultimately upheld) was a simple, logical and appropriate legal consequence of a team having been eliminated by another who fielded an ineligible player.
56. Independently of the Article 21.2 retroactivity argument, Appellant further argues that the match should be declared forfeit as a result of a disciplinary measure imposed on Shakhtar for knowingly fielding a player who had committed a doping offense and where UEFA had advised the club not to field him.
57. In particular, Appellant relies on Article 11 of the UEFA DR governing the general principles of conduct for football stakeholders, including clubs and players. Pursuant to paragraph 1 of Article 11:

“[...] 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.”

58. Pursuant to paragraph 2 of Article 11:

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

[...]

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

e) who does not abide by decisions and directives of the UEFA Organs for the Administration of Justice, or decisions of the Court of Arbitration for Sport [...]

i) who enters a player on a match sheet who is not eligible to play;

[...]

k) who behaves in an unsporting manner.”

59. Appellant asserts that the decision of the Shakhtar coach to field Player (which decision is attributable to the club by reason of Article 8 of the UEFA DR) breached Article 11 by bringing the sport and UEFA into disrepute and acting in an unsporting manner, especially where Shakhtar had been advised by UEFA not to field Player, meriting forfeiture of the match pursuant to Article 6(1) of the UEFA DR (providing for forfeiture as one of the sanctions against clubs for breach of the UEFA DR).
60. Appellant affirms that, having been aware at the time of the match of the positive A-Sample for HCT, Shakhtar knew or should have known that a provisional or permanent suspension was quite likely and thus fielding Player was “*a risky proposition*”.
61. In this regard, Appellant points to Article 25 of the FIFA Disciplinary Rules (“FIFA DR”), which provides as follows:

“In addition to the automatic disqualification of the results in the Competition which produced the positive Sample under these Regulations, all other competitive results of the Player obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or period of ineligibility, shall, unless fairness requires otherwise, be disqualified with all of the resulting consequences including forfeiture of any medals, points and prizes.”

62. Asserting that in a team sport such as football, “*competitive results*” of a player have little or no separate meaning from the competitive results of the team in question, Appellant concludes that Shakhtar should have been aware – especially after UEFA’s advised that Player not be fielded – that any results involving Player after his positive A-Sample “*were clearly against the principles of fair play and sportsmanship and would be subject to disqualification [as...] otherwise the provision would not have any effect on the Player’s competitive results.*”

B. Position of First Respondent

63. First Respondent commences its defense against Appellant’s argumentation by noting, as a “*preliminary issue*”, that the CONMEBOL disciplinary decision underlying this dispute is still pending and not final.
64. Specifically, First Respondent refers in its Answer to two facts noted above involving parallel proceedings: firstly

“...the simple fact that the decision rendered by the CONMEBOL Disciplinary Committee is still pending before another CAS Panel (in CAS 2016/A/4438). It has come to our knowledge that WADA has lodged an appeal against the CONMEBOL decision. As far as we know, WADA is pleading for an amendment of the sanction, requesting that the starting date shall be the one in which the CAS award enters into force, i.e., from the day the sanction against the Player is

imposed and can de facto start to be really effective – and not only “on the paper”.

65. Secondly, First Respondent continues that:

“In addition, UEFA has been informed by the attorneys of the Player Fred that in the course of the above arbitral proceedings before the CAS, the Player has requested for a Review of the Appealed Decision before the CONMEBOL Disciplinary Tribunal. The reason therefor is that scientific evidence has been discovered that may have resulted in a more favourable decision. WADA, on its side, has agreed to such provisional suspension of the procedure until either (i) a decision by CONMEBOL (including its Disciplinary Tribunal) not to proceed with the Request for Revision or (ii) if CONMEBOL does proceed with the Request for Revision, a decision on the merits of the Request for Revision.”

66. First Respondent next highlights a number of points which were pivotal for the Appealed Decision. These include the undisputed facts that UEFA has no jurisdiction over the Copa América, which instead is an entirely CONMEBOL-administered competition, that as of 28 July 2015 Player had not been suspended (either provisionally or definitively) by CONMEBOL or FIFA after his adverse A-Sample analytical result and that (by virtue of Article 35 of the FIFA ADR and Article 95 of the CONMEBOL Disciplinary Regulations) a provisional suspension is not mandatory in the case of an adverse analytical finding for a specified substance such as HCT³.
67. Regarding the alleged violation of UEFA DR 21.2 (“A match is declared forfeit if a player who has been suspended following a disciplinary decision participates in the match”), First Respondent asserts that Appellant’s approach (i) “intentionally changes the meaning of Article 21 DR” and “disrespects the obvious ratio legis of this important provision”, and (ii) “disregards the impact such wrong approach may have on UEFA club competitions”.
68. For First Respondent, the plain language, grammar and syntax of UEFA DR 21.2 require a “clear chain of events” with a “specific temporal order”, i.e., “first and strictly prior to the match, a disciplinary measure has to cause the suspension of the player and later on, also from a time perspective, the player suspended participates in the match. To put it simple, the player has to be aware or be made aware prior to the match that he is suspended and therefore he cannot participate at the match in question.”
69. First Respondent further asserts that any interpretation of UEFA DR 21.2 which would give it effect when at the time of the match in question Player was not actually serving a suspension would confuse and complicate the issue of eligibility to such an extent as to defeat the rule’s very purpose of “reinforc[ing] transparency in the competition” and would accordingly “jeopardize the whole competition as well as all the national competitions and leagues too, putting every match under the loop of a potential forfeiture, possibly years after a certain match”.

³ Appellant, who appears to have based a substantial portion of its argument in the proceedings against UEFA on the contrary position, i.e., that provisional suspension is indeed mandatory and not optional in the instant case, has stepped back from this argument in this proceeding.

70. First Respondent characterizes as “*courageous*” but “*not only legally plainly wrong, but also a pure nonsense*” Appellant’s argument that the retroactive or backdated sanction against Player should have effect on his club’s matches played after the date in question. Instead, affirms First Respondent, “[R]etroactivity does NOT mean that the results of the club for which a football player played must be forfeited or annulled... retroactivity has [no]... place in this particular case”.
71. First Respondent counters Appellant’s reliance on Article 28 of the FIFA ADR and Article 10.11 of the WADA Code (“*all competitive results achieved during the period of Ineligibility, including retroactive eligibility, shall be disqualified*”) on the basis that: (i) neither the FIFA ADR nor the WADA Code are applicable to UEFA; (ii) while Article 66.4 of the UEFA DR provides that doping-relating measures taken outside of UEFA are “*recognised by UEFA*”, such recognition could not be required or expected in the case of a measure which would render impossible the smooth organisation and conduct of international football competitions, a paramount objective of the UEFA Statutes, in violation of Article 66.3 of the UEFA DR contemplating extension to UEFA competitions of non-UEFA sanctions “*if the decision on which the request is based complies with the general principles of law and with UEFA’s regulations*”; (iii) retroactivity in relation to suspensions of players in team sports “*has no sense*”⁴; (iv) the purpose and intent of the retroactivity concept embedded in Article 28 of FIFA ADR is to protect the player, not hurt the club or the competition; and (v) in a prior case raising similar issues (CAS 2013/A/3301) Appellant advocated the non-applicability of retroactive disciplinary sanctions to team results in the interest of the “*principle of legal protection*”.
72. Regarding the alleged violation of Article 11 of the UEFA DR, First Respondent considers Appellant’s position to be “*not only totally wrong, but also irrational and illogical*”. Far from violating principles of ethical conduct, loyalty, integrity and sportsmanship, First Respondent asserts that Shakhtar’s actions in fielding Player when he was eligible to play (not having been suspended, provisionally or definitively, either by CONMEBOL or any other football or doping authority in the world) was fully compliant with the applicable rules and regulations.
73. With regard to the pending CAS and CONMEBOL proceedings, First Respondent indicated at the hearing that such are entirely irrelevant to this proceeding, since whatever the outcome “*we can’t go back [and change the results] anyway*”.
74. In its Answer, First Respondent sought the issuance of an Award granting the following relief:

⁴ First Respondent indicates that WADA itself is making this argument in the case pending before the CAS (CAS 2016/A/4438) in which it is challenging the CONMEBOL decision on the following basis (quoting what it presents as an extract from WADA’s submissions in the case):

“*Backdating of ineligibility in a team sport means that the Player suffers no negative consequence at all in respect of the backdated period. In other words, a backdated sanction is no sanction at all. Whereas an individual athlete would suffer from backdating (this results in the relevant period would automatically be disqualified, including loss of medals, points and prizes), a member of a team will not endure any of these consequences.*”

- “1. *Rejecting the Appeal of Fenerbahçe and confirming the decision of the UEFA Appeals Body of 26 November 2015.*
2. *In any event, ordering Fenerbahçe to bear all the costs of these arbitration proceedings and to award UEFA with a contribution to the legal fees incurred at an amount of EUR 20,000.”*

C. Position of Second Respondent

75. Second Respondent’s position largely echoes that of First Respondent, and thus can be succinctly set out herein.
76. Thus, Second Respondent argues that: (i) it was perfectly entitled to field Player on 28 July 2015 since he was not sanctioned on that date, and considering him ineligible would be tantamount “*to consider the Player guilty of doping before having a decision of the appropriate bodies*”; (ii) any competitive results to be disqualified pursuant to Article 28.1 of the FIFA ADR should be those of Player – against whom the disciplinary proceedings have been brought – and not the club; (iii) the club should not be responsible, even under a strict liability principle, for an adverse analytical result during a period when Player was not under its discipline, but under that of the national team; and (iv) the facts alleged are insufficient to support a conclusion that any UEFA directive was violated by Player’s being fielded.
77. In its Answer, Second Respondent sought the issuance of an Award that would establish that:
 - “1. *FC SHAKHTAR DONETSK was entitled to field the Player.*
 2. *FC SHAKHTAR DONETSK did not violate any Anti-Doping Regulation.*
 3. *Confirm the decision taken by UEFA Appeal Body.*
 4. *Reject the Appeal filed by Fenerbahçe SK in full.*
 5. *Condemn the Appellant to bear the entire costs of this Appeal procedure.*
 6. *Condemn the Appellant to pay the legal fees of the Respondent in an amount of at least 20,000 €.”*

D. Position of Third Respondent

78. On the merits, Third Respondent’s position tracks those of First and Second Respondents summarized above.
79. In essence, Third Respondent asserts in his Answer firstly that the CAS cannot make the declaration as to his being suspended from UEFA competitions as of 27 June 2015 “*in accordance with the terms of the decision passed by the disciplinary committee of CONMEBOL on 14 December 2015*” when such decision is being challenged by Player before CONMEBOL and by WADA before the CAS.

80. Secondly, Third Respondent argues that backdating the starting date of a suspension period (due to substantial delays in the process not attributable to the athlete) does not and cannot imply under applicable rules the suspension of the concerned player from all matches in which he participated prior to the decision backdating the sanction, and the cancellation of the team's results in those matches.
81. In this regard, Third Respondent cites WADA's submission below in CAS 2016/A/4438 as a clear and "*authentic interpretation*" of the relevance of retroactive sanctions on players in team sports to the effect that "*backdating a sanction does not imply... the Player becoming retroactively ineligible for all the matches in which he participated*":

"The de facto consequence of the backdating is that the Player will serve less than six months' ineligibility in total (pursuant to the sanction of the Appealed Decision). The Player competed with his club until the Appealed Decision. Even when declared ineligible by the CONMEBOL Disciplinary Tribunal on 14 December 2015, the Player still played for his club, FC Shakhtar Donetsk, until FIFA's decision to extend the Appealed Decision on 5 February 2016.

Backdating of ineligibility in a team sport means that the Player suffers no negative consequences at all in respect of the backdated period. In other words, a backdated sanction is no sanction at all. Whereas an individual athlete would suffer from backdating (his results in the relevant period would automatically be disqualified, including loss of medals, points and prizes), a member of a team will not endure any of these consequences."

82. Third Respondent concludes as to the merits as follows:

"The Appeal filed by Fenerbahçe seeks to establish a very dangerous precedent, where players would be deprived of the opportunity to play and practice their profession only because clubs would be scared of being imposed sanctions in the future depending on uncertain events such as possible suspensions and/or sanctions imposed to a player.

This would be unacceptable...

The concerned player has to be already suspended before the relevant match is played in order for him to be ineligible to participate and the match being therefore possibly declared forfeit. Everything else is non-sense that goes against legal certainty."

83. With respect to his objection as to his position in these proceedings, i.e., in respect of Appellant's second request for relief, Third Respondent argues in his Answer that he is not a proper party to these proceedings on the basis that: (i) the fact that Player was not party to the protest proceedings giving rise to the Appealed Decision means that Player has standing neither to sue nor to be sued in the appeal of the same; (ii) as a corollary, Player was not involved in any internal procedure of UEFA and accordingly any appeal involving Player should be considered to have been brought without exhausting legal remedies available as required by Article 62.4 of the UEFA Statutes; and (iii) Appellant lacks sufficient legal interest under Swiss law to obtain a declaratory judgment, failing to satisfy the following three requisites:

- (i) the declaratory judgment is necessary to resolve a legal uncertainty that threatens the claimant – which would be missing if a declaratory judgment is insufficient or falls short of protecting the claimant's interests;
- (ii) the legal uncertainty must relate to the existence or non-existence of a claim or a defined legal relationship between the parties to the dispute;
- (iii) there must be a certain urgency to resolve the uncertainty in order to protect the respective party's right.

84. With respect to the question of his standing to be sued, Third Respondent makes reference in his Answer to a certain divergence in CAS jurisprudence as to whether this question should be considered one of jurisdiction (and thus seeks a declaration of lack of jurisdiction), one of merits (and thus seeks a dismissal of the appeal) or a hybrid (and thus seeks a declaration of inadmissibility).

85. In his Answer, Third Respondent accordingly sought from the CAS the issuance of an Award that would:

- "a) Declare that it does not have jurisdiction to rule on the appeal filed by Fenerbahçe against Third Respondent;*
- b) Declare inadmissible the appeal filed by Fenerbahçe against Third Respondent;*
- c) Dismiss the appeal filed by Fenerbahçe;*
- d) Confirm the decision of the UEFA Appeals Body of 26 November 2015;*
- e) Order that Fenerbahçe reimburse Frederico Rodrigues de Paula Santos for legal expenses in the amount of EUR 20,000 (twenty thousand Euros), added to any and all UEFA and CAS administrative and procedural costs, already incurred or eventually incurred, by Frederico Rodrigues de Paula Santos."*

E. Position of Appellant with Respect to Third Respondent's Objection as to his Position in these Proceedings

86. Appellant counters Player's objection as to his position in these proceedings by asserting as follows: (i) Player's eligibility/ineligibility at the time of the match in question *"was already part of the initial proceedings before UEFA... [i]ndeed, it was not possible to decide on the forfeiture of the match... without deciding, albeit implicitly, on the Third Respondent's eligibility"*, and thus, Player's non-involvement as a party in the UEFA proceedings does not prevent CAS from exercising its jurisdiction over him; (ii) Appellant has sufficient legal interest in obtaining declaratory relief due to the fact that Player *"denies to this day that he was suspended and thus ineligible... [and] is attempting to re-open the proceedings before CONMEBOL"*; and (iii) Appellant did not have to exhaust internal legal remedies before UEFA because no such remedies exist.

87. Finally, Appellant asserts that *"it is questionable whether the CAS would have been able to proceed with this arbitration against the First and Second Respondent alone... since*

part of the finding of the Panel would necessarily touch on Third Respondent's ineligibility" and thus "[i]n order to avoid risk that CAS would dismiss Appellant's prayers for relief directed against the First and Second Respondent for lack of standing to be sued/mandatory litis consortium, it was necessary to name also the Third Respondent as a Respondent".

V. JURISDICTION

88. Article R47 of the CAS Code provides as follows:

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

89. Article 62 of the UEFA Statutes provides as follows:

- "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.*
- 2. Only parties directly affected by a decision may appeal to the CAS. However, where doping-related decisions are concerned, the World Anti-Doping Agency (WADA) may appeal to the CAS.*
- 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.*
- 5. An appeal shall not have any suspensory effect as a stay of execution of a disciplinary sanction, subject to the power of the CAS to order that any disciplinary sanction be stayed pending the arbitration.*
- 6. The CAS shall not take into account facts or evidence which the appellant could have submitted to an internal UEFA body by acting with the diligence required under the circumstances, but failed or chose not to do so."*

90. Article 63 of the UEFA Statutes provides as follows:

"The CAS is not competent to deal with:

- 1. a) matters related to the application of a purely sporting rule, such as the Laws of the Game or the technical modalities of a competition;*
 - b) decisions through which a natural person is suspended for a period of up to two matches or up to one month;*

the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.”

97. In the present case the “applicable regulations” for the purposes of Article R58 of the Code are, indisputably, UEFA’s regulations, because the appeal is directed against decisions issued by UEFA, applying UEFA’s rules and regulations.

98. At the same time, the Panel notes that, pursuant to Article 63.3 of the UEFA Statutes,

“... proceedings before the CAS shall take place in accordance with the Code of Sports-related Arbitration of the CAS.”

99. As a result, in addition to the aforementioned regulations, Swiss law applies subsidiarily to the merits of the dispute, given that Switzerland is the country in which UEFA, i.e., the federation which has issued the challenged decision, is domiciled.

IX. DISCUSSION ON THIRD RESPONDENT’S OBJECTION ON HIS POSITION IN THESE PROCEEDINGS AND MERITS

1. Regarding Third Respondent’s Objection on his Position in these Proceedings and the Merits of Appellant’s Second Request for Relief

100. As noted, Third Respondent submits that the CAS lacks competence to issue the relief (and disputes the standing of Third Respondent to be sued in respect of such relief) identified as request II of Appellant’s five requests for relief (such request II being the only request directed at Third Respondent), i.e., to declare that Player was suspended from UEFA competitions as of 27 June 2015 in accordance with the terms of the decision passed by the disciplinary committee of CONMEBOL on 14 December 2015 and extended worldwide by FIFA on 5 February 2016.

101. Of the various arguments raised by Third Respondent in support of its objection, the Panel finds one dispositive: the fact that Player was not a party to the UEFA proceedings renders the Panel unable to issue declaratory (or other relief) against him in this appeal.

102. This is so due to the oft-repeated limits on the scope of the Panel’s *de novo* review under R57 (see e.g., CAS 2015/A/4003 Maccabi Haifa FC v. Anderson Conceição Xavier & Clube de Regatas Vasco de Gama (“*de novo* power of review cannot be construed as being wider than the power of the body that issued the decision appealed against...”).

103. While the Panel acknowledges the (inevitable and necessary) existence of a certain, unmistakable relation between the issue of forfeiture of the disputed match and the issue of Player’s eligibility/ineligibility to participate in such match, it does not find this fact – nor Appellant’s stated concerns that, absent Player’s presence in the case, its claims against UEFA and Shakhtar might be dismissed for lack of standing – sufficient basis for the standing to be sued of Player, a non-party in the proceedings being appealed.

104. The Panel notes that neither the UEFA regulations nor the Code contain any specific rule regarding standing to be sued.
105. As Third Respondent notes, and CAS Panels have observed, there has been some variability in how the question of standing (to sue or to be sued) is properly addressed, i.e., essentially whether as a matter of jurisdiction /admissibility or a matter of merits.
106. Swiss jurisprudence follows the latter approach. As noted in Mavromati & Reeb, *The Code of the Court of Arbitration for Sport, Commentary, Cases & Materials*, p. 411) "*It should be noted that according to the SFT both 'standing to sue' and 'standing to be sued' are related to the merits of the case, leading thus to the dismissal of the appeal and not to its inadmissibility.*"
107. Recent CAS jurisprudence appears to reflect a growing and significant consensus in favor of this approach.
108. In this regard, see e.g., CAS 2014/A/3496 *Anti-Doping Autoriteit Nederland v. Mr. O. Klaus* and CAS 2014/A/3474 *Clube de Regatas do Flamengo v. Confederação Brasileira de Futebol & Superior Tribunal de Justiça Desportiva*, both to substantially similar effect and the latter indicating as follows:

"59. *Regarding the notion of standing to be sued, the Panel observes that in legal literature it is maintained that "[s]ome CAS cases have treated the issue of standing to sue/standing to be sued as a procedural matter (e.g., CAS 2007/A/1329, 1330, Award of 15 December 2007, para. 3), while others treated it as a matter of substantive law (CAS 2008/A/1517, Award of 23 February 2009, paras. 19-27). However, the Federal Supreme Court has clearly established that this issue is a matter of substantive law, cf. BGE 126 III 59 para. 1a.*" (Michael Noth, *Article R45 CAS Code*, in: ARROYO, *Arbitration in Switzerland, The Practitioner's Guide*, p. 976).

60. *Which view is supported by another commentator:*

*Until recently the jurisprudence of the CAS was not quite clear as to whether the prerequisite of the standing to be sued was to be treated as an issue of the admissibility of an appeal [with reference to CAS 2006/A/1189, §61 et seq. and CAS 2007/A/1329-1330, §§30-32] or of merits [with reference to CAS 2008/A/1517, §135]. In CAS 2008/A/1639, the Panel considered that in an appeal that is directed against a "wrong" Respondent because the latter has no right to dispose of the matter in dispute, the claim filed by the Appellant is admissible but without merit. The CAS Panel saw itself comforted in its reasoning by the jurisprudence of the Swiss Federal Tribunal according to which the prerequisite of the standing to be sued is to be treated as an issue of merits and not as a question for the admissibility of an appeal [with reference to ATF 128 II 50,55 and ATF 123 III 60 c. 3a]. This jurisprudence has been recently confirmed in TAS 2009/A/1869, award of 3 July 2009." (Estelle de La Rochefoucauld, *Standing to be**

sued, a procedural issue before the Court of Arbitration for Sport (CAS), CAS Bulletin 1/2010, p. 51)".

109. Accordingly, Third Respondent's objection on his position in these proceedings is upheld and Appellant's second request for relief (directed only at Third Respondent) is dismissed.

2. **Remaining Merits**

A. **UEFA DR 21.2** – Should the match be declared forfeit because Shakhtar fielded a suspended player?

110. As set out above, UEFA DR 21.2 provides that "*A match is declared forfeit if a player who has been suspended following a disciplinary decision participates in the match.*"

111. Given that it is undisputed that Player was not actually serving a disciplinary suspension on 28 July 2015 when he participated in the first leg match against Shakhtar in Istanbul, the only issue is whether CONMEBOL's 14 December 2015 retroactive sanction (as from 27 June 2015), as subsequently extended worldwide by FIFA, should be considered to bring the situation within the scope of UEFA DR 21.2.

112. On a purely grammatical or interpretative basis, the Panel finds persuasive the arguments of Respondents to the effect that the provision envisages a certain temporal or chronological sequence of events, whereby the disciplinary decision (suspension) must precede the participation. That is to say, giving ordinary effect to the language used in the article, it would seem rather clear that for forfeiture to apply, the suspension should have been decided (and communicated) prior to the match in which the player subsequently participates.

113. Respondents' affirmations as to the importance of clarity as to who is eligible to be fielded and who is not, and as to the need for legal certainty in order to properly administer competitions, also resonate with the Panel and tend to support the grammatical or interpretative position noted above.

114. Notably, if Appellant's position on the application of UEFA DR 21.2 in the context of a retroactive sanction were to be adopted, competitions – international and national – would be subject to unwieldy and ultimately unworkable re-opening on the basis of decisions made after a match was played. This could raise havoc for the proper administration of competitions, and could incentivize clubs to adopt excessive, pre-emptive measures (which may indeed unfairly sanction innocent players, as well as culpable players) in order to avoid any risk that subsequent sanctioning decisions could trigger forfeitures. In this context, it is not without interest that no club other than Fenerbahçe has protested a post-27 June 2015 match in which Player participated.

115. Similarly, while Appellant at the hearing – held long after the conclusion of the UCL 2015/2016 competition – disclaimed any intention or desire to "*rewrite the past*" or "*re-adjust*" the UCL 2015/2016 competition except in respect of the match (or, actually, leg) in question, with the possible consequence of enjoying a potential claim for €3,000,000, accepting its argument would indeed re-write the past, at least to some extent, and potentially expose Shakhtar to a claim to disgorge itself of monies earned

and/or expose UEFA to having to pay to Fenerbahçe amounts equivalent to those already paid to Shakhtar pursuant to the UCL 2015/2016 rules.

116. In short, both a literal and purposive construction of the relevant UEFA rule lead inexorably to the same conclusion.
117. It remains only to consider whether this presumptive conclusion is displaced by Appellant's assertion that "*retroactive means retroactive*". Article 28.1 of the FIFA ADR provides as follows:

"28.1 Delays not attributable to the Player or other Person

Where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Player or other Person, the FIFA Disciplinary Committee may decide that the period of Ineligibility shall start at an earlier date, commencing as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. [All competitive results achieved during the period of Ineligibility, including retroactive Ineligibility, shall be disqualified]" (emphasis supplied).

118. It is true that cancellation of competitive results of an individual player in a team sport may be something of a *non-sequitur*. It may also be true, as speculated by all Parties at the hearing, that Article 28.1 of the FIFA ADR may be an over-literal and infelicitous "*copy-paste*" of the underlying WADA Code provision to a team sport context in which the concept of retroactive cancellation of results raises complexities and consequences inapplicable to individual sporting competitions. Nonetheless, and irrespective of the apparent pendency of and ultimate decision in the parallel CAS proceeding referred to above (which may, it is understood, itself raise the issue of the meaning and purpose of retroactive sanctions on individual athletes in team sports), the Panel is both constrained and obliged to give sensible, coherent meaning to regulations which may suffer from imperfections in language, drafting or structure (or, indeed, may have been "*copy-pasted*" too readily without adaptation to the different context).
119. In this regard, taking into account that the FIFA ADR (and its WADA predicate) is not directly applicable to UEFA, that Article 28.1 of the FIFA ADR (and its WADA predicate) is situated in the section of the regulation addressing "*Sanctions on Individuals*," that the backdating/retroactivity feature is manifestly aimed at protecting the player from over-lengthy suspension decided and communicated after substantial delays not attributable to the player, and that pursuant to UEFA DR 66.4, UEFA is obliged to (automatically) recognise measures taken by other sporting bodies (such as FIFA) only to the extent compatible with its rules, the Panel cannot accept Appellant's argument.
120. In the circumstances of this case, the Panel concludes that UEFA is not obliged to cancel or disqualify any competitive results of Second Respondent obtained in the match subject to the First Protest and prior to the date on which the retroactive suspension decision was communicated, i.e., only the competitive results (if any) of Player as an individual (e.g., prizes won) are subject to disqualification or cancellation as a result of the retroactive sanction, but not those of the team.

121. The retroactive sanction does not entitle the forfeiture of the match; Appellant's claim based on Article 21.2 of the UEFA DR is accordingly dismissed.

B. UEFA DR Articles 11, 8 and 6(g) – Should the match be declared forfeit as a result of a disciplinary measure imposed on Shakhtar for knowingly fielding a player who had committed a doping offense and although UEFA had advised Shakhtar not to field him?

122. Appellant's subsidiary argument can be readily rejected.

123. Firstly, at the time of the match, Player had not been determined to have committed a doping offense; instead, press reports had indicated (seemingly accurately) the existence of an adverse A-Sample.

124. Secondly, UEFA's advice not to field Player – assuming to be true the facts as alleged by Appellant – was not of a nature to constitute, in the Panel's view, an instruction, direction or decision sufficient to have legal consequences (and in no event a "*directive*" in the sense of UEFA DR Article 7, i.e., which "*demand[s] certain behaviour on the part of those concerned*").

125. Accordingly, and in view of the earlier conclusion that the match should not be forfeited pursuant to Article 21.2 of the UEFA DR since Player was not, in fact, ineligible to be fielded on 28 July 2015, Shakhtar cannot be considered to have committed a disciplinary infraction warranting forfeiture by fielding him.

126. The Panel understands the sense of grievance of Appellant if it be the case that First Respondent fielded a player against it in a match in which so much turned in terms of potential prestige and profit where that player, had the full facts been known, should not have been permitted to play, but that understanding cannot deflect it from what it considers to be the only possible conclusion vouched for by the relevant football law. Moreover it observes that whatever the outcome of the pending CAS proceedings between Third Respondent and WADA, Appellant's position could not be improved since either WADA will establish that the retrospectivity of any sanction may be reduced or annulled or Third Respondent will establish that the sanction itself should be reduced or annulled.

127. Appellant's claim based on Articles 11, 8 and 6(g) is accordingly dismissed.

C. CONCLUSION

128. Based on the foregoing, and after considering all evidence produced and submissions made, the Panel dismisses on the merits all of Appellant's claims against each of First Respondent, Second Respondent and Third Respondent.

129. All further claims or requests for relief are dismissed.

X. COSTS

130. Art. R64.4 of the Code provides that:

“At the end of the proceedings, the CAS Court Office shall determine the final amount of the costs of arbitration, which shall include the CAS Court Office fee, the administrative costs of the CAS calculated in accordance with the CAS scale, the costs and fees of the arbitrators calculated in accordance with the CAS fee scale, a contribution towards the expense of the CAS, and the costs of witnesses, experts and interpreters. The final account of arbitration costs may either be included in the award or communicated separately to the parties.”

131. Art. R64.5 of the Code Provides that:

“In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the outcome of the proceedings, as well as the conduct and the financial resources of the parties.”

132. As a general rule, the award shall grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings. In the present case, in view of the outcome, the financial resources of the Parties and all relevant circumstances (including, insofar as the Third Respondent is concerned, (i) Appellant’s decision to pursue claims against him, (ii) the disproportion of financial resources between Appellant and Third Respondent and (iii) the need for Third Respondent’s Brazil-based counsel to travel and attend the hearing requested by Appellant), the Panel finds it reasonable and fair that Appellant (a) bear the arbitration costs to be determined and served by the CAS Court Office, and (b) contribute to Respondents’ respective costs and expenses as follows:

- to UEFA in the amount of four thousand Swiss francs (CHF 4,000)
- to Shakhtar in the amount of four thousand Swiss francs (CHF 4,000)
- to Player in the amount of twelve thousand Swiss francs (CHF 12,000).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 5 February 2016 by Fenerbahçe SK against the decision of the Appeals body of UEFA dated 26 November 2015 is dismissed.
2. The decision taken by the Appeals Body of UEFA on 26 November 2015 is confirmed.
3. The costs of the arbitration, to be determined and served on the parties by the CAS Court Office, shall be borne by Appellant.
4. Fenerbahçe SK shall make contributions in relation to the costs and expenses of this proceeding in the amounts of: four thousand Swiss francs (CHF 4,000) to UEFA; four thousand Swiss francs (CHF 4,000) to FC Shakhtar Donetsk; and twelve thousand Swiss francs (CHF 12,000) to Mr. Frederico "Fred" Rodrigues de Paula Santos.

Done in Lausanne, 18 January 2017