

CAS 2023/A/10223 NK Olimpija Ljubljana v. Union des Associations Européennes de Football (UEFA)

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Francesco Macrì, Attorney-at-Law in Piacenza, Italy
Arbitrators: Mr Daan de Jong, General Counsel in Utrecht, the Netherlands
Mr Patrick Grandjean, Attorney-at-Law in Belmont, Switzerland

in the arbitration between

NK Olimpija Ljubljana, Ljubljana, Slovenia

Represented by Ms Maruša Perko and Mr Drejc Osterman, Attorneys-at-Law, Law Office Golobič Osterman o.p. d.o.o., Ljubljana, Slovenia

Appellant

and

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

Represented by Mr Antonio Rigozzi and Mr Patrick Pithon, Attorneys-at-Law, Lévy Kaufmann-Kohler, Geneva, Switzerland

Respondent

I. THE PARTIES

1. NK Olimpija Ljubljana (the “Appellant” or the “Club” or “NK Olimpija”) is a professional football club with its registered office in Ljubljana, Slovenia. The Club is registered with the Football Association of Slovenia (the “FAS”), which in turn is affiliated to the *Union des Associations Européennes de Football* (the “UEFA”).
2. UEFA (or the “Respondent”) is an association under Swiss law and has its registered office in Nyon, Switzerland. It is the governing body of football at the European level. UEFA exercises regulatory, supervisory, and disciplinary functions over national associations, federations, clubs, officials, and football players in Europe.
3. NK Olimpija and UEFA are hereinafter jointly referred to as the “Parties”.

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the Parties, the hearing and the adduced evidence examined in the course of the proceedings. This background information is given for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.

A. Background facts

5. On 24 August 2023, the Club played a home match against Qarabağ FK, a club from Azerbaijan, in the play-off round of the 2023/2024 UEFA Europa League (“UEL”) (the “Match”). Qarabağ FK won the Match with the final score of 2-0.
6. The UEFA Match Delegate and the Referee reported about the events that happened during the Match as follows (the “Official Reports”):

“UEFA Match Delegate’s report

Security incidents affecting the match (home team) – pitch invasions, throwing of objects, laser pointer, fights, acts of damage, spectators blocking the stairways, etc.

At two times in this match, the home spectators threw plastic cups onto the field of play.”

UEFA Match Delegate’s additional report

“81’: In the minute 81 of the match, one player of the team of Qarabag was lying on the ground close to the touchline and simulating an injury. The referee asked him to continue playing and didn’t allow the team doctor on the pitch. While this player was getting up, the local fans threw out of sectors C 19 and C20 five plastic cups containing liquid in direction of the pitch. Two of them landed on the field of play, the other landed close to the touch line. Nobody was hit by any cup. This incident had no impact on the run of the match.

90+5': In the minute 90+5, the referee was showing a yellow/red card to the home player Nr 3 for dissent. Upset about this situation, the home fans in the C tribune threw out of sectors C17-C22 numerous (about 20) plastic cups some of them containing liquid in direction of the pitch. A part of these cups landed onto the pitch, and some landed close to the touch line. Nobody was hit. This incident had no impact on the further run of the match."

Referee's report:

The Referee reported a total of five cautions (one double caution leading to a red card) as follows:

1 - Cautions

Player No.	Player/staff Name	Team	Minute	Reason
34	Doffo Agustin	NK Olimpija Ljubljana	23'	Unsporting behaviour - Tackle
6	Júlio Romão	Qarabağ FK	29'	Unsporting behaviour - Other
10	Elšnik Timi	NK Olimpija Ljubljana	45'+2	Unsporting behaviour - Tackle
3	David Sualehe	NK Olimpija Ljubljana	55'	Unsporting behaviour - Tackle
19	Sešlar Svit	NK Olimpija Ljubljana	59'	Shows dissent
3	David Sualehe	NK Olimpija Ljubljana	90'+5	Shows dissent

2 - Dismissal of players/staff (name, number, team, minute, description of incident, reason for dismissal)

Player No.	Player/staff Name	Team	Minute	Reason
3	David Sualehe	NK Olimpija Ljubljana	90'+5	2nd yellow card

7. A disciplinary proceeding was opened against the Appellant due to the alleged violations of Articles 15(4) and 16(2) of the 2022 edition of the UEFA Disciplinary Regulations (the "UEFA DR").

B. The proceedings before the UEFA Control, Ethics and Disciplinary Body

8. Considering the Official Reports, the UEFA Control, Ethics and Disciplinary Body ("CEDB") found the Appellant responsible for the improper conduct of its team, according to the provision of Article 15(4) of the UEFA DR, because of the five cautions issued to four players during the Match.
9. Further, the CEDB noted that the UEFA Match Delegate reported that in minute 81 of the Match five plastic cups were thrown by the Club's supporters, and in minute 90+5, another twenty cups further landed on the pitch. Based on the presumed accuracy of the UEFA Match Delegate's Report, which was not reversed by the provided evidence, the CEDB found the Club responsible as per the breach of Articles 15(4) and 16(2) of the UEFA DR.
10. Further to this, the CEDB took into account the recidivism of the Club, which had already been punished in the previous two years for the throwing of objects and improper conduct of its team.
11. Consequently, on 28 September 2023, the CEDB decided the following:

- “ 1. To fine NK Olimpija Ljubljana € 22,625 for throwing of objects.
2. To fine NK Olimpija Ljubljana € 4,500 for the improper conduct of its team.
3. The above fine, in the total amount of € 27,125 must be paid into the bank account indicated below within 90 days of communication of this decision.”

12. The CEDB’s decision with grounds was notified to the Club on 24 October 2023.

C. The proceedings before the UEFA Appeals Body

13. On 27 October 2023, the Appellant declared its intention to appeal the CEDB’s decision before the UEFA Appeals Body (the “AB”).

14. On 1 November 2023, the Club filed its grounds for the appeal.

15. With regard to the breach of Article 16(2) of the UEFA DR, the AB noted that the Appellant did not deny that objects were effectively thrown on the pitch during the Match; instead, it challenged the dangerousness of the objects thrown, explaining that light plastic cups could not endanger those present at the Match. Moreover, the Club also argued that the throwing of objects had no impact on the running of the Match, and that security and preventive measures had been adopted prior to the Match to avoid the incidents.

16. In principle, the AB underlined that the throwing of objects is prohibited during a match. It recalled the principle of strict liability upon the clubs for the behaviour of their supporters, stating that “*in accordance with the well-established jurisprudence of the UEFA disciplinary bodies (as published on the UEFA website), a violation of Article 16(2)(b) DR occurs whenever an object, such as a plastic cup, is thrown, irrespective of the nature of the specific item, i.e., the size and weight, as long as such objects can potentially endanger the physical integrity of others present at the match or impact the orderly running of the match.*” Notably, the Club was aware of this provision’s content since it warned its supporters not to throw objects on the pitch before the Match.

17. The AB did not consider the video footage provided by the Club proper evidence to reverse the presumed accuracy of the UEFA Match Delegate’s Report since such registration showed only twelve seconds of minute 81 when the incidents occurred. Therefore, there was no evidence against the finding of the CEDB concerning the number of plastic cups, which was determined to be twenty-five overall, considering also the number of cups landed on the pitch in minutes 90+5.

18. Given the above, the AB held that a violation of Article 16(2)(b) of the UEFA DR occurs whenever an object, such as a plastic cup, is thrown, irrespective of the nature of the specific item, i.e., the size and weight, as long as such objects can potentially endanger the physical integrity of others attendants or impact the orderly running of the match: “*in view of all the above, and in application of the principle of strict liability as*

explained above, according to Article 16(2)(b) DR, the Appellant is to be held responsible for the throwing of objects and must be punished accordingly”.

19. Concerning the alleged breach of Article 15(4) of the UEFA DR, the AB referred to the Referee’s Report that stated that a total of five cautions to four different players were shown to the Appellant’s players during the Match and recalled the provision of Annex A(VIII) of the UEFA DR, that stipulates that a warning is imposed for “*five to eight cards in total for players [...] with no previous record*”.
20. Consequently, the AB held that having received a total of five cautions, the Club violated Article 15(4) of the UEFA DR and must be punished accordingly pursuant to Annex A(VIII) of the UEFA DR.
21. Since the Club was found responsible for both the violations at stake, the AB pointed out that the amount of € 905 per plastic cup was due to the multiple violations of Article 16(2)(b) of the UEFA DR by the Club during the last two years, which counted as an aggravating circumstance according to Article 25(2) of the UEFA DR.
22. The Club’s objection that the fine was disproportionate to its annual income was also rejected. The AB clarified that the imposed sanction was not based “*on the financial capacities of the party liable for the violation, as it would go against the principle of equal treatment between clubs. The principle of equal treatment requires that UEFA Judicial Bodies do not discriminate on any grounds during their decision-making processes. The principle is violated when two similar situations are treated differently. CAS jurisprudence establishes that “similar cases have to be treated similarly” (CAS 2020/A/6745, para 90; CAS 2012/A/2750, para 133)*”.
23. Consequently, on 30 November 2023, the AB passed the following decision (the “Appealed Decision”):
 - “ 1. *The appeal lodged by NK Olimpija Ljubljana is rejected. Consequently, the UEFA Control, Ethics and Disciplinary Body’s decision of 28 September 2023 is confirmed.*
 2. *The costs of the proceedings, totalling €1,000, are to be borne by the Appellant. The amount is set off against the appeal fee already paid.”*
24. On 15 December 2024, the Appealed Decision with grounds was notified to the Club.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

25. On 22 December 2023, the Club filed a Statement of Appeal with the Court of Arbitration for Sport (the “CAS”) in accordance with Articles R47 and R48 of the CAS Code of Sports-related Arbitration (2023 edition) (the “CAS Code”) against the Respondent with respect to the Appealed Decision, choosing English as the language of the proceedings and requesting that the case be submitted to a sole arbitrator.

26. On 8 January 2024, the Appellant filed its Appeal Brief pursuant to Article R51 of the CAS Code.
27. On 22 and 23 January 2024, the Respondent informed the CAS Court Office that it agreed on English as the language of the procedure and requested to submit the matter to a panel of three arbitrators instead of a sole arbitrator.
28. On 29 January 2024, the CAS Court Office informed the Parties that the Deputy President of the CAS Appeals Division had decided to refer the procedure to a panel of three arbitrators. Consequently, the Appellant was granted a 10-day time limit to appoint an arbitrator.
29. On 8 February 2024, the Appellant communicated to the CAS Court Office that it appointed Mr Jakub Laskowski, Attorney-at-Law in Warsaw, Poland, as an arbitrator. Consequently, the Respondent was requested to nominate its arbitrator within ten days.
30. On 13 February 2024, the Respondent informed the CAS Court Office that, to its knowledge, Mr Laskowski also acted as a counsel for a European club before UEFA's disciplinary bodies. Therefore, the Respondent requested "*that (i) Mr. Laskowski be provided with a copy of NK Olimpija Ljubljana's appeal brief before accepting his appointment and (ii) that he discloses all cases in which he has represented or is assisting a club in a case concerning UEFA's disciplinary regulations in which the club's position is consistent with the Appellant's position in this arbitration*".
31. On 16 February 2024, the Appellant informed the CAS Court Office that it objected to the Respondent's request to provide Mr Laskowski with a copy of the Appeal Brief before accepting his appointment.
32. On 22 February 2024, the Respondent stated that its request concerning the role of Mr Laskowski, a counsel to a club, was in line with the so-called "duty of curiosity" concerning any potential conflict of interest of an arbitrator and necessary to avoid any possible challenge that would hamper the smooth progression of the arbitration. Consequently, the Respondent asked the Division President of the Appeals Division to uphold its request in accordance with Article S20 lit. c) of the CAS Code.
33. On 11 March 2024, within the extended time limit, the Respondent filed its Answer to the Appeal Brief in accordance with Article R55 of the CAS Code.
34. On 14 March 2024, the Parties were invited to inform the CAS Court Office whether they preferred a hearing to be held or for the Panel to issue an award based solely on their written submissions and, if they deemed necessary, a case management conference to discuss any issue concerning the procedure.
35. On 18 March 2024, the Appellant informed the CAS Court Office that it asked for a hearing to be held and considered the case conference management unnecessary.

36. On 22 March 2024, the CAS Court Office informed the Parties that the Respondent's requests to provide Mr Laskowski with a copy of the Appellant's Appeal Brief before accepting his appointment was granted and that he shall disclose "*all cases in which he has represented or is assisting a club and a case concerning UEFA's disciplinary regulations in which the club's position is consistent with the Appellant's position in this arbitration*", although subjected to the acceptance of Mr Laskowski to maintain the Appeal Brief's content confidential.
37. On 22 April 2024, the CAS Court Office informed the Parties that Mr Laskowski had declined to serve as an arbitrator in the current dispute, inviting the Appellant to nominate a new arbitrator within three days.
38. On 25 April 2024, the Appellant appointed Mr Daan de Jong, General Counsel in Utrecht, the Netherlands, as an arbitrator. Accordingly, the CAS Court Office invited the Respondent to nominate an arbitrator in accordance with Article R53 of the CAS Code.
39. On 2 May 2024, the Respondent appointed Mr Omar Ongaro, Legal Counsel in Dübendorf, Switzerland, as an arbitrator.
40. On 10 May 2024, the Appellant submitted several considerations about the impartiality of Mr Ongaro and requested him to disclose any circumstance concerning his potential conflict of interest due to an alleged professional relationship with the Respondent.
41. On 21 May 2024, the CAS Court Office provided the Parties with Mr Ongaro's Arbitrator's Acceptance and Statement of Independence and his attached disclosure remarks.
42. On 28 May 2024, the Appellant filed a challenge against the nomination of Mr Ongaro as an arbitrator in the present matter.
43. On 29 May 2024, the CAS Court Office informed the Parties that Mr Ongaro, after having taken note of the Appellant's challenge, had decided to decline to serve as an arbitrator.
44. On 10 June 2024, the Respondent appointed Mr Patrick Grandjean, Attorney-at-Law in Belmont, Switzerland, as an arbitrator.
45. On 21 June 2024, after some Parties' respective submissions on a potential conflict of interest concerning Mr Grandjean to serve as an arbitrator, the CAS Court Office informed the Parties that the Appellant withdrew its request for further disclosures.
46. On 19 July 2024, the CAS Court Office informed the Parties that, pursuant to Article R54 of the CAS Code and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the Arbitral Tribunal appointed to hear the Appeal was constituted as follows:

President: Mr Francesco Macrì, Attorney-at-Law in Piacenza, Italy.

Arbitrators: Mr Daan de Jong, General Counsel in Utrecht, the Netherlands
Mr Patrick Grandjean, Attorney-at-Law in Belmont, Switzerland

47. On 5 August 2024, after consultation with the Parties, the CAS Court Office informed them that a hearing would take place on 1 October 2024 by videoconference.
48. On 9 August 2024 and 4 September 2024, respectively, the Appellant and the Respondent returned to the CAS Court Office copies of the Order of Procedure duly signed.
49. On 30 September 2024, the Respondent provided the CAS Court Office with a copy of the UEFA Regulations entered into force on 2 June 2024.
50. In addition to the Panel and Mr Björn Hessert, Counsel to the CAS, the following persons attended the remote hearing on 1 October 2024:
 - For the Appellant: Mr Drejc Osterman, Counsel,
 - For the Respondent: Mr Antonio Rigozzi and Mr Patrick Pithon, Counsels and Mr Paul-Antoine Dumond, UEFA representative.
51. At the outset of the hearing, the Parties each confirmed that they had no objection to the composition of the Panel.
52. The Panel heard evidence from X. and Y., respectively [...] and [...], and Z., [...] of A. d.o.o, as factual witnesses, all presented by the Appellant. The President of the Panel invited the witnesses to tell the truth subject to the sanctions of perjury under Swiss law. Both Parties and the Panel had the opportunity to examine and cross-examine the witnesses.
53. The Parties had sufficient time to present their case, argue, and respond to the Panel's questions.
54. Before the hearing was concluded, the Parties expressly stated that they did not have any objection to the procedure adopted by the Panel and that their right to be heard had been respected.
55. After the end of the hearing, the Respondent provided the CAS Court Office with a screenshot of the video shown during its closing statement at the hearing as an extract of Exhibit A-17 in the case file.

IV. SUBMISSIONS OF THE PARTIES

56. The following summary of the Parties' positions is illustrative only and does not necessarily comprise every contention put forward by the Parties. The Panel, however, has, for the following legal analysis, carefully considered all the submissions made by the Parties, even if there is no specific reference to those submissions in the following

summary. The Parties' written and oral submissions, documentary evidence, and the content of the Appealed Decision were all taken into consideration.

A. The Appellant's Position

57. In its Appeal Brief, the Appellant submitted the following requests for relief:

“a. The Appeal filed by ŠPORTNO DRUŠTVO NOGOMETNI KLUB OLIMPIJA LJUBLJANA against the Decision of the UEFA Appeal Body, passed on 30 November 2023 and notified to the Appellant with grounds of the Decision on 15 December 2023, with regard to the Decision of the UEFA Control, Ethics and Disciplinary Body passed on September 28th, 2023, and notified to the Appellant with grounds on October 24th, 2023 regarding disciplinary case Ref. Nr.: 37344/pdu5 – UEL – 2023/24, is upheld.

b. The Decision of the UEFA Appeal Body, passed on 30 November 2023 and notified to the Appellant with grounds of the Decision on 15 December 2023, with regard to the Decision of the UEFA Control, Ethics and Disciplinary Body passed on September 28th, 2023, and notified to the Appellant with grounds on October 24th, 2023 regarding disciplinary case Ref. Nr.: 37344/pdu5 – UEL – 2023/24, is annulled.

c. The first (1.), second (2.) and third (3.) point of the operative part of the CEDB Decision passed on September 28th, 2023, and notified to the Appellant with grounds on October 24th, 2023, imposing a total fine of EUR 27,125.00 on the Appellant, consisting of:

a fine of EUR 22,625.00 for throwing of objects,

a fine of EUR 4,500.00 for improper conduct of its team,

is overturned.

Subordinately, should the CAS reject the legal request from the preceding point, the Appellant subordinately proposes CAS to decide as follows:

d. The first (1.), second (2.) and third (3.) point of the operative part of the CEDB Decision passed on September 28th, 2023, and notified to the Appellant with grounds on October 24th, 2023, regarding disciplinary case Ref. Nr.: 37344/pdu5 – UEL – 2023/24, from the preceding point imposing a total fine of EUR 27,125.00 on the [Appellant], consisting of:

a fine of EUR 22,625.00 for throwing of objects,

a fine of EUR 4,500.00 for improper conduct of its team,

is amended so that warnings are imposed on the Appellant for throwing of objects and for improper conduct of its team instead of a fines [sic], respectively a total fine of EUR 27,125.00 is reduced to the amount of EUR _____, whereby a fine for throwing of objects is reduced to the amount of EUR _____ and a fine for improper conduct of its team is reduced to the amount of EUR _____.

e. The costs of the arbitration, to be determined and served to the parties by the CAS Court Office, shall be borne in their entirety by the Respondent.

f. The Respondent shall bear its own expenses and is ordered to pay ŠPORTNO DRUŠTVO NOGOMETNI KLUB OLIMPIJA LJUBLJANA a contribution towards the legal fees and expenses incurred in connection with this arbitration proceedings in an amount to be determined at the discretion of the Panel, but of no less than CHF 10,000.00”.

58. The Appellant’s submission may be summarised as follows:
59. The Appellant starts by submitting that no substantial incidents happened during the Match on 24 August 2023 and the Appellant’s organisation, as the host, was above the standards. The UEFA Match Delegate reported only two events that ultimately led to the appealed sanctions, i.e. the improper conduct of the home team and the throwing of plastic cups at two different moments, namely at minutes 81 and 90+5 of the Match.
60. Regrettably, in its additional report, the UEFA Match Delegate provided further details concerning the two episodes when some plastic cups were thrown on the pitch without providing evidence of the incidents. The report also clarified that such events had no impact on the regular run of the Match, and nobody was hurt or endangered. Moreover, there was no evidence of the exact number of plastic cups thrown on the pitch. Nevertheless, inexplicably, the CEDB imposed a fine on the Appellant, and the AB confirmed it, considering as accurate the number of cups indicated in the Appealed Decision.
61. Regarding the throwing of objects, the Appellant argued that the UEFA bodies (i.e. CEDB and the AB) bear the burden of proof and must demonstrate that the alleged violation occurred based on the standard of proof of comfortable satisfaction. Furthermore, the sanctions must be proportionate to the offence.
62. On these premises, the Appellant submits that the core of the dispute concerns four primary points to be addressed by the Panel:
- How many plastic cups were thrown away by the Club’s supporters during the Match?
 - Did the plastic cups that were thrown constitute a violation of Article 16(2) of the UEFA DR?
 - Did the five cards issued by the Referee to the four players of the Appellant constitute a violation sanctioned by Article 15(4) of the UEFA DR?
 - Were the sanctions as determined by the Appealed Decision appropriate, correctly determined and proportionate to the circumstances of the incidents?
63. The Appellant submits the following concerning the number of plastic cups thrown during the Match:

Regarding the incident in minute '81

64. The video footage provided by the Appellant pertains to the whole relevant time frame of the alleged incident, and it is sufficient to rebut the presumed accuracy of the UEFA Match Delegate's Additional Report, which referred that the supporters threw a total of five cups, "2 (two) of them landing on the field of play, the other (op. 3) landed close to the touch line".
65. Such a report was not even confirmed by the Referee's Report, where it was stated that only two cups were thrown, and the AB did not dispute the veracity of those statements: it follows that the allegations against the Appellant were unfounded, at least not proven.
66. The two-video footage provided by the Appellant covered the relevant time frame within which the incidents occurred due to the simulation of the injury by a Qarabağ FK player and the reaction of the supporters that started to throw the plastic cups on the pitch: the total number of cups were only three and not five as stated in the Appealed Decision. Furthermore, three witnesses confirmed the limited number of cups on the pitch through written statements.

Regarding the incident in minute 90+5

67. There is an evident conflict between the Referee's Report, which states that only several cups landed on the pitch, and the UEFA Match Delegate's Additional Report, which reports about twenty plastic cups. This conflict undermines the certainty of the proof against the Appellant and stands against the burden of proof that lies on the Respondent. Consequently, there are no valid grounds to impose disciplinary sanctions on the Appellant. The presumption of accuracy under Article 45 of the UEFA DR cannot deviate from the fact that the regulatory body (i.e. the Respondent in the present matter) must show and provide enough materially convincing evidence to satisfy its burden of proof.
68. Moreover, the two pieces of video evidence provided by the Appellant show that, at least at the end of the Match, no more than thirteen cups lay on the field. There is no other evidence of the exceeding difference of twelve cups assumed by the UEFA disciplinary bodies. Therefore, the UEFA Match Delegate's Report cannot be granted the presumption of accuracy in accordance with Article 45 of the UEFA DR, and the fine to be imposed on the Appellant cannot exceed the total amount of EUR 13,625, to be calculated only on the basis of the alleged thirteen cups found on the field.

Regarding the amount of the fine imposed for the breach of Article 16(2) of the UEFA DR

69. The amount of the imposed fine is not in line with the requisites provided by Article 23 of the UEFA DR, and it does not take into account the mitigating circumstances offered by the Appellant, concerning the perfect organisation of the event, the absence of injury upon the people in the stadium, the Security Plan, the Appellant's compliance with all the UEFA Safety and Security Regulations (the "UEFA

SSR”), the warning for the supporters during the Match and on the social media the days before, the impossibility of the plastic cups to cause physical injuries to anyone.

70. Considering the above, the aggravating circumstances considered by the UEFA disciplinary bodies are unjustified and unlawful, not proportionate to the finances of the Appellant and not in line with UEFA jurisprudence in the determination of the amount of the fine in previous similar cases.

Regarding the violation of Article 15(4) of the UEFA DR and the amount of the fine

71. The criteria provided by Article 15(4) of the UEFA DR (2022 edition) were not met since the five cautions and one dismissal were issued against four different players of the Appellant and not five as it is stated in such provision, which should be the minimum number to be considered as the base for the sanction.

B. The Respondent’s Position

72. On 11 March 2024, the Respondent filed its Answer to the Appeal Brief pursuant to Article R55 of the CAS Code. This document contained a statement of the facts and legal arguments.

73. At the hearing, the Respondent partially amended its requests for relief due to the new content of Article 15(4) in conjunction with Annex A.VIII (which provides the list of disciplinary measures) of the 2024 edition of the UEFA Disciplinary Regulations, which entered into force on 2 June 2024, therefore intending to apply the principle of “*lex mitior*” and renouncing to request for a sanction against the Appellant for the improper conduct of its team in that regard.

74. Consequently, the Respondent asked the Panel:

“To reject the Appellant’s requests for relief concerning the violation of Article 16 of the UEFA DR and to confirm the Appealed Decision in this regard;

To fine NK Olimpija Ljubljana € 22,625 for throwing of objects;

To order the Appellant Olimpija Ljubljana to bear all arbitration costs incurred with the present proceedings and pay a contribution towards the legal expenses incurred by UEFA in connection with these proceedings”.

75. In essence, the Respondent’s submissions may be summarised as follows.

76. The Appellant does not object to the infringement of Article 16(2) of the UEFA DR; rather, it contests the number of plastic cups thrown by its supporters and claims that the Official Reports are not accurate pursuant to Article 45 of the UEFA DR. Further, the Appellant also merely asks the Panel to consider the mitigating circumstances previously denied by the UEFA judicial bodies and to reduce the imposed fine.

77. Contrary to the Appellant's assumption, the content of Article 45 of the UEFA DR establishes a regulatory presumption that shifts the burden of proof. It is up to the Appellant to challenge the statements' accuracy in the Official Reports.
78. The Official Reports are consistent and confirm that plastic cups were thrown onto the pitch at minutes 81 and 90+5, regardless of the precise number of such objects. Therefore, these statements cannot be considered vague or uncertain; they are accurate and sufficient to prove the Appellant's responsibility.
79. The evidence provided by the Appellant is insufficient to reverse the presumption of accuracy of the Official Reports.
80. The witnesses' statements confirmed that at least one plastic cup landed on the pitch at minute 81, and the supporters threw several cups at minute 95+5. These statements do not exclude the possibility that more objects may have been thrown; they only conclude that the facts reported by the UEFA Match Delegate and the Referee effectively occurred.
81. The Appellant's videos are unclear and show only one angle of the pitch, which cannot capture the entire incident, such as the possibility that other cups may have landed elsewhere. Therefore, the videos are insufficient to undermine the Official Reports' accuracy.
82. The amount of the sanction aligns with the provisions of Article 23 of the UEFA DR and UEFA's decisions regarding its calculation. On the other hand, the mitigating circumstances invoked by the Appellant should be considered only as expected parameters for the host club's regular match preparation.
83. Contrary to the Appellant's position, aggravating circumstances should be taken into account, as the Appellant has been sanctioned five times by the UEFA disciplinary bodies in the past two years for the throwing of objects. The offence in question constitutes the sixth time the Appellant has infringed Article 16(2)(b) of the UEFA DR.
84. Finally, UEFA bodies did not violate the legal principle of equal treatment, as the calculation of the fine amount followed the same method used in previous cases. The fine was increased due to the Appellant's recidivism, which is considered an aggravating circumstance.

V. JURISDICTION

85. Article R47 para. 1 of the CAS Code provides as follows:

“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.”

86. The jurisdiction of the CAS derives from Article 62 of the UEFA Statutes, which reads:

“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”.

87. The jurisdiction of the CAS is further confirmed by the Orders of Procedure duly signed by both Parties.

88. It follows that the CAS has jurisdiction to decide on the present dispute.

VI. ADMISSIBILITY

89. Article R49 of the CAS Code provides, in its relevant parts, as follows:

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

90. Article 62(3) of the UEFA Statutes provide that “[t]he time limit for appeal to the CAS shall be ten days from the receipt of the decision in question”.

91. The Statement of Appeal was filed on 22 December 2023, within the deadline of 10 days provided by Article 62(3) of the UEFA Statutes and stated in the Appealed Decision. It complies with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fee.

92. Furthermore, the Respondent has not raised any objection regarding the admissibility of the appeal.

93. The appeal is therefore admissible.

VII. APPLICABLE LAW

94. Article R58 of the CAS Code provides the following:

“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.”

95. Article 63(2) of the UEFA Statutes reads as follows:

“[P]roceedings before the CAS shall take place in accordance with the Code of Sports-related Arbitration of the CAS.”

96. Article 64 of the UEFA Statutes provides that:

“These Statutes shall be governed in all respects by Swiss law.”

97. Both the Appellant and the Respondent submitted that the dispute shall be adjudicated based on the applicable UEFA Statutes, UEFA rules and regulations, and, additionally, Swiss law.
98. The Panel is satisfied that the law applicable to the present dispute is the UEFA Statutes, UEFA rules and regulations, and Swiss law applies to fill in any *lacuna* within those regulations.

VIII. MERITS

99. Before addressing the relevant issues of the case, the Panel stresses that the CAS Code sets forth an adversarial system of arbitral justice rather than an inquisitorial one. Any party wishing to prevail on a disputed issue must discharge their burden of proof. The two requisites included in the concept of “burden of proof” are (i) the “burden of persuasion” and (ii) the “burden of production of the proof”. In order to fulfil its burden of proof, a party must, therefore, provide a CAS panel with all relevant evidence that it holds, and, with reference thereto, convince the panel that the facts it pleads are true, accurate and produce the consequences envisaged by such party. Only when these requirements are complied with has said party fulfilled their burden and has the burden of proof been transferred to the other party (*ex multis*, CAS 2017/A/5336).
100. And furthermore, *“According to the general rules and principles of Law, facts pleaded have to be proven by those who plead them, i.e. the proof of facts, which prevent the exercise, or extinguish, the right invoked, must be proven by those against whom the right in question is invoked. This means, in practice, that when a party invokes a specific right it is required to prove such facts as normally comprise the right invoked, while the other party is required to prove such facts as exclude, or prevent, the efficacy of the facts proved, upon which the right in question is based. This principle is also stated in the Swiss Civil Code. In accordance with Article 8 of the Swiss Civil Code: <Unless the Law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from the fact>. It is well established CAS jurisprudence that any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. must give evidence of the facts on which its claim has been based. The two requisites include the concept of ‘burden of proof’ are (i) the ‘burden of persuasion’ and (ii) the ‘burden of production of the proof’. In order to fulfil its burden of proof, a party must, therefore, provide the Panel with all relevant evidence that it holds, and, with reference thereto, convince the Panel that the facts it pleads are true, accurate and produce the consequences envisaged by the party. Only when these requirements are complied with has the party fulfilled its burden and has the burden of proof been transferred to the other party”* (cf. CAS 2015/A/3909; CAS 2007/A/1380, with further references to CAS 2005/A/968 and CAS 2004/A/730).
101. According to Article 24 of the UEFA DR:

“The standard of proof to be applied in UEFA disciplinary proceedings is the comfortable satisfaction of the competent disciplinary body”.

102. Accordingly, to determine whether the Appellant has violated Article 16(2) of the UEFA DR, the Panel must be comfortably satisfied that objects were thrown onto the field during the Match. This action must be entirely and adequately documented and reported by the official reports to the appropriate disciplinary authorities for further action (see CAS 2022/A/9078).
103. The Panel holds that the Parties’ requests shall be examined in light of the provided evidence to determine if they have satisfied their respective burden of proof.
104. Therefore, taking into account the facts of the case and the Parties’ submissions, as well as the Respondent’s amended requests for relief, the remaining questions to be addressed by the Panel in deciding the dispute are the following:
- Was the Appellant responsible for the incidents during the Match under the terms of Articles 16(2) of the UEFA DR?
 - If the answer is affirmative, was the sanction imposed by UEFA on the Appellant appropriate and fair in accordance with Articles 23 and 25 of the UEFA DR?

A. The alleged violation of Article 16(2) of the UEFA DR:

105. The Panels notes that the UEFA DR set forth this framework of relevant provisions as applicable to the case at stake:

Article 6 (Disciplinary measures): *“The following disciplinary measures may be imposed on member associations and clubs: [...] c. fine; [...] 3. Fines must not be less than € 100 or more than € 10,000,000. [...] 5. Annex A contains a list of standard disciplinary measures which may be taken into consideration by the relevant disciplinary body when rendering its decision [...]”.*

Article 8 (Responsibility): *“Unless stipulated otherwise in these regulations, a member association or club that is bound by a rule of conduct laid down in UEFA’s Statutes or regulations may be subject to disciplinary measures and directives if such a rule is violated as a result of the conduct of one of its members, players, officials and supporters or any other person exercising a function on behalf of the member association or club concerned, even if the member association or the club concerned can prove the absence of any fault or negligence”.*

Article 16(2) (Order and security at UEFA competition matches): *“[A]ll [...] 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: [...] b. the throwing of objects potentially endangering the physical integrity of others present at the match or impacting the orderly running of the match; [...]”.*

106. In the case at stake, the Appellant does not deny that objects were effectively thrown on the pitch during the Match, therefore admitting that Article 16(2) of the UEFA DR was infringed. However, the Appellant challenges the exact number and dangerousness of the objects (plastic cups) thrown on the pitch, explaining that the UEFA Official Reports were not accurate and the UEFA disciplinary bodies imposed an excessive fine; it insisted on the fact that the light plastic cups had no potential of endangering the ones present at the Match.
107. Concerning the number of objects thrown at minute 81 of the Match, the Appellant relies on the video footage provided during the CEDB proceedings and the new evidence provided with its appeal before CAS, stating that the number of cups was less than the five reported in the UEFA Match Delegate's Additional Report.
108. Concerning the incident at minute 90+5, the Appellant provides a video footage from minute 90:00 and 3:53 to minute 90:00 and 4:32 and a screenshot of the state of the relevant part of the pitch in the minute 90:00 and 5:22, assuming that only 13 plastic cups were lying on the ground near the touchline. As a result, the discrepancy of twelve cups compared to the UEFA Match Delegate's Report was not substantiated, and the imposed fine should be decreased.
109. Further, the Appellant corroborates its position by submitting three witnesses' written statements from two officials and the Security Manager, all signed and released on 8 January 2024.
110. Contrary to the Appellant's position, the Panel believes that the evidence in the case file is not sufficient to revert the presumption of the accuracy of the Official Reports, according to Art 45 of the UEFA DR, which reads:

“Article 45 – Official reports

Facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided.”
111. Given its statutory nature, this provision has to be considered a presumption of law and influences the burden of proof: it operates by assuming the existence of a fact (the presumed fact) from the existence of another fact (the so-called “premise-fact”), which is rebuttable.
112. Accordingly, the CAS panel in CAS 2013/A/3139 stated as follows: *“The Panel notes that Article 45 of the UEFA DR provides that the content of the official reports is presumed to be accurate, which means that the general principle for disciplinary cases according to which the burden of proof lies with the accuser is reversed as far as the inaccuracy of the reports is concerned”*. Notwithstanding this finding, the Panel considers that even if the burden of proof would be on UEFA, UEFA has proved its case against the Club taking into account the available evidence.
113. With the above in mind, it must be noted that the Referee's Report and the Additional Report of the UEFA Match Delegate are not contradictory but consistent. Both reports

mention plastic cups being thrown onto the pitch. The Referee noted two cups, while the UEFA Match Delegate specified that five cups had landed on the field. It is essential to highlight that the UEFA Match Delegate, who had a different viewpoint than the Referee, supplemented the Referee's Report without contradicting it by providing the exact number of cups on the pitch.

114. This total number of plastic cups is evident from the same footage submitted by the Appellant and more plainly displayed in the screenshot taken from that same video and produced by the Respondent during its closing statements at the hearing.
115. The breach is established due to the five plastic cups found on the pitch. Consequently, the fine should be assessed based on this evidence. The statements from the Club's officials cannot be deemed credible and should not undermine the validity of the UEFA Officials' Reports. This is particularly evident considering that those written witness statements were made over five months after the Match and are clearly contradicted by the video footage provided by the Appellant itself.
116. Concerning the incidents at minute 90+5, the Panel does not find any evidence in the case file that can revert the accuracy of the Official Reports and shares the finding of the CEDB:

“The same applies for the objects thrown at the 95th minute of the Match. If the UEFA Match Delegate reported that about 20 cups were thrown, the Club considers that only around 10 empty cups were thrown at that moment. In this regard, no evidence was provided by the Club here to challenge the presumed accuracy of the UEFA Match Delegate's report. Therefore, once again, the CEDB has no reason to depart from the content of the UEFA Match Delegate's report and is consequently comfortably satisfied here again that 20 plastic cups were thrown by Club's supporters at the 95th minute of the Match”.

117. The video footage and the screenshots at the Panel's disposal are not sufficient to reverse the burden of proof, which rests entirely on the Appellant according to the legal principle of strict liability, as set out in the CEDB decision and confirmed by longstanding CAS jurisprudence: *“The principle of strict liability is an important mechanism that assists UEFA to achieve its statutory objectives, protects UEFA's reputation and protects the reputation of football generally. National associations and football clubs are in a position to influence behaviour, and, specifically in the context of discrimination, to create an environment that promotes anti-discrimination and fosters inclusion through, for example: engaging in education and awareness campaigns to spread the anti-discrimination message; identifying risks of discriminatory conduct arising and taking reasonable steps to remove those risks; implementing policies, rules and regulations that prohibit discrimination; acting quickly and decisively when discriminatory conduct arises; and imposing stringent sanctions when required, all of which contributes to reinforcing the anti-discrimination message in football. It is established CAS jurisprudence that the strict liability principle complies with the principle of fairness and public policy (cf. CAS 2013/A/3324 and 3369, para 9.24).”* (CAS 2021/A/7736).

118. The Panel observes that the collected images are very brief and cover only a small portion of the pitch, failing to provide a view of all sectors of the stadium from which the objects were thrown.
119. The UEFA Match Delegate's Report indicates that the throwing of objects originated from sectors C17 to C22, a larger stadium area than shown in the images provided by the Appellant. It notes that "[...] *the home fans in the C tribune threw out of sectors C17-C22, numerous (about 20) plastic cups some of them containing liquid in the direction of the pitch*". For comparison and corroboration of such a point, suffice it to say that the previous incident at minute 81, which referred to sectors C19 and C20, included at least the area of the midfield.
120. The witnesses failed to provide a convincing counterargument to the UEFA Match Delegate's Report. They testified that their written testimonies were submitted more than five months after the Match, and they did not provide the Appellant with a concurrent written account of what they had observed during the event. The unreliability of these statements is further confirmed by the blatant error the witnesses made in reporting a different number of plastic cups falling at minute 81 compared to the number of plastic cups on the video in the case file.
121. Accordingly, the Panel finds that the Appellant is responsible for violating Article 16(2) of the UEFA DR, particularly for the throwing five plastic cups in the minute 81 and twenty plastic cups in the minute 90+5 of the Match by its supporters.
122. For the sake of completeness, the Appellant's argument regarding the safety of plastic cups—which suggests that they should not be considered a reason for sanctions—cannot be deemed acceptable. On the contrary, Article 16(2) of the UEFA DR imposes penalties for the throwing of any object that is not inherently dangerous but could *potentially* pose a danger, such as plastic cups (especially if they contain substances) and any other object thrown on the pitch. There have been incidents in modern football where individuals were injured due to the throwing of plastic cups. These incidents underscore the significant risks posed by throwing seemingly harmless items, as their trajectory, speed, and force of impact can turn them into dangerous projectiles. This emphasises the necessity of strictly applying Article 16(2) of the UEFA DR to ensure the safety of everyone present at the venue and on the pitch.

B. The proportionality and adequacy of the fine imposed on the Appellant.

123. The Appellant contends that the fine imposed by the Appealed Decision is neither appropriate nor proportionate and does not align with the purpose of sanctioning the breach of Article 23 of the UEFA DR. Additionally, it violates the legal principle of equal treatment as established in UEFA's previous decisions. The Appellant argues that the UEFA disciplinary bodies failed to consider both the objective and subjective elements, as well as the mitigating circumstances surrounding the case. Consequently, the Appellant believes that the fine should be reduced.
124. The Panel notes that the fine should be calculated based on the total number of plastic cups thrown on the pitch, i.e., twenty-five cups, taking into account the Appellant's

recidivism since it has already been sanctioned five times for the same incident in the two years before the Match at stake.

125. In this regard, Article 23 of the UEFA DR provides for the following:

“1. The competent disciplinary body determines the type and extent of the disciplinary measures to be imposed in accordance with the objective and subjective elements of the offence, taking account of both aggravating and mitigating circumstances.

[...]

3. Disciplinary measures can be reduced or increased by the competent disciplinary body on the basis of the circumstances of the specific case. In the case of offences related to Article 16(2)(a) and (e) the competent disciplinary body may take into consideration the immediate reaction of the host club or national association as a mitigating circumstance.”

126. In addition, Article 25 of the UEFA DR reads:

“[r]ecidivism occurs if another offence of a similar nature is committed within: a. one year of the previous offence if that offence consisted in the improper conduct of a team [...] c. two years of the previous offence if that offence was related to order and security at UEFA competition matches [...]. Recidivism counts as an aggravating circumstance.”

127. Taking these provisions into account, the Panel considers that, given the events that occurred, the fine imposed on the Appellant is proportionate, fair, and consistent with the standards applied by UEFA’s disciplinary bodies when imposing sanctions for incidents, as outlined in Article 16 of the UEFA DR. Therefore, the Panel abides by the calculation of the fine as provided in the CEDB’s decision:

“Hence, in view of the circumstances of the above, by applying its well-established jurisprudence regarding the throwing of dangerous objects, such as plastic cups (as published on the UEFA website), a fine of €1,500 is deemed appropriate for the first object thrown, a fine of €750 for the second and a fine of €500 for each further item (€1,500 + €750 + 23€500 = €13,750 for 25 items thrown).*

Furthermore, the CEDB adds an additional 50% of that fine for the Club’s second offence within the past two years (i.e. €13,750 + €6,875 = €20,625). Considering that the Club has already been punished on five previous occasions for the same offence, the CEDB decides to add an additional fine of €500 per offence, as from the third one within the last two years. Therefore, a total fine of €22,625 shall be deemed the appropriate sanction for the throwing of objects in the case at hand.”

128. The Panel acknowledges that in circumstances such as the present case, where the decision in a dispute is a disciplinary sanction imposed for conduct that breaches a sports association’s rule, there is a line of consistent CAS authority that provides that a disciplinary sanction may only be reviewed when it is “*evidently and grossly disproportionate to the offence*” (cf. CAS 2019/A/6239, para 133; CAS 2013/A/3139

para. 114; CAS 2012/A/2762 para. 122;). But this is not the case since the sanction appears lawful and well-founded.

129. As stated in the Appealed Decision, “[...] *by imposing standard sanctions for standard cases, as the one at stake, the UEFA judicial Bodies offer legal security to its members as the sanction is predictable and in line with the long-standing jurisprudence that is publicly available on UEFA website*”.
130. UEFA applied the standard sanction for a first offence in accordance with its previous decisions, i.e. a fine of EUR 1,500 for the first object thrown, a fine of EUR 750 for the second and a fine of EUR 500 for each further object thrown. The Appealed Decision is in line with the principle of proportionality by following the standard sanction it applies to every case, ensuring equal treatment.
131. Furthermore, the Appealed Decision thoroughly examined the aggravating circumstances surrounding the Appellant, particularly regarding repeated violations of Article 16 of the UEFA DR over the two years leading up to the Match. Therefore, the increased sanction is justified and consistent with similar cases.
132. The mitigating circumstances presented by the Appellant, which mainly concern the proper organisation of the Match, do not seem to be exceptional. Instead, they are relatively common responsibilities for host clubs and are more clearly outlined in the UEFA Safety and Security Regulations. Hence, the Panel confirms the imposed fine.
133. Considering the Respondent's waiver of the sanction under Article 15 of the UEFA Disciplinary Regulations (DR), the Panel concludes that it must limit its decision solely on establishing the violation of Article 16 of the UEFA DR committed by the Appellant, as stated above. Consequently, the Appellant will be held responsible for covering the costs of the proceedings before the Court of Arbitration for Sport (CAS) and the associated legal fees.

C. Conclusions

134. Based on the foregoing, and after considering all the case's specific circumstances, the evidence produced, and the arguments submitted by the Parties, the Appeal is partially upheld, and the Appellant is held to be liable only for breach of Article 16(2) of the UEFA DR.
135. All further or other motions or prayers for relief are dismissed.

IX. COSTS

(...).

* * * *

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by NK Olimpija Ljubljana against the decision rendered on 30 November 2023 by the UEFA Appeals Body is partially upheld.
2. The decision rendered by the UEFA Appeals Body on 30 November 2023 is confirmed, subject to the following amendment:
 - The fine of € 4,500 imposed on NK Olimpija Ljubljana for the improper conduct of its team, in breach of Article 15(4) of the UEFA DR, is annulled.
3. (...).
4. (...).
5. All further and other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 19 March 2025

THE COURT OF ARBITRATION FOR SPORT

Francesco Macrì
President of the Panel

Daan de Jong
Arbitrator

Patrick Grandjean
Arbitrator