

**CAS 2009/A/1920 FK Pobeda, Aleksandar Zabrcanec, Nikolce Zdraveski v/ UEFA**

ARBITRAL AWARD

Delivered by the

COURT OF ARBITRATION FOR SPORT

Sitting in the following composition:

President: Mr Efraim **Barak**, Attorney-at-law, Tel Aviv, Israel

Arbitrators: Mr Stephan **Netze**, Attorney-at-law, Zurich, Switzerland  
Mr Denis **Oswald**, Attorney-at-law, Neuchâtel, Switzerland

Ad hoc Clerk: Mr Nicolas **Cottier**, Attorney-at-law, Lausanne, Switzerland

in the arbitration between

1. **FK Pobeda-Prilep**, Prilep, Macedonia,
2. Aleksandar **Zabrcanec**, Prilep, Macedonia,
3. Nikolce **Zdraveski**, Prilep, Macedonia,

all represented by Mrrs. Simon and Gorjancho Simonoski, Attorneys-at-law in Prilep, Macedonia,

As Appellants

and

**UEFA, Nyon, Switzerland**

represented by Mr. Jean-Samuel Leuba, Attorney-at-Law in Lausanne, Switzerland and Mr. Michele Bernasconi, Attorney-at-law in Zurich, Switzerland.

As Respondent

\* \* \* \* \*

## I. FACTUAL BACKGROUND

### 1. Parties

1. FK Pobeda – Prilep (hereinafter “Pobeda” or “the Club”) is a Football Club located in the city of Prilep, Former Yugoslavian Republic of Macedonia (hereinafter “FYR Macedonia” or “Macedonia”). The Club is affiliated to the Football Federation of Macedonia, which in turn is a member of UEFA. At the relevant period to this Appeal, the Club played in the Macedonian First League
2. Aleksandar Zabrcanec (hereinafter “Mr. Zabrcanec”) is Pobeda’s President. Nikolce Zdraveski (hereinafter “Mr. Zdraveski”) was Pobeda’s captain during the first qualifying round of the 2004/2005 UEFA Champions League and became later the coach of Pobeda.
3. The Union of European Football Associations (hereinafter “UEFA” or “the Respondent) is an association according to Art. 60 of the Swiss Civil Code with its headquarters in Nyon, Switzerland. UEFA is the governing body of European football, dealing with all questions relating to European football and exercising regulatory, supervisory and disciplinary functions over associations, clubs, officials and players located on the European continent.

### 2. Facts

Below is a summary of the main relevant facts as established on the basis of the parties’ written submissions and evidence adduced at the hearing. Additional facts may be set out, where relevant, in connection with the legal discussion which follows.

4. In the first qualifying round of the UEFA Champions League 2004/2005, the Club was drawn to play against FC Pyunik from Armenia. On 13 July 2004 Pobeda played its first match against FC Pyunik in Skopje, FYR Macedonia. Pobeda lost the game 1-3. The return leg was played on 21 July 2004 in Yerevan, Armenia, and ended with a score of 1-1, which led to the elimination of Pobeda from the UEFA Champions League 2004/2005.
5. Following rumors and various pieces of information, UEFA mandated a betting expert, Mr. Karl Dhont, to analyze the betting patterns related to the two matches between Pobeda and FC Pyunik.
6. Mr. Dhont produced a report which was submitted to UEFA on 18 March 2009. In that report, Mr. Dhont stated that, according to his findings, unusual large amounts of money had been betted on the first game between Pobeda and Pyunik. In particular, this game attracted ten times the usual amount for this kind of matches. Based on the betting patterns of this game, the expert concluded:

“There was obviously something very strange and very unusual going on with the market-price in Asia. (...). Pyunik was considered as the better team of the two if we look at the starting price only.

That original price went down to 2.29 minus 0.5 goals (sic) but then took a huge cut towards 2.05 minus 0.75 goals (sic). Not only did the price drop 24 cents but the handicap changed as well to 0.75 which means that Pobeda still had to win with only one goal difference but that the people who had bet the game had their risk as good as doubled (the same goal difference only gives half of the money).

After that the price went even lower (see excel file) and the handicap changed to minus 1 and later to minus 1,25 goals. This is a huge difference with the starting price because the people who bet this then have a lower price on Pobeda than at the start and Pobeda have to score double the amounts of goals they had to score at the starting price of the bet.

For me there is absolutely no doubt that this game was not straight [emphasis in the original text of the report] and it was either fixed or that very solid rumors and/or criminal organizations were influencing the outcome of this fixture.

(...)

The people I have contacted for this to check and double-check all data and theories are all trusted and well-meaning veterans of the highest form of sports betting. (...). All full names and positions can be explained and written in full in a separate document if necessary.”

7. Mr. Dhont only dealt with the characteristics of the betting market related to the first match. Due to the fact that many bookmakers had decided not to offer the return match between Pobeda and Pyunik, Mr. Dhont did not make a statement as to whether the second match was also fixed.
8. During the month of March 2009, UEFA officials interrogated several persons with respect to the circumstances of the matches in question.
9. On 24 March 2009, UEFA brought a charge of match fixing against the Appellants with its Control and Disciplinary Body (“the UEFA Control and Disciplinary Body”).
10. On 29 March 2009, the UEFA Disciplinary Inspector filed a report in which he concluded that the Club, its president Mr. Zabrcanec and its former captain Mr. Zdraveski had violated the principles of integrity and sportsmanship pursuant to article 5 of the UEFA Disciplinary Regulations.
11. On 4 April 2009 the Appellants submitted their answer statements to the charges in which they requested *inter alia* to dismiss the charges.
12. On 13 April 2009 another witness was interrogated by UEFA officials. The identity of the witness was not disclosed to the Appellants.
13. On 17 April 2009 the UEFA Control and Disciplinary Body held a hearing which was attended also by the Appellants and their counsel. At the same day, prior to the opening of the hearing, the Appellants were granted about 65 minutes to review the statements of the anonymous witnesses. The Appellants were not informed about the identity of these witnesses.

14. On the same day, the UEFA Control and Disciplinary Body issued its decision according to which Pobeda was suspended from competing in any UEFA competition for eight years starting from the 2009/2010 season and Pobeda's President, Mr. Zabrcanec and its former captain Mr. Zdraveski were banned from exercising any football-related activities for life.
15. The written decision of the UEFA Control and Disciplinary Body was issued and notified to the Appellants on 24 April 2009.
16. On 2 May 2009, the Appellants lodged an appeal against the decision of the UEFA Control and Disciplinary Body with the UEFA Appeals Body ("the UEFA Appeals Body").
17. On 11 May 2009, three further witnesses were interrogated by UEFA officials.
18. On 12 May 2009, UEFA submitted its response to the appeal.
19. On 16 May 2009, the UEFA Disciplinary Inspector submitted new evidence including the minutes of interrogations of the three new witnesses that were interrogated on 11 May 2009.
20. On 18 May 2009, the parties were granted a final deadline to submit further evidence until 21 May 2009.
21. On 19 May 2009 the chairman of the UEFA Appeals Body interviewed five protected witnesses in Skopje. The identity of those witnesses was revealed only to the UEFA Appeals Body but not to the Appellants.
22. On 21 May 2009, the Appellants submitted additional evidence to the UEFA Appeals Body.
23. On 25 May 2009 the Appellants were notified that the new evidence submitted by UEFA was available for consultation at the UEFA headquarters in Nyon on 26 May 2009 from 11:00 to 18:00. The Appellants protested against the timing of that consultation since they were supposed to arrive in Switzerland only on 26 May at 19:45. Mr. Peter Limacher, Head of the Disciplinary Services of UEFA informed the Appellants on 26 May 2009 that the additional evidence would be brought to their hotel. He added that a PC to run the audio file was available on 27 May at 8:00 at the UEFA headquarters in Nyon.
24. On 27 May 2009, the hearing of the UEFA Appeals Body took place at the UEFA headquarters in Nyon. At the beginning of the hearing, the counsels for Pobeda and Mr. Zabrcanec were present. Mr. Zdraveski did not attend the hearing. However the representatives and counsels of the Appellants left the hearing because they were of the opinion that they had not been granted sufficient time to review the evidence (mainly the witness statements submitted by UEFA) and because the UEFA Appeals Body had decided that the Appellants were not allowed to question the witnesses directly but only via the UEFA Appeals Body in order to "*protect the anonymity guaranteed to them by both UEFA disciplinary bodies for the sake of their safety and that of their families*"(Decision of the UEFA Appeals Body, pg. 5). The hearing of the UEFA Appeals Body continued without the presence of the Appellants or their counsels.
25. The UEFA Appeals Body reviewed the case *de novo*. It also reviewed new evidence that was submitted by both parties, and decided on 27 May 2009 as follows:

- “1. *The Appeals of FK Pobeda, Aleksander Zabrcanec and Nikolce Zdraveski are rejected and the Control and Disciplinary Body decision of 17 April 2009 is upheld.*
2. *The costs of the proceeding totaling EUR 40,000, are to be paid by the appellant, minus the appeals fee.*
3. *The decision is final, in accordance with article 66 DR. (...)*”

26. The decision of the UEFA Appeals Body (“the Appealed Decision”) was communicated to the Appellants by fax dated 17 July 2009.

### **3. Proceedings before the Court of Arbitration for Sport**

27. On 27 July 2009, the Appellants filed a Statement of Appeal with CAS and completed it with an Appeal Brief, which was received by CAS on 5 August 2009.

28. The Appellants’ submissions can be summarized as follows:

- a. The Appellants claim that they had no or only limited access to important parts of the evidence submitted by the Respondent. According to the Appellants, the conduct of the proceedings before the two UEFA bodies deprived them from the necessary means to prepare their defense and to present their own evidence. The Appellants further claim that their own evidence was not duly taken into consideration.
- b. Since the evidence submitted by the Respondent was sent to the Appellants only on the day of the hearing of the UEFA Control and Disciplinary Body and since it was in English language, they had not enough time to translate, read and understand these documents and were not able to properly prepare their defense.
- c. The Appellants were not given the opportunity to ask direct questions to the protected witnesses. Furthermore, the UEFA Control and Disciplinary Body was not in a position to assess whether the protected witnesses were telling the truth or not.
- d. There was also a “*violation of the procedure*” before the UEFA Control and Disciplinary Body because the witness Nedelkovski acted simultaneously as an interpreter for the protected witnesses and was also a witness. Therefore he had the opportunity to modify the statements of the protected witnesses.
- e. The same procedural violations happened also before the UEFA Appeals Body. The Appellants assert that the UEFA Disciplinary Inspector delivered additional information to the Appeals Body on 16 May 2009. This additional information was revealed to the Appellants only on 26 May 2009, i.e. one day before the hearing with the UEFA Appeals Body. However, even this possibility did not help much since the Appellants arrived in Switzerland only on 26 May 2009 in the evening. Furthermore, the time granted to them to consult the evidence on the morning of 27 May 2009, before the opening of the hearing, was not sufficient and the refusal of

the UEFA Appeals Body to grant the Appellants more time deprived them of the possibility to properly prepare their defense.

- f. While the chairman of the UEFA Appeals Body came to Skopje, Macedonia, to hear some of the protected witnesses, no chance was given to the Appellants to present their own witnesses at the same time. The Appellants claim that if they had timely been informed, they would have asked the chairman of the UEFA Appeals Body to hear also certain former Pobeda players in person instead of relying on their written notary statements.
  - g. The Appellants complain that the UEFA Appeals Body considered the data from the betting market as key evidence although such data was not available at the hearing. The Appellants also mark a number of inconsistencies in Mr. Dhont's statements and question his independence.
  - h. The Appellants reject the witness statement of Mr. Iseini, a former board member of the Football Federation of Macedonia who they apparently recognized as one of the protected witnesses, qualifying his testimony as a "complete lie". Furthermore, they claim that there was not enough evidence from media reports to conclude that the game Pobeda against Pyunik was fixed. The Appellants also question the testimony of a former Pobeda coach, who allegedly saw certain unidentified Pobeda players placing bets against their team before the beginning of the game against Pyunik.
  - i. The Appellants complain about the lack of written evidence which would support the allegation that money was paid to fix the matches. The UEFA Appeals Body was ready to accept the respective statement from the UEFA Disciplinary Inspector as evidence but rejected the Appellants' own witness statements and other evidence.
  - j. The Appellants finally claim that the witnesses heard by the UEFA Appeals Body were instrumented by people who wanted to take control over the Football Federation of Macedonia, which is currently chaired by a relative of Mr. Zabrcanec.
29. Together with their Appeal Brief, the Appellants produced various documents, including witness statements, video materials, press articles and bank account reports.
30. The Appellants filed the following request for relief:
- “(A) The CAS shall issue an award replacing the Appealed Decision that the games in the first qualifying round of the 2004 UEFA Champions League between FK Pobeda and PC Pyunik in Skopje and Yerevan, respectively, on July 13 and 21, 2004, were not fixed and, therefore, the disciplinary measures against FK Pobeda, Aleksandar Zabrcanec and Nikolce Zdraveski shall be annulled, and that the costs of the UEFA appeal proceedings in the amount of EUR 40'000.00 shall be solely paid by the Respondent;*
  - (B) ...*
  - (C) The Respondent shall bear the costs of the Arbitral Proceeding before the CAS and the legal costs of the Appellants.”*

31. In their Statement of Appeal, the Appellants also asked for an order to stay the execution of the Appealed Decision until an award was granted by CAS. This request was dismissed by a decision of the Deputy President of the Appeals Arbitration Division of CAS on 20 August 2009.
32. On 6 August 2009, still within the deadline to file their Appeal Brief, the Appellants filed supplementary submissions in order to “*point out contradictions in the statements of the protected witnesses.*” They contest that witness K traveled to Yerevan to see the return leg, claiming that they were aware of his identity and that they were sure that he had not attended the match. They further claim that there was no evidence that witness Y attended the first match in Skopje. Since witness Y had admitted that he had a financial claim against Mr. Zabrcanec of EUR 16,000 the reliability of witness Y was questionable. The Appellants also claim that the statement of witness B that there were rumors that the match was fixed was contradicted by the report of the expert Karl Dhont. With respect to witness C, the Appellants claim that this witness was not credible since he was organizing a plot against the President of the Football Federation of Macedonia.
33. UEFA’s Answer dated 3 September 2009 can be summarized as follows:
  - a. The present case is governed by the 2004 version of the UEFA Disciplinary Regulations (hereafter the “2004 DR”), save for certain specific statutes which may be more favorable under the 2008 version of the UEFA Disciplinary Regulations (hereafter the “2008 DR”).
  - b. The Appellants committed a breach of the general principles of loyalty, integrity and sportsmanship as set forth under article 5 of the 2004 DR by influencing the progress and/or the result of a match in order to gain an undue advantage for themselves or a third party. UEFA refers in this respect to article 5 par. 2 lit. j of the 2008 DR, which mentions this type of behavior as an example of a breach of the general principles referred above.
  - c. Based on article 52 of the edition 2004 of the UEFA Statutes (hereafter the “2004 Statutes”) and article 8 of the 2004 DR, UEFA claims that this unsporting conduct is punishable by disciplinary means. Thus, the Appellants must be sanctioned as provided under article 6 par. 1 of the 2004 DR, which states that clubs are responsible for the conduct of their players, officials, members and supporters and any other person exercising a function at a match on behalf of the club. Moreover, article 11 of the 2004 DR stipulates that disciplinary measures may be taken against member associations or clubs if a team, player, official or member is in breach of article 5 DR. UEFA refers to several precedents where similar cases were the object of disciplinary decisions.
  - d. UEFA agrees that it bears the burden of proof. As to the required standard of proof and taking into account the nature of the behavior in question, UEFA refers to CAS jurisprudence on disciplinary doping cases and submits that the facts should be established “*to the comfortable satisfaction of the Court having in mind the seriousness of allegation which is made*” (CAS 2005/A/908 para. 6.2).

- e. When dealing with the principles of loyalty, integrity and sportsmanship which are protected by Article 5 2004 DR, the mere appearance of impropriety was sufficient to consider that the principles of article 5 2004 DR had been breached and that it was not necessary to establish the exact manner in which the match was fixed.
- f. UEFA relies on the expert report of Mr. Dhont and the eyewitness reports of individuals who attended the match or saw some Pobeda players placing bets on their own team's defeat in betting shops in Skopje. UEFA refers also to the media which reported after the game, that there were some rumors that the first match between Pobeda and Pyunik was fixed.
- g. UEFA asserts that Mr. Zabrcanec presented himself as a match-fixer at the halftime of the return leg,. UEFA also refers to a witness statement according to which Mr. Zdraveski, who was the captain of Pobeda at that time, admitted at the halftime of the game in Skopje that he knew that the match was fixed.
- h. UEFA refers to the pressure which was allegedly exercised on various witnesses in their home-country which made it necessary for the UEFA Appeals Body to provide certain protective measures. It underlines that the offences committed are of a very serious nature and justify exemplary sanctions, despite the fact that the offences were committed five years ago.
- i. UEFA asserts that the proceeding before the UEFA Appeals Body was an appeal proceeding, in which any potential procedural failure before the UEFA Control and Disciplinary Body was remedied. The same applies to any procedural failures before the UEFA Appeals Body as CAS can review the facts and the law *de novo*.
- j. UEFA finally requests that the Appellants shall not be provided with the original minutes and recordings of the protected witnesses' interrogations and that the identity of the protected witnesses shall not be revealed to the Appellants. UEFA further requests the Panel to hear the protected witnesses anonymously.

34. UEFA submitted the following requests for relief:

- I. UEFA requests that the appeals filed by FK Pobeda, Aleksander Zabrcanec and Nikolce Zdraveski is rejected and the decision rendered by the UEFA Appeal Body on 27 May 2009 is confirmed.*
- II. Costs which shall be determined by the CAS panel shall be paid to UEFA jointly and severally by FK Pobeda, Aleksander Zabrcanec and Nikolce Zdraveski or subsidiarily in proportions to be determined by the CAS."*

35. UEFA submitted the written witness statements of the protected witnesses and CD-ROMs, which contain video-footage of the examination of the protected witnesses. The video-footage was also submitted to assure that the protected witnesses could be clearly identified by the Panel and that the written statements could be easily verified.



**4. Interim proceedings and decisions regarding the Protected Witnesses and other procedural and evidential matters**

36. On 8 October 2009, the Panel ordered UEFA to provide the legal grounds for its request to protect some of its witnesses.
37. In a letter dated 23 October 2009, UEFA explained that various incidents, which occurred in the previous proceedings, gave reasons to fear that the witnesses and their families would be endangered if their identity was revealed. UEFA asserted that the Appellants “*were using the time between the procedural hearings for the purpose of intimidating witnesses*”. According to evidence attached to UEFA’s Answer, Pobeda threatened the potential witnesses to publish their names and photographs. Should the witnesses not be protected, there would be a high risk that they would refuse to testify at all. UEFA reminded the Panel of the jurisprudence of the European Human Rights Court of Justice and the Swiss Federal Court (ATF 125 I 127, 129 I 127, 133 I 33 and 132 I 127) which allowed the Panel to hear witnesses without disclosing their identity to the Appellants.
38. On 24 October 2009, the Appellants requested CAS to provide them with the audio recordings of the witnesses’ statements given to the UEFA Disciplinary Inspector as well as the recordings of the two hearings before the UEFA Bodies.
39. On 26 October 2009, the Respondent requested CAS to admit a seventh witness, namely witness Z who had been interrogated by the UEFA Disciplinary Services only after the Answer was submitted to CAS. UEFA also requested that the minutes of the interrogation of the seventh witness should not be transmitted to the Appellants, because based on this witness statement, the seventh witness’ identity could easily be identified.
40. By letter dated 30 October 2009, UEFA opposed to the request to file the audio recordings of the hearing of the first and second instances of UEFA, since the main objective for recording the UEFA hearings was to verify the correct unfolding of the procedure in the event of an appeal. Such records may be useful, if a party asserts a procedural flaw or if a witness cannot be heard before a CAS Panel and the testimony of such witness is questioned in the Appeal. Since the Appellants did not rely on either of those two reasons there was no ground to disclose the recordings to the Appellants.
41. On 4 November 2009, the Appellants received a set of the minutes of interrogation with the encoded names of the witnesses. Also on 4 November 2009, the Appellants were invited by the Panel to express their position on the admissibility of witness Z, and on the request of the Respondent to reveal the minutes of the interrogation of witness Z only to the Panel.
42. On 5 November 2009, the Appellants wrote to the CAS that they objected to the letter of the Respondent dated 30 October 2009 and that they insisted on the audio recordings of the witnesses heard by the UEFA Disciplinary Inspector and the audio recordings of both hearings before the UEFA Disciplinary Bodies.
43. By letter dated 11 November 2009, the Appellants opposed to the request of UEFA to allow the hearing of a witness Z, stating that UEFA had had sufficient time to hear this witness before its internal bodies and that the admission of a new witness would be contrary to article

R56 of the CAS Code. The Appellants insisted again on receiving all audio or video recordings of the witnesses and the hearings before the UEFA internal bodies.

44. On 25 November 2009 the Panel informed the parties that based on the jurisprudence of the Swiss Federal Court, it had decided to accept the Respondent's request and to hear witnesses Y, O and C without disclosing their identity. The Appellants would however be granted the opportunity to cross-examine these witnesses. The Panel also fixed specific modalities for the examination of the protected witnesses. No objection was raised by the parties. The grounds for this decision will be further discussed in para.73 – 76 of this award.
45. By letter of 25 November 2009, the Panel granted the Appellants' request to receive the audio recordings of the hearings of the first and second instances of UEFA and instructed the Respondent to provide the Appellants with these audio recordings. In the meantime, the Appellants were granted a one week deadline from the transmission of the material to "*indicate the definite extracts on which they intend to rely on*". The Panel rejected the Appellants' request for the filing of recordings of the interrogation before the UEFA Disciplinary Inspector since the Respondent denied the existence of such recordings, while the Appellants had not submitted any evidence that such recordings existed.
46. As to the hearing of witness Z, the Panel rejected UEFA's request and refused to hear this witness on the ground that the UEFA had failed to establish the existence of exceptional circumstances, as required under article R.56 of the CAS Code, which would explain why witness Z was not interrogated before the filing of the Answer.
47. By letter dated 3 September 2009, which was submitted together with the Answer, UEFA asked to hear six protected witnesses. By letters dated 26 October and 11 November 2009, however, the UEFA informed the Panel and the Appellants that it did not insist on the testimonies of witnesses A, B, P and K "*because of practical reasons*". On 25 November 2009, the Panel informed the Parties that it had decided "*to maintain the minutes of the interrogation of witnesses A, B, P and K in the file only if the Appellants are granted the right to directly interrogate them.*"
48. On 3 December, 2009 the Appellants reiterated their request to disclose the audio recordings of the testimonies given to the UEFA Disciplinary Inspector, asserting that those recordings actually existed. Furthermore, the Appellants requested the Panel to decline Respondent's proposal to summon Mr. Nedelkovski as a witness, since Mr. Nedelkovski was also called as a translator for several witnesses and did not have any direct information about the dispute at stake.
49. By letter dated 4 December 2009, the Panel asked the Respondent whether it maintained its position that the audio recordings of the testimonies given to the UEFA Disciplinary Inspector did not exist. In the same letter, the Panel denied the request of the Appellant to refuse the witness statement of Mr. Nedelkovski referring to article R55 of the Code according to which the Respondent has the right to call any witness it deems relevant. In a letter dated the same day, the Respondent requested that the minutes of the interrogations of witness A, B, P and K should remain in the file because these statements had been an integral part of the two first proceedings before the UEFA. The Respondent also maintained its request to hear witness Z.

50. On 10 December 2009, the Panel agreed that the minutes of the interrogations of witnesses A, B, P and K will remain in the file. However, the Panel drew the Respondent's attention to the "*potential consequence of the decision of the Respondent not to bring these persons as witnesses in this proceeding and by this not allowing the Panel and the Appellants the possibility to interrogate them, when assessing the evidence related to them.*" The Panel still offered the Respondent the possibility to bring these witnesses to the Hearing. The Panel also repeated its refusal of the Respondent's request to question witness Z. The Panel explicitly referred to article R56 of the CAS Code and stated that UEFA had not demonstrated the existence of exceptional circumstances. Furthermore the Panel noted that in the recording of the witness statement of Y, the Disciplinary Inspectors was offered the possibility to hear further witnesses, but the Disciplinary Inspector decided that this was not necessary.
51. The audio recordings of the two hearings held before UEFA's internal bodies were produced by the Respondent before the date of the Hearing.
52. The Hearing was held on 16 and 17 December 2009 at the headquarters of the IOC where sufficient boots for the translators were available. The Panel, with the assistance of the CAS secretariat and the personal assistance of the Secretary General of CAS took all the necessary preparations and installations in order to allow simultaneous translation as well as the interrogation of the protected witnesses.
53. During the Hearing and notably during the final oral pleadings, the Parties confirmed the factual background and legal developments as set out in their previous written submissions. The Appellants complained again about the procedural failures before the UEFA internal bodies but confirmed that they had no objection with the way the proceedings were conducted before CAS. They explained that the second witness (Mr. Nikolovski) had informed them that he did not want to testify as he was afraid to cause "bad press" at home.
54. At the outset of the Hearing, UEFA maintained its request to hear witness Z. The Panel once again rejected this request for the same reasons mentioned in its letters dated 25 November and 10 December 2009.
55. The protected witnesses were brought to a secure location in Lausanne where they were duly identified and assisted by an independent interpreter. According to the modalities set out by the Panel on 25 November 2009, the identity of the witnesses was checked by the Panel. A CAS counsel was present in the same room as the witnesses when they gave their testimonies in order to assure that their testimony was given without any influence from a third party. All protected witnesses signed a "protocol of identification" indicating their name and passport number. The protected witnesses confirmed that they had requested to be heard as a protected witness and explained the reasons for their request to be protected. The procedure was explained by the President of the Panel to both parties. Neither party objected to the way the interrogation of the protected witnesses was conducted.
56. One of the witnesses, Mr. Illievski who was supposed to be a protected witness (witness Y) decided at the beginning of his testimony to reveal his identity and to come to the hearing room and give his testimony in front of the Panel and the parties.
57. After the examination and cross-examination of the witnesses, the parties made short final submissions.

58. At the end of the Hearing, the President of the Panel asked the parties whether they were satisfied with the CAS procedure and whether their right to be heard had been respected. The Appellants confirmed their full satisfaction with the Hearing and the compliance with their right to be heard. UEFA stated that their right to be heard was not fully respected because of the refusal of the Panel to allow the testimony of witness Z.
59. After these statements of the Parties, the president of the Panel closed the Hearing.

## II. IN LAW

### 5. CAS Jurisdiction and admissibility

60. The decision of the UEFA Appeals Body is a final decision of an internal body of UEFA. Based on article 62 paragraphs 1 and 4 of the UEFA Statutes (Edition June 2007) in conjunction with R47 of the Code of Sport-related Arbitration (Ed. 2004), CAS is therefore competent to deal with the appeal lodged by the Appellants. The jurisdiction of CAS has not been disputed and is confirmed by the UEFA *Recognition of a Court of Arbitration* form signed by Pobeda and by the order of procedure signed by all parties, which both contain a specific reference to the jurisdiction of CAS.
61. Article 62 paragraph 3 of the UEFA Statutes provides that an appeal must be lodged within “*ten days from the receipt of the decision in question.*” The appeal against the decision of the UEFA Appeals Body which was notified to the Appellants on 17 July 2009 was filed on 27 July 2009. The Appeal was lodged within the statutory time limit set forth by the UEFA Statutes, which is undisputed.
62. The Appellants are directly affected by the decision of the UEFA Appeals Body. As provided under article 62 paragraph 2 of the UEFA Statutes, the Appellants have thus standing to sue, which is also undisputed.
63. It follows that the Appeal is admissible.

### 6. Applicable law

64. Art. R58 of the Code provides the following:

*“The Panel shall decide the dispute according to the applicable regulations and 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 application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision. ”*

65. When the Club registered for the 2004/2005 Champions League tournament, it signed a mandatory form called “Recognition of the Court of Arbitration for Sport” in which it undertook, inter alia, “*to be bound by and observe the UEFA Statutes and relevant*

*regulations, including the Disciplinary Regulations and relevant UEFA club competition regulations, as well as any other essential decisions taken by the competent bodies regarding the competition in question*". The match which was allegedly fixed took place on 13 July 2004 when the 2004 edition of the UEFA Disciplinary Regulations was in force. The Club acknowledged those regulations when registering for the 2004/2005 UEFA Champions Leagues qualifying rounds by signing the abovementioned document. Thus, the Club submitted to the 2004 edition of the statutes and regulations of UEFA.

66. The present case relates to a disciplinary procedure because of the alleged participation of the Appellants in a match fixing scheme during a qualifying round of the Champions League, a competition organized by UEFA. According to article 2 of the 2004 and 2008 DR, this disciplinary case is thus subject to the UEFA Disciplinary Regulations.
67. The officials and the players of the Club are compelled to abide by the statutes, rules and regulations of UEFA when they participate in the UEFA Champions League. This follows from article 3 2004 DR. Thus, the UEFA statutes and regulations apply also to Mr. Zabrcanec in its capacity as the president of the Club, and to Mr. Zdraveski in his capacity as a player of the Club. The application of said regulations on the Appellants Zabrcanec and Zdraveski was not disputed by the Appellants.
68. It is true that the UEFA Control and Disciplinary Body applied the 2008 DR because of the principle of the *lex mitior* which it deemed applicable in the present case. The UEFA Appeals Body then applied the 2004 DR, "*except in specific cases where the 2008 edition is considered to be more favorable towards the appellants, for example the payment of the interpreter costs.*"
69. Considering that (i) the Appellants never formally acknowledged the 2008 DR, as Pobeda did not participate in UEFA club competitions in the 2008/2009 season, and (ii) that regarding the involvement of players, officials or clubs in active or passive corruption, neither the nature nor the extent of the measures the disciplinary bodies may take have changed in the 2008 DR, the Panel adopts the same approach as the UEFA Appeals Body and applies the 2004 edition of the UEFA Statutes (hereinafter "the 2004 Statutes") and the 2004 DR except in specific cases where the 2008 DR are more favorable to the Appellants.
70. Furthermore, the Panel notes that the decision was issued by the UEFA Appeals Body, which is a jurisdictional body of the UEFA, a Swiss association seated in Nyon, Switzerland. Therefore, Swiss law is also applicable.
71. Subject to the foregoing, the Panel will thus decide the present case according to the 2004 DR, the 2004 UEFA Statutes (except where the 2008 DR would be more lenient to the Appellants) and Swiss law.

## **7. Testimonies of protected witnesses**

72. When facts are based on anonymous witness statements, the right to be heard which is guaranteed by article 6 of the European Convention of Human Rights (ECHR) and article 29 par. 2 of the Swiss Constitution is affected. According to a decision of the Swiss Federal Court dated 2 November 2006 (ATF 133 I 33) anonymous witness statements do however not

breach this right when such statements support the other evidence provided to the court. According to the Swiss Federal Court, if the applicable procedural code provides for the possibility to prove facts by witness statements, it would infringe the principle of the court's power to assess the witness statements if a party was prevented from relying on anonymous witness statements. The Swiss Federal Court refers to the jurisprudence of the European Court of Human Rights which recognizes the right of a party to rely on anonymous witness statements and to prevent the other party from cross examining the witness, if "la sauvegarde d'intérêts dignes de protection", (i.e. if the personal safety of the witness is at stake). With reference to the ECHR-cases Doorson, Van Mechelen and Krasniki, the Swiss Federal Court then noted that the use of anonymous witnesses, although admissible, was subject to strict conditions. The right to be heard and to a fair trial must be ensured through other means, namely by cross examination through "audiovisual protection" and by an in-depth check of the identity and the reputation of the anonymous witness by the court.

73. The Panel emphasizes that due attention was given to the statements of the protected witnesses in the current proceeding and in the proceedings before the UEFA Bodies that they were personally exposed to threats, insults, pressure and intimidation. Given the circumstances of this case, the Panel had no reasons to ignore those fears and could not disregard the possibility of such threats and the Respondent's assertion that the life and/or the personal safety of the witnesses and their families were at risk.
74. However, at all time the Panel has respected the procedural rights of the Appellants. It is convinced having maintained a proper balance between the rights of the Appellants, notably the right to examine the witnesses, and the necessity to protect the witnesses.
75. The Panel made sure that the Appellants received the minutes of the interrogations of the protected witnesses and that the Appellants were able to directly cross-examine the protected witnesses over the phone during the Hearing. A counsel of the CAS assured that the witnesses were properly identified and that they were alone at the time of the examination-in-chief and the cross-examination. The Panel repeatedly denied requests of the Respondent that anonymous witness statements should be admitted without providing the Appellants with the minutes or without granting them the right to cross-examine them.

## 8. Merits

### 8.1 **The UEFA regulatory framework applicable to match-fixing**

76. Article 52 of the 2004 Statutes and article 8 2004 DR provide that unsporting conduct, breaches of the Laws of the Game and infringements of UEFA's Statutes, regulations, decisions and directives shall be subject to disciplinary measures. Article 52 of the 2004 Statutes provides that "*disciplinary measures may be imposed for unsportsmanlike conduct, violations of the Laws of the Game, and contravention of UEFA's Statutes, regulations, decisions and directives as shall be in force from time to time.*" The article 8 2004 DR provides that "*Unsporting conduct, breaches of the Laws of the Game, as well as infringements of UEFA's Statutes, regulations, decisions and directives, are penalised by means of disciplinary measures.*"(par.1). "*Disciplinary measures provided for may be taken against members associations, clubs and individuals for offences before, during or after the match.*" (par.2).

77. Article 5 paragraph 1 2004 DR provides more specifically that “*member associations, clubs, as well as their players, officials and members shall conduct themselves according to the principles of loyalty, integrity and sportsmanship.*” Article 5 paragraph 2 2004 DR gives examples of breaches of these principles, notably engaging and attempting to engage in active or passive bribery (letter a) and conduct that brings the sport of football, and UEFA in particular, into disrepute (letter d). According to article 11 lit. a 2004 DR, “*disciplinary measures provided for in the present regulations may be taken against clubs if a team, player, official or member is in breach of article 5*” 2004 DR.
78. No provision in the UEFA 2004 Statutes and 2004 DR refers specifically to “match fixing”. Still, the Panel is convinced that match fixing touches at the very essence of the principle of loyalty, integrity and sportsmanship because it has an unsporting impact on the result of the game by inducing players not to perform according to their real sporting capacities and because they get rewarded for their misconduct. Match fixing is cheating and constitutes a clear violation of the basic principles under which sporting competitions shall be carried out. This has been also emphasized in previous CAS case law: “*The Panel notes, quite obviously, that honesty and uprightness are fundamental moral qualities that are required in every field of life and of business, and football is no exception. More specifically, however, the Panel is of the opinion that the notion of integrity as applied to football requires something more than mere honesty and uprightness, both from a sporting and business point of view. The Panel considers that integrity, in football, is crucially related to the authenticity of results, and has a critical core which is that, in the public’s perception, both single matches and entire championships must be a true test of the best athletic, technical, coaching and management skills of the opposing sides. Due to the high social significance of football in Europe, it is not enough that competing athletes, coaches or managers are in fact honest; the public must perceive that they try their best to win and, in particular, that clubs make management or coaching decisions based on the single objective of their club winning against any other club*” (CAS 98/2000 AEK Athens & SK Slavia Prague v/UEFA).
79. Although match fixing and betting activities were specifically implemented as examples of a breach of the principles established under article 5 DR only in the 2008 edition of the Disciplinary Regulations, the Panel has no doubt that already before, match fixing activities always constituted a breach of the principles of loyalty, integrity and sportsmanship and thus, violated also the 2004 version of article 5 DR. This qualification was actually not disputed by the Appellants.
80. According to article 8 2004 DR, unsporting conduct as well as infringements of the UEFA Statutes and regulations are penalized by disciplinary measures. Article 11 2004 DR provides that disciplinary measures may be taken against clubs if “*a team, player, official or member is in breach of Article 5*” of the 2004 DR (article 11 lit. a 2004 DR). ). In addition, article 17 of the 2004 DR stipulates that: “*The Disciplinary Bodies determine the type and extent of the disciplinary measures to be imposed, according to the objective and subjective elements, under consideration of incriminating or exonerating circumstances.*”
81. Article 14 2004 DR provides for a catalog of disciplinary measures which may be imposed against clubs:

“The following disciplinary measures may be imposed against member associations and clubs in accordance with article 53 of the Statutes:

- (a) warning,
- (b) reprimand,
- (c) fine,
- (d) annulment of the result of a match,
- (e) order that a match be replayed,
- (f) deduction of points,
- (g) awarding of a match by default,
- (h) playing of a match behind closed doors,
- (i) stadium ban,
- (j) playing of match in a third country,
- (k) disqualification from competitions in progress and/or exclusion from future competitions.”

82. Article 15 2004 DR provides for a catalog of disciplinary measures which may be imposed against individuals;

“The following disciplinary measures may be imposed against individuals in accordance with article 54 of the Statutes:

- (a) warning,
- (b) reprimand,
- (c) fine,
- (d) suspension for a definite number of matches or for a definite or indefinite period,
- (e) suspension from carrying out a function for a definite number of matches or indefinite period,
- (f) ban on exercising any football-related activity.”

83. Accordingly, individuals and clubs involved in match-fixing are violating the principles of loyalty, integrity and sportsmanship and that they can face disciplinary measures based on articles 14 and 15 2004 DR.

## **8.2 The burden of proof and the standard of proof**

84. It has not been disputed that in disciplinary matters of this kind the burden of proof lays with the regulatory body, and indeed UEFA agrees that it has to demonstrate that the Appellants violated article 5 2004 DR.



85. Taking into account the nature of the conduct in question and the paramount importance of fighting corruption of any kind in sport and also considering the nature and restricted powers of the investigation authorities of the governing bodies of sport as compared to national formal interrogation authorities, the Panel is of the opinion that cases of match fixing should be dealt in line with the CAS constant jurisprudence on disciplinary doping cases. Therefore, the UEFA must establish the relevant facts “*to the comfortable satisfaction of the Court having in mind the seriousness of allegation which is made*” (CAS 2005/A/908 nr 6.2).

### 8.3 The alleged procedural mistakes and failures during the UEFA proceedings

86. With reference to the various submissions of the Appellants related to the alleged procedural mistakes made by the UEFA jurisdictional bodies and the violation of the Appellants’ right to be heard, the Panel stresses that it hears the case *de novo* and that the Appellants confirmed that they were satisfied with the way the CAS procedure was conducted.
87. According to article R57 of the Code, the CAS has full power to review the facts and the law. The consequences deriving from this provision are described in the consistent CAS jurisprudence, according to which “*if the hearing in a given case was insufficient in the first instance (...) the fact is that, as long as there is a possibility of full appeal to the Court of Arbitration for Sport, the deficiency may be cured*” (CAS 94/129 USA Shooting & Q. v UIT, award of 23 May 1995, par. 59). Later the CAS has reaffirmed this principle, holding that “*the virtue of an appeal system which allows for a rehearing before an appeal body is that issues relating to the fairness of the hearing before the Tribunal of First instance “fade to the periphery”*” (CAS 98/211, B. v Fédération Internationale de Natation, award of 7 June 1999, par.8). More recently, the CAS has further relied on the Swiss Federal Tribunal case law, which held that “*any infringement of the right to be heard can be cured when the procedurally flawed decision is followed by a new decision, rendered by an appeal body which had the same power to review the facts and the law as the tribunal of first instance and in front of which the right to be heard had been properly exercised*” (CAS 2006/A/1177 Aston Villa FC v B.93 Copenhagen, award of May 2009, par. 7.3). For another recent case, see for instance, CAS 2008/A/1594 Sheykhov v. FILA para. 109, “*However, as CAS has complete power to review the facts and the law and to rule the case de novo, the procedural deficiencies which affected the procedures before FILA disciplinary bodies may be cured by virtue of the present arbitration proceedings (see e.g. CAS 2006/A/1175 Daniute v/ IDSF paras. 61 and 62, CAS 2006/A/1153 WADA v. Assis & FPF, para. 53, CAS 2003/O/486, Fulham FC c. Olympique Lyonnais, para. 50)*”. This CAS jurisprudence is actually in line with European Court of Human Rights decisions, which in par. 41 of the Wickramsinghe Case concluded that “*even where an adjudicatory body determining disputes over civil rights and obligations does not comply with Article 6 (1) [ECHR<sup>1</sup>] in some respect, no violation of the Convention will be found if the proceedings before that body are subject to subsequent control by a judicial body that has full jurisdiction and does provide the guarantees of Article 6 (1)*”.
88. In conclusion, even if a violation of the principle of due process or of the right to be heard occurred in the prior proceedings before the internal instances of UEFA, it may be cured by an appeal to CAS. Therefore all submissions of the Appellants with respect to the conduct of

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<sup>1</sup> Article 6.1 ECHR guarantees notably a fair process and the right to be heard

the proceedings by the UEFA internal jurisdictional bodies must be rejected, because any violation of procedural rights before the prior instances was cured in the proceedings before CAS.

#### **8.4 The facts as established by the evidentiary proceeding before the CAS**

##### **1. Were the games between Pobeda and Pyunik, played in July 2004, fixed?**

89. The Panel is convinced that the games between Pobeda and Pyunik which took place in June 2004 had been manipulated. It relies primarily on the expert report of Mr. Dhont and on his clear and credible explanations provided at the Hearing. Mr. Dhont gave his testimony by way of a telephone conference. He reported that he was working in the English betting industry for more than 25 years. He became a member of the UEFA Disciplinary Committee in April 2009. The circumstances of his election were confirmed by Peter Limacher, the chairman of the UEFA Disciplinary Services. At the hearing, Mr. Dhont explained in a general way the mechanism of betting in international football and the way bookkeepers handled the betting of football matches.
90. Mr Dhont then turned to the games between Pobeda and Pyunik and confirmed the content of his report which he had delivered to UEFA. On the basis of the available data he concluded that the betting patterns of the first game between Pobeda and Pyunik were extraordinary and abnormal and did not correspond at all to the expected strength of the two clubs. There was no other conclusion but that this game must have been manipulated.
91. The Panel finds that the Appellants did not raise any material rebuttal or tried to offer any counter expert opinion to challenge the conclusions of Mr. Dhont. Mr. Vicic, who was called by the Appellants as a witness, did not present any specific and useful counterevidence. In addition, the personal statements of the Appellants Zabrcanec and Zdraveski who had a personal interest in the outcome of this Appeal were not sufficiently convincing to de-stabilize Mr. Dhont's report and expert testimony.
92. As the second leg Pyunik-Pobeda, played in Yerevan on 21 July 2004 was not offered by the big betting companies and could not be analyzed by Mr. Dhont, the Panel could not rely on enough technical evidence that this game was fixed as well. However, the fact that numerous bookkeepers decided not to offer the second leg in Yerevan for betting is an another indication that the first match was manipulated.
93. Apart from the betting patterns, the Panel's conclusion that the matches between Pobeda and Pyunik were fixed was supported by further evidence:
- a. Obviously, the Club had major financial problems, as set out plausibly by witnesses O and Mr. Illiewski, a former coach of the Club. The latter referred to a meeting with Mr. Zabrcanec (i.e. the Club's president) three days after the end of the Macedonian championship because the Club had still failed to pay him the full salary. Mr. Zabrcanec complained that he did not have enough money to pay the players and he said that he wanted to "*give up the match*". Obviously, the Club's president referred to the game against Pyunik. This situation forced Mr. Illiewski to pay back half of his salary to the club to cover the players' outstanding salaries and to avoid a strike. The attitude of the Club's president was not acceptable for Mr. Illiewski and he quitted his position as a coach of Pobeda. According to Mr.

Illiewski, Mr. Zabranec did not mention any specific amount he would get for giving up the match, and the word “fixing” was not used by him. The monetary problems of the Club and the non-payment of salaries to the players were also confirmed by witness O.

Mr. Zabrcanec disputed that the Club had financial problems. Pobeda had just won the national championship and qualified for the European competitions. The employment contract with Mr. Illievski, was terminated because of financial reasons which had nothing to do with a dispute on any match fixing issue. Mr. Zabrcanec claimed that he had no interest in fixing the match to get the alleged EUR 300'000.- from a criminal organization, as a qualification to the second qualifying second round of the Champions League would have brought more financial means to Pobeda, even in consideration of the costs related to such qualification. However, the Panel is not convinced about the Club's president's statement. He and the Club knew of the respective allegations and witness statements but they still preferred not to present any counter-evidence regarding the financial status of the Club. Furthermore, the Panel is aware of Mr. Zabrcanec's role in this proceeding and prefers to give more credibility to the witnesses who have no own stake in the outcome of this Appeal.

- b. At the day of the game in Skopje, Mr. Illiewski was sitting in a restaurant near the team's hotel and next to a betting shop named “The Golden Shoe” where he saw players of the Club betting. This fact was also supported by the testimony of witness O. However, neither Mr. Illievski nor witness O could say whether the players were betting in favor or against their own team. Nevertheless, Mr. Illievski testified that when he asked one of the players what they were betting, he got the answer that “*it would be better that he did not know*”. Betting on one's own team is not prohibited. However, the Panel has no reason not to believe Mr. Illievski's statement with regard to the response he got from the players although it was not clear which player made this statement. If the players had betted on their own success, they could have said so without any negative consequences. The response to Mr. Illievski rather indicates that the players had a different agenda which would then be in line with the findings of Mr. Dhont.
- c. Witness O testified that before the first match “*Acule [ Aleksander Zabrcanec] disappeared for two or three days and had only reappeared some hours before the match*”. Witness O was present in the dressing room at the half time of the first game but not for the entire 15 minutes. He also testified that the Mr. Zabrcanec and some members of the board of the Club, notably Mr. Nikolovski, had an argument, as many people were not happy with the result at half time. However, he testified that this event did not take place in the dressing room but in the hall near the dressing room, because nobody was allowed to enter the dressing room except the players and the coach.

Mr. Zdraveski and Mr. Zabrcanec contested however that a discussion took place in the dressing room at half time of the first match because Mr. Nikolovski was simply not there. Mr. Zdraveski said that as a player he was indeed present in the dressing room and would have noticed the dispute. He also stated that his testimony had been confirmed by a written statement of Mr. Nikolovski signed before a

notary. Mr. Nikolowski was not present at the Hearing and was not available for cross-examination. Mr Zabrcanec added that Mr. Nikolovski was still one of his good friends.

For the Panel, the exact place (i.e. the dressing room or the hallway) where such a discussion may have taken place is not decisive. When considering the intermediate result into account, it is credible that there were questions at halftime why the team played so badly. That the match was fixed is at least one of the answers which could explain the modest performance of the team and the lack of improvement in the second half of the game.

- d. After the match, witness O heard “*some of the board members scolded Acule and called him names*”. He heard one of them saying to Mr. Zabrcanec: “*You fixed the match and you didn’t tell us, so now we are looking ridiculous*” This was the reason for him to resign from his job with the Club, witness O said.

Mr. Zabrcanec contested ever having heard such statements. However, considering Mr. Zabrcanec’s role as a party in this proceeding, the Panel is inclined to follow the testimony of witness O.

- e. Mr. Ilievski confirmed that when he watched the game he was surprised by the bad performance of the team. It was obvious that something was wrong; he knew the team inside out and had never seen this kind of play before. Such bad play was also reported by the media. Although bad performance of a team cannot be conclusive evidence of match fixing, it supports the findings of Mr. Dhont and the reaction of the bookmakers.
- f. According to witness O, something extraordinary took place at half time of the return leg in Armenia; the Club’s president was begging the players to help him to “*finish the business*” as the Club led by 1:0. He asked the players to ensure that the game would finish with 1:1 “*because there otherwise would be problems for him and his family.*” In his interrogation of 13 April 2009 witness O also testified that he had heard Mr. Zabrcanec saying to the players during half time :”*They will kill me, What shall I do? They will burn my house*”. Mr. Zabrcanec vigorously contested having said something like “*they will kill me, they will burn my house*”. Again, the Panel considers the testimony of witness O more credible than the denial of Mr. Zabrcanec. However, the disputed statement is not decisive for the Panel’s conclusion but constitutes only an element of the entire picture which was mainly drawn by the report of Mr. Dhont.
- g. In same statement witness O testified that when he was back in Macedonia Mile Hadzi-Risteski, the director of FK Pobeda, approached him and asked him “*for help regarding the transfer of 150,000 Euro which he had in a bag with him, to Yerevan. Acule was kept in Yerevan until the money was transferred*”. Although this statement would be in line with the finding of Mr. Dhont, it is rather isolated and the Panel could not verify it by examining Mr. Hadzi-Risteski who was not present at the Hearing.

h. Witness C testified that he had invited Mr. Nedelkovski (a Respondent's witness and a sports commentator for Macedonian television) and Mr. Nikolovski (a member of the Club's board) to a restaurant in Macedonia. There, Mr. Nikolovski declared that the match between Pobeda and Pyunik on 13 July 2004 had been fixed. Mr. Nedelkovski confirmed at the Hearing that this lunch meeting took place and also that Mr. Nikolovski said that the game in Skopje had been fixed. According to Mr. Nedelkovski, who was examined in English, the lunch meeting took place in March or April 2009 and since then the witness talked to players who participated in the match fixing and earned gains.

94. There was also a dispute whether after the second game between Pobeda and Pyunik, Mr. Zabrcanec did not directly return home but went to another city, allegedly Istanbul, where the money for the match fixing had to be paid. The statements of the parties and the witnesses regarding Mr. Zabrcanec's trip were contradictory and did not support the findings of the Panel.

95. The Panel also took the notary statements of several Pobeda players and other witnesses submitted by the Appellants into account which contradict to the report of Mr Dhont and the testimonies of witnesses Illievski, C and O. However, the Panel cannot examine under which circumstances those statements were given. As a matter of fact, the Panel is very reluctant to rely on statements of witnesses who decided not to come to the hearing – even as protected witnesses - and not being available for cross-examination. In any case, those written statements lack the technical elements of an expert report and are not sufficiently convincing to rebut the report of Mr. Dhont and the witness statements of Mr. Illievski, C and O. The fact that the content of most of those written statements was identical and that the players who signed those witness statements could have been involved in the match fixing-plot lead the Panel to put less weight to these written statements than to the examination of the witnesses present at the hearing. In this respect, the Panel notes that the Appellants which had complained that UEFA did not give them the opportunity to present their own witnesses to the Chairman of its Appeals Body, did not present such witnesses at the Hearing. Hence, the Panel was not in a position to examine the persons who had given the testimonies in the notary statements.

## **2. Were the Appellants involved in the match fixing plot?**

96. The Panel finds that the qualification games for the Champions League 2004/2005 between Pobeda and Pyunik were manipulated. It must now examine whether any of the Appellants were responsible for this manipulation.

### **1. The involvement of Mr. Zabrcanec**

97. One of the key witnesses who testified before the Panel, Mr. Illievski, confirmed that during a meeting with Mr. Zabrcanec three days after the end of the Macedonian championship, Mr. Zabrcanec complained that he did not have enough money to pay the players and he said that he wanted to "give up the match". The fact of the poor financial situation which could be the reason for fixing the match was also confirmed by witness O, who explained that Pobeda had financial problems leading to the nonpayment of the players' salaries during three months.

98. Mr. Illievski testified that Mr. Zabrcanec spoke about “giving away” the game, but did not explicitly use the expression “fixing the game”, as wrongly recorded in his written witness statement. However from the full context of the conversation, as well as from the fact that those terminologies may be synonyms when translated from Macedonian to English (as proved in an easy test that was made by the Panel during the testimony of Mr. Nedelkovski) the panel is satisfied that Mr. Zabrcanec meant and intended to fix the match when he was stating he wanted to “*give away the match*”.
99. Mr. Zabrcanec is accused having admitted in the dressing room, at the halftime of the first game, that the match was manipulated. There is however no conclusive evidence in the file. According to the minutes of the interrogation, Witness C and Mr. Nedelkovski had heard from Mr. Nikolovski, the previous board member of Pobeda, that Mr. Zabrcanec had admitted to him at halftime of the first game that this game was fixed. However, those witnesses only knew this from hearsay and Mr. Nikolovski denied having said these words in a notary statement. Therefore, the Panel considered that, taken into account all circumstances and witness statements, it was not established to the comfortable satisfaction of the Panel, that the alleged incident at halftime of the first match, actually took place in the dressing room.
100. According to witness O, however, there was indeed an argument between the President and other board members because of the poor performance of the team. This event did not take place in the dressing room but in the hallway, because nobody could enter the dressing room except the coach. The alleged discussion between Mr. Nikolovski and Mr. Zabrcanec was also mentioned by witness C. During the hearing, witness C. also confirmed the lunch meeting with Mr. Nedelkovski and Mr. Nikolovski.
101. All those pieces of evidence do not only support the report of Mr. Dhont, but also demonstrate that Mr. Zabrcanec was personally involved in the manipulation of the matches. In particular, the Panel is sufficiently convinced that Mr. Zabrcanec addressed the players at the halftime of the second match in Yerevan, when Pobeda was leading 1:0, saying: “*they will kill me, they will burn my house*”. Such a statement from a club’s President shows that Mr. Zabrcanec wanted his players to lose or go for a draw, which eventually happened with the game finishing in 1:1. The interpretation of Mr. Zabrcanec’s behavior leads the Panel to the conclusion that the President wanted his team to lose and this can only be explained within the framework of being involved in the fixing of the match. The President thus committed a serious breach of the principle of loyalty, integrity and sportsmanship.
102. In light of all the above, the Panel is indeed comfortably satisfied that the evidence establishes that Mr. Zabrcanec was involved in the plot and that he actively participated in fixing the games in Skopje and Erevan.

## 2. The involvement of Mr. Zdraveski

103. Mr. Zdraveski insisted on the fact that there was no evidence on his implication in the alleged fixing of the two games played by Pobeda against Pyunik. He said that he was nervous about that game as he was recovering from an injury and felt that his physical shape was not yet good enough. He eventually played only 45 minutes during the first game and did not make the trip to Yerevan. Mr. Zdraveski argued that if he had been involved in the plot, he would have played both games in order to influence the result.

104. Mr. Zdraveski also said that if the sanction against him was confirmed, this would end his professional career as a coach, which was rather promising as he was elected best coach of Macedonia.
105. Obviously, Mr. Zabrcanec could not fix a match all by himself and needed some kind of help “on the pitch”. However, UEFA only sanctioned the captain, Mr. Zdraveski, on the basis of the incident concerning the alleged quote “*Uncle Stavre, don’t you know that the match was fixed?*” which was reported by Mr. Nikolovski to Mr. Nedelkovski and witness C. The Respondent asserted that Mr. Zdraveski, as the captain of the team, had a key role in ensuring that things occurred on the play field as arranged.
106. However, as mentioned above, the dressing-room incident was not confirmed by witness O. There was no first hand-observation that Mr. Nikolovski was in the dressing room or that he was present when Mr. Zdraveski was talking about the manipulation of the match.
107. The evidence brought forward by the Respondent, namely that it was Mr. Zdraveski who told Mr. Nikolovski “*Uncle Stavre, don’t you know that the match was fixed*” does not convince the Panel. Mr. Nikolovski eventually changed his statement and decided at the last moment not to testify. In other words; the person who originally heard those words changed in a later phase his statement and denied that such words were said, leaving only a hearsay statement of Mr. Nedelkovski and Witness C. Convicting Mr. Zdraveski only on the basis of a hearsay testimony referred to a person that refused to testify at the hearing would not be correct. Moreover witness O, who was in the dressing room for most of the time, did neither hear Mr. Zdraveski say those words nor see Mr. Nikolovski in, or near, the dressing room. This silence of witness O is important in this respect as this key witness to UEFA was very specific on numerous other facts which would indicate that the match was fixed, like the declarations of board members, the presence of players in betting shops or the visit of the President to some players before the game.
108. By contrast, the Panel found the Appellant Zdraveski convincing when he claimed that if he would have been involved in the fixing of the matches, his role would have been to be on the pitch during the two games in order to influence the result. Instead, Mr Zdraveski, was only on the pitch for 45 minutes. Contrary to the UEFA Appeal Body’s arguments, the fact that he left in the middle of the first game and did not even travel to the second game, is rather evidence of the fact that he was not involved in the plot.
109. Considering all of the above, the Panel is not satisfied by the evidence brought forward by the Respondent against the Appellant Zdraveski and is not comfortably satisfied to establish that Mr. Zdraveski was actually involved in match-fixing. Therefore no disciplinary measures should be taken against him.

### 3. The involvement of the Club

110. Article 11 2004 DR provides for the possibility to sanction clubs for actions of their players or officials; “disciplinary measures provided for in the present regulations may be taken against clubs if a team, player, official or member is in breach of article 5 ”. As mentioned before, in light of the expert’s report, the result of the first game and the overall circumstances as described above, the Panel is convinced to its comfortable satisfaction that Mr. Zabrcanec, President of Pobeda, indeed influenced some players and the coach in order to ensure that the

plot succeeded. The mere fact that the president of Pobeda is found guilty of fixing matches is, according to article 11 2004 DR, sufficient to also sanction the Club as such.

111. In this regard the Panel finds it also important to underline that there is no evidence that the president of the club manipulated the games because of his personal gain.

4. Conclusion on the involvement of the Appellants

112. On the basis of article 8 2004 DR and article 11 2004 DR, the Panel thus finds that the UEFA Control and Disciplinary Committee as well as the UEFA's Appeal Body were right in taking disciplinary measures against Pobeda and Mr. Zabrcanec. The Panel does however not share the finding of the UEFA Appeal Body that Mr. Zdraveski was involved in the match fixing scheme.

9. The Sanctions

113. The UEFA Appeals Body imposed an eight years ban from UEFA competitions on the Club and a life ban from any football related activities on Mr. Zabrcanec.
114. This finding is based on the seriousness of the acts of Mr. Zabrcanec as the President of a club participating in the Champions League and because of the consequences of such acts for the reputation of football in Macedonia and in Europe.
115. The Panel is aware of the severe consequence of the sanction imposed on Mr. Zabrcanec. It does, however, not find any mitigating circumstances which could lead to a reduction of the sanction. Match fixing is one of the worst possible infringements of the integrity of sports. Therefore, the Panel finds that a life ban from any football related activities against Mr. Zabrcanec is an adequate sanction and not disproportionate.
116. As to the Club, the Panel finds the sanction imposed by the UEFA Appeals Body appropriate as well. The episode at half time during the second game in Erevan shows that the President was not afraid to talk to the whole team about the plot and that nobody dared to oppose. Only reactions inside the clubs can prevent that games are manipulated, and only strong sanctions against the clubs will set the necessary signal to the officials and the players that the direct or indirect support of match fixing activities are not tolerated but can lead to severe consequences for the entire club and not only for the leading actors of the plot. Such sanctions should not only prevent individuals from manipulating games, but also encourage the other members of the club to take action when they become aware of such manipulations.
117. Article 11 2004 DR provides for the possibility to sanction clubs for actions of their players or officials. The objective of this provision can only be reached by a rigorous application of the sanctions provided under article 14 2004 DR.. The Panel also notes that Pobeda supported its President's stance without making any separate submissions on the issue of the proportionality of the sanction imposed on the Club for breaches committed by individuals. On the other hand, the Panel stresses that the sanction imposed on the Club does not prevent it from competing at the national level.



118. The Panel therefore considers the exclusion of Pobeda from the UEFA competitions for a period of 8 years to be an appropriate sanction.
119. Based on all the above, the Panel confirms the decision of the Appeals Body as to the sanctions pronounced against the Appellants Pobeda and Zabrcanec and sets aside the sanction imposed on Mr. Zdraveski.
120. (...)

\* \* \*

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal of FK Pobeda and Aleksandar Zabrcanec is rejected and the decision of the Appeals Body of UEFA of 27 May 2009 in their regard is upheld.
2. The appeal of Mr. Nikolce Zdraveski is admitted and the decision of the Appeals Body of UEFA in his regard of 27 May 2009 is annulled.
3. All other motions or prayers for relief are dismissed.
4. (...)

Lausanne, 15 April 2010

THE COURT OF ARBITRATION FOR SPORT

Mr Efraim **Barak**  
President of the Panel

Mr Stephan **Netzle**  
Arbitrator

Mr Denis **Oswald**  
Arbitrator

Mr Nicolas **Cottier**  
Ad hoc Clerk