

UEFA v. Skënderbeu: A review of the proceedings and the use of UEFA's Betting Fraud Detection System

At the time of publication, the first leg of the qualifying matches for the 2018/19 UEFA Champions League have taken place. KS Skënderbeu, despite finishing the Albanian Superliga 2017/18 season at the top of the table, were not eligible to compete in these matches due to ongoing Court of Arbitration for Sport ('CAS') proceedings over the club's alleged involvement in match-fixing at a level never before dealt with by UEFA. In this article Philippa Lombardi and James Mungavin, of Lombardi Associates, review the proceedings against KS Skënderbeu and the use of UEFA's Betting Fraud Detection System ('BFDS') in relevant cases.

Introduction

The CAS media release of 14 June 2018 entitled 'The CAS dismisses the application for a stay filed by KS Skënderbeu,' was the first official confirmation that UEFA has once again issued a sanction against KS Skënderbeu for match-fixing. The media release noted that on 29 March 2018, UEFA's Control, Ethics and Disciplinary Body ('CEDB') found the club guilty of match-fixing activities and issued a sanction of a ten year exclusion from UEFA club competitions and a fine of EUR 1 million.

Most readers will be aware of the recent history of this club. On 1 June 2016, the UEFA Appeals Body had declared the club ineligible to play in the UEFA Champions League 2016/2017 due to involvement in match-fixing. This one year ban was confirmed by CAS on 6 July 2016¹. In February 2018, UEFA confirmed, by way of media release², that it was conducting a further disciplinary investigation into Skënderbeu's involvement in match-fixing. The media release noted that the officials working on this case had received anonymous death threats. However, after the February media release, nothing further was communicated by UEFA about the case.

The CAS media release of 14 June 2018 noted that Skënderbeu's application for a stay of execution of the decision was dismissed, and the arbitration process is continuing. However, no hearing date has yet been set. Thus, Skënderbeu will not be eligible to play in the 2018/19 UEFA Champions League, for which it qualified.

Given the information in the media release noted above, it is interesting to acknowledge that CAS has indirectly confirmed the existence of a UEFA decision that had not previously been publicly announced. Given that UEFA received threats designed to intimidate, it would be understandable if a media blackout had been put in place by UEFA to limit further exposure. This article will initially consider under which circumstances CAS may grant a stay of the execution of a decision and will go on to examine the details of this case and the applicable UEFA regulations. The length of the ban will also be examined.

According to CAS jurisprudence³, a stay of a decision may be granted for three reasons, which are considered cumulatively: 'irreparable harm' - in this case if the damage to the club caused by missing the 2018/19 UEFA Champions League would be irreparable; 'likelihood of success' - whether a *prima facie* analysis of the merits would indicate a reasonable chance of success for Skënderbeu; and 'balance of interests' - whether the risk of damage to Skënderbeu by not taking part outweighs the risk of damage to UEFA in not running a 'clean' competition. Given that Skënderbeu qualified for the UEFA Champions League, an application to stay the decision was an expected one. As Skënderbeu's request for a stay of execution was dismissed, however, (it is assumed that CAS must have considered the three tests and ultimately decided against the request for the stay), the club will not be admitted to the competition.

Instead, the 'next best placed club in the top domestic championship of the same Association'⁴ will replace Skënderbeu - FK Kukesi. The arbitration procedure will continue through CAS, and in due course we will find out if the sanction imposed by UEFA is confirmed.

UCLR articles 4.02, 4.03 and Article 50(3) of the UEFA Statutes

In discussing the detail of this case, firstly it is crucial to understand the two-part process enshrined in the UEFA regulations which has allowed UEFA to bring two cases against Skënderbeu, both of which centre on much of the same evidence. Article 50(3) of the UEFA Statutes regulates the non-admission, with immediate effect, into a UEFA competition of any club/member directly or indirectly involved in match-fixing. Importantly, this non-admission is without prejudice to any possible disciplinary measures that may be imposed at a later stage. The UEFA Champions League Regulations ('UCLR') Article 4.02 refers to Article 50(3) and essentially notes that non-admission into the competition is effective only for one season. Article 4.03 UCLR further states that 'In addition to the administrative measure of declaring a club ineligible as provided for in Paragraph 4.02, the UEFA Organs for the Administration of Justice can, if the circumstances so justify, also take disciplinary measures in accordance with the UEFA Disciplinary Regulations of the UEFA Statutes.'

Thus, it is clear that the case against Skënderbeu brought in 2016 was indeed

MATCH-FIXING

1. CAS 2016/A/4650.
2. UEFA Media release: Investigation into KF Skënderbeu, 16 February 2018.
3. The three tests are referred to in various CAS jurisprudence including among others: CAS 2008/A/1453, CAS 2008/A/1630, CAS 2012/A/2948, CAS 2008/A/1674.
4. Regulations of the UEFA Champions League Art. 4.08.
5. CAS 2016/A/4650 para. 106.
6. CAS 2016/A/4650 para 107.
7. CAS 2016/A/4650 para. 81.
8. CAS 2016/A/4650 para. 95.
9. CAS 2010/A/2235, para. 86.
10. CAS 2016/A/4650 para. 86.
11. CAS 2016/A/4650 para. 103. Previous jurisprudence CAS 2014/A/3628, *Eskisehirspor Kulubu v UEFA* para. 136 CAS 2013/A/3094 *Hungarian Football Federation v. FIFA* paras 85 - 90.
12. UEFA Disciplinary Regulations, Article 10.
13. CAS 2009/A/192.

UEFA's investigation into match-fixing by Skënderbeu appears to have been enormous, with many experts engaged to support the BFDS and its findings.

continued

the first 'administrative' measure, with a sanction of ineligibility for entry into the UEFA club competitions for one year. In the CAS appeal arising from that sanction, the Panel in its conclusion had "no doubt that the Club was at least indirectly involved in match-fixing activities⁵." The Panel was careful, however, not to enter into more detail on the specific accusations levelled by UEFA, and indeed they noted: "The Panel considers this approach to be justified because any such specific findings may only prejudice the outcome of any possible future disciplinary proceedings and/or criminal proceedings against the Club or persons related to it⁶." The CAS Panel at that time was aware that UEFA might wish to pursue further measures against the club. In that case, CAS focussed specifically on four key matches in European competition within the 2015/16 season, which UEFA believed were fixed, and UEFA presented a rigorous explanation and defence of its Betting Fraud Detection System ('BFDS').

In the new case under discussion, it is understood that UEFA again presented details of the original four key matches which it believes were fixed, plus two other European competition matches from earlier seasons, 41 matches from the domestic Albanian competitions, and six friendly matches. Furthermore, it is understood that UEFA again offered a detailed explanation and rigorous testing of its BFDS to demonstrate its reliability. In addition, UEFA submitted comments from a panel of experts who analysed the play during the suspicious matches, and also submitted detailed analysis of the key staff at the club and their links to betting companies. Again, it is understood that UEFA felt that many stakeholders believed

match-fixing was occurring, and that key betting operators in the Asian betting markets were refusing bets or suspending betting on matches in which Skënderbeu was competing.

Discussion of the BFDS

In both the 2016 case and the current case, UEFA's BFDS has been critical to the evidence presented. The BFDS is a system that aims at detecting irregular betting patterns, both pre-game and in-game, which may be indicative of match-fixing or match manipulation. It is best explained as follows: "The role of the BFDS is to highlight irregular betting movements [...] in the core betting markets by monitoring major European and Asian bookmakers [...] The monitoring uses sophisticated algorithms and mathematical models to compare calculated odds with actual bookmakers' odds to determine whether the odds in a specific minute or time period are irregular⁷." The BFDS is a staged process.

Stage 1 is designed to flag matches in which the model determines that there is a real possibility of match-fixing.

Stage 2 in the process is the review by analysts of the matches which have been flagged by Stage 1. The analysts look for genuine reasons to explain any flagged anomalies.

Most flagged matches do have legitimate explanations for triggering a Stage 1 flag, and indeed, according to the relevant CAS award in 2016 "only [approx. 1/50 of the] matches that triggered a yellow or red alert for irregular betting patterns by means of the BFDS analytical monitoring between 1 August 2013 and 31 July 2014 were reported as escalated

after the qualitative analysis of the BFDS analysts⁸." However, if a match is still deemed to be suspicious, it is referred on for further scrutiny and detailed investigation.

In the 2016 case, the CAS Panel drew an interesting comparison between the BFDS and another unrelated detection system, the athlete blood passport (the 'ABP') used in doping cases. Both systems record analytical data, which is then reviewed by specialists to determine the likelihood of an offence having taken place. CAS has obviously heard many doping cases in which the ABP was central to discussions, and the jurisprudence in this area reflects an important concept - "abnormal values are (for the purposes of the ABP) a necessary but not a sufficient proof of a doping violation⁹."

Thus, comparing the two detection systems, the CAS Panel noted that the flagging of a match under the BFDS, without a legitimate explanation, is not *per se* proof that match-fixing has taken place. The Panel further stated that in order for match-fixing to be established, there has to be additional, external information supporting this conclusion. "A differentiation must be made between the so-called quantitative information and a qualitative analysis of the quantitative information¹⁰."

To reach its conclusion of "indirect match-fixing," the CAS Panel considered other corroborating factors, such as suspicious actions of players on the pitch, suspicions raised by opponents after the match, emergence of betting patterns on conceding late goals in matches when the tie was no longer competitive, and bookmakers refusing to take further bets on the match.



While the Panel was satisfied that the BFDS is in principle a reliable means of evidence to prove indirect involvement in match-fixing, which in this case Skënderbeu did not successfully challenge, one point the Panel made about the system was that no regulatory framework exists for the BFDS. To this end, the CAS Panel made the suggestion of an *ad hoc* UEFA regulation to strengthen the process.

They suggested, for example, setting a minimum number of analysts that need to agree in order to flag a match for abnormal betting behaviour, anonymising the name of the club (at least during the first stages of the analysis), and including some former players and/or coaches in the pool of analysts.

In underlining the efficacy of the BFDS, it appears that UEFA took on board the above comments of CAS in bringing the second disciplinary case. It is understood that the report by the UEFA Ethics and Disciplinary Inspectors for UEFA's CEDB included the review, by an external expert, of ten matches played over four seasons which had been anonymised. The results of the anonymised review were the same as the results under the BFDS.

Additionally, UEFA drafted in an expert panel of international coaches to give a qualitative analysis of the on-pitch performance of the players over a significant number of matches. Again, it is understood that the assessment of the matches by the expert panel were in agreement with the findings by the BFDS. It will be interesting to see if this is the standard that CAS was expecting and what reference will be made in the upcoming CAS

award to the recommendations that were made in the first CAS award.

Strict liability - the alleged involvement of players and officials

Article 8 of the UEFA Disciplinary Regulations provides for the well-established principle of 'strict liability' whereby a club, as a whole, can be punished for the misdemeanours of an individual (e.g. member/player/official). In the 2016 *Skënderbeu* case, the CAS Panel noted that the club itself put forward the scenario that the players had engaged in match-fixing without the knowledge of the club. The Panel was clear in noting that this was "an explanation that does not exculpate the club". Thus, in offering this argument there was the explicit acknowledgement by the lawyer acting for the club that match-fixing had occurred.

To fix a match, it is of course necessary to have the participation of at least some of the key players on the pitch. It is understood that UEFA alleged that players, high level officials of the club (past and present) and a financial backer were all implicated. There appears to be a web of very close and long standing relationships between the key individuals.

In addition, and of utmost importance, the non-players included in the allegations appear to have had very close links to betting companies, which would allow them to profit to a significant financial degree from match-fixing. It is alleged that very significant sums of money were bet on 'fixed' matches. Online betting allows individuals to bet significant sums on a specific event occurring. An organised group of individuals can simultaneously

bet hundreds of thousands of euros in a very short space of time.

Unprecedented sanction?

Article 6 of the UEFA Disciplinary Regulations set out the disciplinary measures that can be imposed on clubs. Although it states that suspension is a possible sanction, there is no direction within the Regulations as to the specific period of time for match-fixing. (Incidentally, for match-fixing there is no statute of limitations¹².) In the case of *FK Pobeda, Aleksandar Zabrcanec, Nikolce Zdraveski v. UEFA*¹³, FK Pobeda was found to have fixed the outcome of two qualifying matches for the UEFA Champions League. The UEFA Appeals Body imposed an eight year ban from UEFA competitions and this was upheld by CAS. The sanction of a ten year ban for Skënderbeu plus a fine EUR 1 million does not, in principle, seem disproportionate in comparison to the *FK Pobeda* case.

Conclusion

UEFA's investigation into match-fixing by Skënderbeu appears to have been enormous, with many experts engaged to support the BFDS and its findings. This reflects that the level of 'red flags' raised by the BFDS for suspicious match activity involving Skënderbeu far surpasses the activity of any other club, ever. It is paramount that UEFA protects the integrity of one of the most exciting football tournaments in the world. In the 2016 case, the CAS Panel was clear in its support for the BFDS but gave some practical recommendations for UEFA to strengthen the system. UEFA appears to have taken these recommendations on board, and the use of the BFDS has been central to both the 2016 case and the current case.