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WE CARE ABOUT FOOTBALL

Date: 05/06/2018
To: FC Shirak/ UEFA Ethics and Disciplinary Inspector
Ref. Nr.: 31419

This message contains 8 pages (including cover page)

Dear Sirs,

Please find attached the Termination Order taken by the UEFA Appeals Body at its meeting on 5 June 2018

We would appreciate your taking due note of this decision and ensuring its implementation.

Yours faithfully,

UEFA

Emilio Garcia
Managing Director Integrity



Termination Order of 5 June 2018

rendered by the

APPEALS BODY

Sitting in the following composition:

Chairman: Pedro Tomás (Spain)

In the case

UEFA

Represented by Mr Liétard, UEFA Ethics and Disciplinary Inspector

Claimant

against

FC Shirak

represented by Rouben Hakobyan, attorney in law

Respondent

I. Facts Of The Case

1. The elements set out below are a summary of the main relevant facts, as established by the Appeals Body on the basis of the written submissions of the parties, the exhibits filed and the statements produced in the course of the Appeals Body proceedings. While the Appeals Body has considered all the facts, allegations, legal arguments and evidence submitted by the parties in these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.
 2. Shirak FC has the sporting merit to be qualified the UEFA Champions League 2018/2019, in application of the relevant UEFA Regulations.
 3. According to Article 4.01.g) of the UEFA Champions League Regulations (UCL Regulations), to be eligible to participate in the competition, a club must fulfil the following criteria:

“it must not have been directly and/or indirectly involved, since the entry into force of Article 50(3) of the UEFA Statutes, i.e. 27 April 2007, in any activity aimed at arranging or influencing the outcome of a match at national or international level and must confirm this to the UEFA administration in writing”.
 4. Shirak FC sent its Admission Criteria Form for the UEFA Club Competitions 2018/2019, signed by the club and the Football Federation of Armenia (FFA) on 4 May 2018.
 5. Shirak FC did not report in its Admission Criteria Form any direct or indirect involvement of its club in any activities aimed at arranging or influencing the outcome of a match at national or international level since 27 April 2007.
 6. Upon request from the UEFA Administration, the FFA provided UEFA with a decision of its Disciplinary Committee dated 5 May 2018. This decision related to the bribe made by Shirak FC’s sporting director Ararat Harutyunyan to the Club’s former player, defender Eduard Kpodo to fix the result of the match FC Banants v. FC Shirak of 5 May 2018. The decision imposed a lifetime ban from football on the Director, as well as a twelve-point deduction from the league standings and a fine on Shirak FC equal to seven times the minimum salary.
 7. Shirak FC did not report the above-described incidents in the above-referenced admission criteria form.
 8. On 17 May 2018, after FC Shirak sent the above mentioned admission criteria form, and pursuant to Article 4.07 UCR, the UEFA General Secretary referred the above-mentioned Admission Criteria Form and the case itself to the UEFA Control, Ethics and Disciplinary Body. At the same time, the UEFA General Secretary requested to the UEFA Ethics and Disciplinary Inspector to conduct an investigation over the admission of Shirak FC into the UEFA Champions League 18/19.
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II. Summary of the proceedings before the Appeals Body

9. On 18 May 2018 and pursuant Article 29 (3) DR, the Chairman of the Control, Ethics and Disciplinary Body referred directly the case to the Appeals Body.
10. On this same date the club was informed that disciplinary proceedings had been opened against the latter for violations relating to the admission criteria, i.e. Article 4.02 UEFA Champions League Regulations. The different documents of this case file had been submitted to the UEFA Appeals Body to decide on the matter at the occasion of its next meeting on 5 June 2018
11. On 25 May 2018, FC Shirak informed UEFA about its withdrawal to participate at the UEFA club competition season 2018/2019.
12. On 28 May 2018, UEFA informed the Ethics and Disciplinary Body about the above communication submitted by FC Shirak of 26 May 2018. In addition, the parties were informed that an order of procedure would be rendered by the Appeals Body in due course.
13. On 31 May 2018, the Appellant filed its grounds for appeal. The club refers to the fact that it understands that no hearing would take place after his withdrawal of the UEFA competitions. However, if a decision on the merits will be taken, it notes its will of holding a hearing in this matter. Further, in its statements, the Appellant, essentially, argued the following:
 - The decisions passed by the Football Federation of Armenia (hereinafter - FFA) Disciplinary Committee on 5 May 2018 and by the FFA Appeals Committee on 18 May 2018 cannot be regarded as valid, as the transparency and procedural fairness of both proceedings were absolutely not ensured.
 - The facts of the case are intentionally being distorted by FFA.
 - There is a grounded risk that a group of people has acted with an intention to cause harm to FC Shirak.
14. On 1 June 2018, the EDI had been informed about the statements of the club. The parties were again reminded that the Appeals Body will render a decision based on the above mentioned written statements submitted by the parties.

III. Legal Considerations Of The Appeals Body

A. The legal framework.

15. The UEFA Statutes, rules and regulations, in particular the UCL Regulations are applicable to these proceedings.
 16. Article 30 (4) DR states as follows: "The Appeals Body has jurisdiction to hear appeals against decisions by the Control, Ethics and Disciplinary Body and to rule on particular
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urgent cases referred to it directly by the chairman of the Control, Ethics and Disciplinary Body.”

17. According to Article 4 of UEFA Champions League Regulations (UCL Regulations):

4.02 If, on the basis of all the factual circumstances and information available to UEFA, UEFA concludes to its comfortable satisfaction that a club has been directly and/or indirectly involved, since the entry into force of Article 50(3) of the UEFA Statutes, i.e. 27 April 2007, in any activity aimed at arranging or influencing the outcome of a match at national or international level, UEFA will declare such club ineligible to participate in the competition. Such ineligibility is effective only for one football season. When taking its decision, UEFA can rely on, but is not bound by, a decision of a national or international sporting body, arbitral tribunal or state court. UEFA can refrain from declaring a club ineligible to participate in the competition if UEFA is comfortably satisfied that the impact of a decision taken in connection with the same factual circumstances by a national or international sporting body, arbitral tribunal or state court has already had the effect to prevent that club from participating in a UEFA club competition.

4.03 In addition to the administrative measure of declaring a club ineligible as provided for in Paragraph 4.02, the UEFA Organs for the Administration of Justice can, if the circumstances so justify, also take disciplinary measures in accordance with the UEFA Disciplinary Regulations.

B. Merits

18. The case in hand is about the club FC Shirak, including one of its officials, who recently has been sanctioned by the Football Federation of Armenia for incidents relating to match fixing.
 19. The original scope of the current proceedings is aimed at evaluating the possible legal consequences of this incident in the light of the UEFA regulations and, specifically, the Article 4.02 UCL Regulations, if any.
 20. The EDI, following the appointment of the UEFA General Secretary, issued a report concluding that the club violates the admission criteria for participating at UEFA club competitions enshrined in Article 4.02 UCL Regulations. He requests to declare the club ineligible to participate at the next UEFA Champions League season 2018/2019, independently from the potential additional disciplinary measures contemplated in Article 4.03 UCL Regulations.
 21. The club, after being notified of the current disciplinary proceedings, confirmed its withdrawal to participate at the UEFA competitions season 2018/2019. In addition, it contests in its reply to the EDI report both the conclusions of the FFA decisions and the EDI report.
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a. The competence of UEFA

22. It is noted that before the starting of each seasons, clubs are obliged to fill in the so called "Admission Form", which includes the confirmation by the latter of having met the admission criteria established in the relevant UEFA club competition regulations. In this regard, and according to Article 4.01 UCL Regulations, to be eligible to participate the clubs must, not have been directly and/or indirectly involved, since the entry into force of Article 50(3) of the *UEFA Statutes*, i.e. 27 April 2007, in any activity aimed at arranging or influencing the outcome of a match at national or international level and confirm this to the UEFA administration in writing.
23. Further, Article 4.02 UCL Regulations establishes that if, on the basis of all the factual circumstances and information available to UEFA, UEFA concludes to its comfortable satisfaction that a club has been directly and/or indirectly involved, since the entry into force of Article 50(3) of the *UEFA Statutes*, i.e. 27 April 2007, in any activity aimed at arranging or influencing the outcome of a match at national or international level, UEFA will declare such club ineligible to participate in the competition. Such ineligibility is effective only for one football season. When taking its decision, UEFA can rely on, but is not bound by, a decision of a national or international sporting body, arbitral tribunal or state court. UEFA can refrain from declaring a club ineligible to participate in the competition if UEFA is comfortably satisfied that the impact of a decision taken in connection with the same factual circumstances by a national or international sporting body, arbitral tribunal or state court has already had the effect to prevent that club from participating in a UEFA club competition.
24. Based on the above, the Appeals Body deems that two conditions need to be fulfilled in order to assess the compliance by club with the admission criteria in cases of a potential involvement of the club in an activity aimed at arranging or influencing the outcome of a match at national or international level (Article 4.02 (g) UCL Regulations). First, the club must be allowed to participate at the UEFA competitions because of the sporting merits achieved during the previous domestic season. Second, the club accepts indeed to compete at the next UEFA club competition season, independently of any possible administrative or disciplinary procedures it may confront prior to the start of the said UEFA competition in accordance with Article 4 UCL Regulations.
25. The Appeals Body notes that FC Shirak submitted the so called "Admission Form" expressing its will to participate at the next UEFA club competition season 2018/2019 on 4 May 2018. However, after confronting the current disciplinary proceedings, by means of its communications of 30 May and 31 May 2018, it decided to withdraw its participation from the next UEFA competition for the next season 2018/2019.
26. It is noted that, even though the first condition is fulfilled i.e. to be qualified to UEFA club competitions for sporting merits, the club has voluntarily withdrawn its participation for the next UEFA club competition. This decision is subsequent to the opening of disciplinary proceedings for potential violations of the admission criteria contemplated in Article 4 UCL Regulations.
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27. Bearing the above in mind, the direct legal consequence of this decision is that, as the club has withdrawn its participation at the next UEFA competition season 2018/2019, this UEFA disciplinary body has no competence to assess if the club indeed fulfils with the admission criteria contemplated in Article 4.01 UCL Regulations. It is noted that the territorial scope of Article 4.02 is extended to domestic cases, but it does not mean that UEFA has a *carte blanche* in prosecuting clubs for national match-fixing violations. Competence in respect of national match-fixing is provided by the UCL Regulations is restricted to clubs that are subjected to these UCL Regulations (CAS 2013/A/3256).

b. In casu

28. Notwithstanding the above procedural considerations and as an obiter dicta, the Appeals Body takes this opportunity to express its opinion on the merits of the case insofar it understands that the legal ramifications of this decision may comport other consequences as regards the UEFA club competition.

29. The Appeals Body deems that FC Shirak by withdrawing its participation from the UEFA competitions season 2018/2019 complied also with the request of the UEFA Ethics and Disciplinary Inspector in his report. It follows that the aim and *ratio legis* of Article 4.02 UEFA club competitions is accomplished and, consequently, the legal consequence of the club's withdrawal from the competition is to be understood as having the same consequences as the possible administrative measures imposed in cases of the same kind (Article 4.02 UCL Regulations).

30. It is noted that the evidence at hand demonstrates that FC Shirak by means of one of its officials had been involved in arranging or influencing the outcome of a match at national level. FC Shirak in a letter sent to the FFA disciplinary committee doesn't deny the fact that its director, Ararat Harutyunyan, may have contacted the former Eduard Kpodo to fix the result of the match FC Banants v. FC Shirak of 5 May 2018. In its reply to the EDI Report, the club does not deny again this either. In this regard, the case file contains a number of evidence, e.g. taped conversations and messages between these individuals, pointing to the fact that the attempt to fix the match existed.

31. The club merely points to some procedural issues at domestic level before the competent disciplinary bodies of the FFA and at an alleged plot against the club. But none of these elements have been demonstrated by the club, and are not diminishing by any extent the corroboration by FC Shirak of the alleged match fixing activity of its official and the solid evidence indicating its existence.

32. It follows, also in the light of the recent CAS Case law that FC Shirak by means of its official is itself at least indirectly involved in match fixing activities (CAS 2014/A/3625). In these circumstances, the Appeals Body deems that under the above considerations Article 4.02 UCL Regulations would be applicable to the current proceedings, being the outcome to declare FC Shirak ineligible to participate at the next UEFA club competitions season 2018/2019.

33. This conclusion is in line with CAS Case law, CAS 2013/A/3256. In substance by applying the above general findings to the facts of this particular case, the Appeals Body finds that the withdrawal of FC Shirak shall be regarded as the voluntary imposition of a period of ineligibility equal to a period of ineligibility pronounced by UEFA on the basis of article 4.02 UCL Regulations. In this respect, this UEFA disciplinary body thus finds it irrelevant for this purpose how this period is finally imposed. It is noted, nevertheless, neither of these options excludes the possibility of further disciplinary proceedings to be instigated against the club. To the contrary, this possibility is specifically provided for in article 4.03 UCL Regulations.

On these grounds, the Appeals Body

decides

The Appeals Body decides that the proceedings instigated against FC Shirak are terminated.

Chairman



Pedro Tomás
