



Tribunal Arbitral du Sport  
Court of Arbitration for Sport

**CAS 2014/A/3870 Bursaspor Kulübü Derneği v. UEFA**

## **ARBITRAL AWARD**

**delivered by the**

## **COURT OF ARBITRATION FOR SPORT**

**sitting in the following composition:**

President: Mr. Mark A. Hovell, Solicitor, Manchester, England  
Arbitrator: Mr. Manfred P. Nan, Attorney-at-law, Arnhem, The Netherlands  
Arbitrator: Mr. João Nogueira da Rocha, Attorney-at-law, Lisbon, Portugal

**in the arbitration between**

**BURSASPOR KULÜBÜ DERNEĞİ, Bursa, Turkey**

Represented by Ms. Jale Demir and Mr. Nihat Guman, Attorneys-at-law, Bursa, Turkey

**Appellant**

**and**

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

Represented by Mr. Julien Zylberstein and Mr. Andrew Mercer of UEFA

**Respondent**

**I. PARTIES**

1. Bursaspor Kulübü Derneği (hereinafter referred to as “Bursaspor” or the “Appellant”) is a football club with its registered office in Bursa, Turkey. The Appellant is registered with the Turkish Football Federation (hereinafter referred to as the “TFF”), which in turn is affiliated to the Fédération Internationale de Football Association (hereinafter referred to as “FIFA”).
2. Union des Associations Européennes de Football (hereinafter referred to as “UEFA” or the “Respondent”) is the administrative body for association football in Europe with its registered office in Nyon, Switzerland. It is one of six continental confederations of FIFA.

**II. FACTUAL BACKGROUND**

3. Below is a summary of the main relevant facts and allegations based on the parties’ written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.
4. On 24 February 2012, the UEFA Control and Disciplinary Body (hereinafter referred to as the “UEFA CDB”) found that Bursaspor had breached the UEFA Club Licencing and Financial Fair Play Regulations (2010 edition) because it had overdue payables towards other football clubs and an exclusion from UEFA club competitions was imposed on Bursaspor (hereinafter referred to as the “CDB Decision”). The CDB Decision provided:

*“The Control and Disciplinary Body*

**decides:**

1. *To fine Bursaspor €200,000.*
2. *To exclude Bursaspor from one UEFA club competition for which it qualifies in the next four seasons. This exclusion is suspended for a probationary period of three years.*
3. *The above fine (€200,000) must be paid into the bank account indicated below within 30 days of communication of the grounds for this decision.”*

5. On 30 May 2012, the UEFA Appeals Body (hereinafter referred to as the “UEFA AB”) issued a decision excluding Bursaspor from one UEFA club competition and imposing a fine of EUR 50,000 suspended for three years (hereinafter referred to as the “AB Decision”). The AB Decision provided:

- “1. *The appeal lodged by UEFA is partially admitted. Therefore, Bursaspor is excluded from one UEFA club competition for which it qualifies in the next three seasons.*
2. *Bursaspor is fined €50,000, with payment of the fine suspended for a probationary period of three years...*”

6. On 1 June 2012, the UEFA Club Licensing and Financial Fair Play Regulations (2012 edition) came into force (hereinafter referred to as the “UEFA Regulations”). Article 66 of the UEFA Regulations provides:

- “1. *The licensee must prove that as at 30 June of the year in which the UEFA club competitions commence it has no overdue payables (as specified in Annex VIII) towards its employees and/or social/tax authorities (as defined in paragraphs 2 and 3 of Article 50) that arose prior to 30 June.*
2. *By the deadline and in the form communicated by the UEFA administration, the licensee must prepare and submit a declaration confirming the absence or existence of overdue payables towards employees and social/tax authorities.*
3. *The following information must be given, as a minimum, in respect of each overdue payable towards employees, together with explanatory comment:*
  - a) *Name of the employee;*
  - b) *Position/function of the employee;*
  - c) *Start date;*
  - d) *Termination date (if applicable); and*
  - e) *Balance overdue as at 30 June, including the due date for each overdue element.*
4. *The following information must be given, as a minimum, in respect of each overdue payable towards social/tax authorities, together with explanatory comment:*
  - a) *Name of the creditor;*

- b) *Balance overdue as at 30 June, including the due date for each overdue element.*
5. *The declaration must be approved by management and this must be evidenced by way of a brief statement and signature on behalf of the executive body of the licensee.*
6. *If the licensee is in breach of indicator 4 as defined in Article 62(3), then it must also prove that, as at the following 30 September, it has no overdue payables (as specified in Annex VIII) towards employees and/or social/tax authorities that arose prior to 30 September. Paragraph 2 to 5 above apply accordingly.”*
7. On 22 June 2012, the Court of Arbitration for Sport (hereinafter referred to as the “CAS”) annulled the AB Decision and replaced it with its own decision following the CDB Decision in case reference CAS 2012/A/2821 (hereinafter referred to as the “CAS Decision”). The operative part of the CAS Decision was duly notified to the parties and provided:
- “The Court of Arbitration for Sport rules that:*
1. *The appeal filed by Bursaspor Kulübü Derneği on 8 June 2012 against the UEFA Appeals Body decision of 30 May 2012 is upheld.*
  2. *The UEFA Appeals Body decision dated 30 May 2012 is annulled.*
  3. *Bursaspor Kulübü Derneği is excluded from one UEFA club competition for which it qualifies in the next four years. This exclusion is suspended for a probationary period of three years.*
  4. *Bursaspor Kulübü Derneği is fined EUR 250,000 (two hundred fifty thousand Euros)...”*
8. On 10 July 2012, the CAS Decision, in full, was provided to the parties.
9. At the end of the 2013/14 Season in Turkey, Bursaspor finished in 5<sup>th</sup> place and thereby qualified on the pitch for UEFA’s Europa League competition for Season 2014/15.
10. As a consequence of such qualification, Bursaspor were required by the UEFA Regulations to supply the TFF with certain financial information as at 30 June 2014. This was completed by 15 July 2014.
11. Bursaspor’s completed monitoring documentation indicated overdue payables towards employees of EUR 3,443,000 as at 30 June 2014.
12. From 4 to 22 August 2014, Bursaspor paid EUR 2,188,000 and informed UEFA of the payments.

13. On 15 October 2014, the TFF submitted Bursaspor's updated monitoring documentation in accordance with the UEFA Regulations. Bursaspor's documentation indicated total overdue payables towards employees of EUR 1,191,000 as at 30 September 2014.
14. From 22 to 31 October 2014, Bursaspor further reduced the overdue payables by making payments of EUR 330,000 and deferring a further sum of EUR 115,000.
15. On 13 November 2014, UEFA's Club Financial Control Body's (hereinafter referred to as the "CFCB") Investigatory Chamber issued a decision finding that Bursaspor had breached Article 66(1) of the UEFA Regulations as a result of having overdue payables toward employees as at 30 June 2014 and Article 66(6) as a result of having overdue payables towards employees at 30 September 2014. In light of the findings the CFCB Chief Investigator suggested that the CFCB Adjudicatory Chamber imposed, in accordance with Article 27(c) of Procedural Rules Governing the UEFA Financial Control Body (2014 Edition) (hereinafter referred to as "the Procedural Rules"), disciplinary measures consisting of an exclusion from the next UEFA club competition which Bursaspor qualifies on sporting merit in the next three seasons unless Bursaspor was able to prove, by 31 January 2015, that it had paid the overdue payables due to employees as at 30 September 2014 and a fine, to be determined by the CFCB Adjudicatory Chamber at its discretion (hereinafter referred to as the "Investigatory Chamber Decision").
16. On 13 November 2014, the Chairman of the CFCB wrote to Bursaspor referring to the Investigatory Chamber Decision and informing Bursaspor that, in application of Articles 19 and 20 of the Procedural Rules, the judgment stage had been opened. Bursaspor was invited to provide any observations by 24 November 2014.
17. On 24 November 2014, Bursaspor wrote to the CFCB Adjudicatory Chamber confirming that it had already made a number of payments. The letter confirmed that Bursaspor had paid most of the payments which were overdue on 30 September 2014 and that as at 24 November 2014 the outstanding overdue debt to the players was EUR 316,850. Bursaspor undertook to pay the remaining overdue debt of EUR 316,850 by 15 December 2014.
18. On 2 December 2014, the Chairman of the CFCB wrote to Bursaspor in relation to the CAS Decision. It was noted that the exclusion from UEFA club competitions, that had been suspended for a probationary period of three years, was still active and that the CFCB Adjudicatory Chamber was bound to consider the CAS Decision. Bursaspor was invited, by 8 December 2014, to comment on the CAS Decision.
19. On 8 December 2014, Bursaspor wrote to the CFCB Adjudicatory Chamber asking for it not to recognise the CAS Decision as the CFCB Adjudicatory Chamber lacked the jurisdiction to deal with it.

20. On 15 December 2014, Bursaspor wrote again to the CFCB Adjudicatory Chamber providing the details of a number of payments made and confirming that it had now paid all of the overdue payables that existed at the end of September 2014.
21. On 19 December 2014, the CFCB Adjudicatory Chamber held that Bursaspor had breached the UEFA Regulations because it had overdue payables towards employees of EUR 3,433,000 as at 30 June 2014 and EUR 1,191,000 as at 30 September 2014 (hereinafter referred to as the “Appealed Decision”). The Appealed Decision provided:

*“The CFCB Adjudicatory Chamber hereby decides:*

*As a consequence of the 2012 Decision:*

1. *The exclusion imposed in the 2012 Decision shall come into immediate effect and Bursaspor is therefore excluded from participating in the next UEFA club competition for which it would otherwise qualify in the next four (4) seasons (i.e. the 2015/16, 2016/17, 2017/18 and 2018/19 seasons).*

*Without prejudice to the above, and as a consequence of the breaches of Articles 66(1) and 66(6) of the CL&FFP Regulations in the present case:*

2. *To impose on Bursaspor a further exclusion (i.e. for a different season to the season in which the immediate exclusion referred to in Paragraph 1 of this Operative part applies) from participating in a UEFA club competition for which it would otherwise qualify in the next four (4) seasons (i.e. the 2015/16, 2016/17, 2017/18 and 2018/19 seasons), unless the Club is able to prove by 31 January 2015 that it has paid the amounts that were identified as overdue payables on 30 September 2014 (i.e. one million, one hundred and ninety-one thousand Euros (€1,191,000)).*
3. *To impose a fine of one hundred thousand Euros (€100,000) on Bursaspor.*
4. *Fifty thousand Euros (€50,000) of the amount referred to in Paragraph 3 of this Operative part is suspended and will only fall due if the Club is not able to prove by 31 January 2015 that it has paid the amount that were identified as overdue payables on 30 September 2014 (i.e. one million, one hundred and ninety-one thousand Euros (€1,191,000)).*
5. *The conservatory measure imposed by the CFCB Investigatory Chamber (as referred to in Paragraph 9(c) of this Decision) will no longer be in force upon payment of the immediately payable portion (i.e. fifty thousand Euros (€50,000)) of the fine referred to in Paragraph 3 of this Operative part....”*

**III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

22. On 25 December 2014, Bursaspor filed a Statement of Appeal with the CAS in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (hereinafter referred to as the “CAS Code”). Bursaspor nominated Mr. Manfred Nan as an arbitrator. Bursaspor made the following requests for relief:

*“Subject to supplementing or otherwise amending the present prayer for relief at a later stage of the proceedings, the Appellant hereby request*

1. *to declare that the Appellant has not violated the UEFA Club Licensing and Financial Fair Play Regulations;*
2. *to annul the decision of the UEFA CLUB FINANCIAL CONTROL BODY Adjudicatory Chamber dated on 19<sup>th</sup> December 2014 with reference AC-05/2014;*
3. *to order the Respondent to pay the entire costs of the present arbitration, if any;*
4. *to order the Respondent to pay the entire costs of the Claimant’s legal representation and assistance as well as other costs incurred by the Claimant in connection with this arbitration.”*

23. On 5 January 2015, Bursaspor filed its Appeal Brief with the CAS. Bursaspor referred to its prayers for relief as set out in the Statement of Appeal.

24. On 9 January 2015, UEFA stated that it wished to appoint Mr João Nogueira da Rocha as an arbitrator.

25. On 20 January 2015, the CAS Court Office, pursuant to Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, informed the parties that the Panel appointed to hear the matter was constituted as follows: President, Mr. Mark Hovell, Solicitor, Manchester, England, and Mr. Manfred Nan and João Nogueira da Rocha Attorneys-at-law in Arnhem, the Netherlands and Lisbon, Portugal respectively.

26. On 27 January 2015, UEFA filed its Answer with the following request for relief:

*“On the grounds set out above, UEFA respectfully requests CAS to dismiss the appeal and to order payment by the Appellant of all costs of the arbitration as well as a contribution towards legal costs suffered by UEFA.”*

27. On 27 January 2015, the CAS Court Office, on behalf of the Panel, invited Bursaspor to provide the CAS Court Office, by 3 February 2015, with copies of the exhibits to its

letter dated 24 November 2014. Further, Bursaspor was invited to provide a translation into English of the bank receipts/payment documents filed as exhibit 3 of its Appeal Brief.

28. On 28 January 2015, the CAS Court Office acknowledged receipt of the Answer and, in view of the fact that Bursaspor had already requested a hearing, invited UEFA, by 2 February 2015, to confirm whether it preferred for a hearing to be held or for the Panel to issue an award based solely on the parties' written submissions.
29. On 28 January 2015, UEFA confirmed that it did not object to the holding of a hearing.
30. On 9 February 2015, the CAS Court Office, on behalf of the Panel, invited the parties and their witnesses to attend the hearing which would be held on 14 April 2015 at the CAS Court Office, Lausanne, Switzerland.
31. A hearing was held on 14 April 2015 at the CAS premises in Lausanne, Switzerland. The parties did not raise any objection as to the constitution of the Panel. The Panel was assisted by Mr. Antonio de Quesada, Counsel to CAS. The following persons attended the hearing:
  - i. Appellant: Mr. Bolukbasi, Bursaspor's President, Mr. Guman and Ms. Demir both counsel, and Mr. Gedik, translator;
  - ii. Respondent: Dr. Silvero, UEFA Head of Disciplinary and Integrity and Mr. Zylberstein and Mr. Mercer, both UEFA counsel.
32. At the hearing Bursaspor withdrew its first prayer for relief and acknowledged that it had breached the UEFA Regulations in 2014 with its overdue payables. Bursaspor maintained its prayer for relief against the CFCB Adjudication Chamber's decision to impose the previously suspended ban contained in the CAS Decision.
33. The parties were given the opportunity to present their cases, to make their submissions and arguments and to answer questions posed by the Panel. The President of Bursaspor spoke at length regarding the recent history of the club, about its future prospects and the effect any ban would have on the club. UEFA assisted the Panel with its questions regarding the UEFA Regulations and the wording of the Appealed Decision. After the parties' final, closing submissions, the hearing was closed and the Panel reserved its detailed decision to this written Award.
34. Upon closing the hearing, the parties expressly stated that they had no objections in relation to their right to be heard and that they had been treated equally in these arbitration proceedings. The Panel had carefully taken into account in its subsequent



deliberation all the evidence and the arguments presented by the parties, both in their written submissions and at the hearing, even if they have not been summarised in the present Award.

#### **IV. THE PARTIES' SUBMISSIONS**

##### **A. The Appellant's Submissions**

In summary, Bursaspor submitted the following in support of its Appeal:

35. The CFCB Adjudicatory Chamber erred in reaching its decision as it had no jurisdiction to impose the sanction that was suspended in the CAS Decision. Further, Bursaspor did not violate Article 66 of the UEFA Regulations. The CFCB Adjudicatory Chamber based its decision on the wrong set of facts and therefore the CAS should set aside the sanction or at least impose a milder sanction that is proportionate to the circumstances of the violation.
36. Bursaspor has made a number of payments of overdue payables in 2014. Bursaspor committed to pay the remaining EUR 861,000 by 15 December 2014 and completely paid these amounts by this deadline.
37. In 2012, the competent bodies for the application of the UEFA Regulations were the UEFA CDB and the UEFA AB. However, those judicial bodies were "*not professional on financial subjects*" and therefore UEFA introduced new specific judgment bodies and mechanisms. Bursaspor is one of the "*victims*" of the previous decision bodies. Bursaspor faced very heavy sanctions in 2012 that would not be imposed today.
38. Since 2013, Bursaspor experienced extraordinary conditions. In May 2013, the President passed away due to a heart attack. In June 2013 there was a new board elected and a year later that board resigned. In June 2014, the current President was elected by the general assembly. The current President informed the Panel at the hearing that he was not made aware of the CFCB Investigatory Committee's investigation until October 2014. This was the fault of one member of his management team, that he dismissed as a result. Bursaspor only owed EUR 1.2m to the employees and could have repaid this earlier, instead of other debts, had he been aware. Nonetheless, Bursaspor has paid all overdue debt that existed as at 30 September 2014 by 15 December 2014.
39. Further, under the leadership of the current President, Bursaspor had reduced the total debt of the Club by 60m Turkish Lira; has parted company with 7 expensive players, replacing them with 13 youth players that have received professional contracts; has improved its relations with the municipal authorities and corporate businesses in Bursaspor and has secured the club's move to its new "crocodile" stadium.

40. The CFCB Adjudicatory Chamber suddenly imposed the previously suspended exclusion which was originally imposed by the UEFA CDB. However, the CFCB Adjudicatory Chamber is now the deciding body on these type of matters. Both bodies have different jurisprudences.
41. Bursaspor was not informed by the CFCB Investigatory Chamber of the application of the suspected sanction. Therefore, the immediate imposition of such sanction was not appropriate for Bursaspor.
42. In relation to the 2014 overdue payables, the new sanction was a one year exclusion and fine. However, it should be noted that Bursaspor has paid all its overdue debts by 15 December 2014. The CFCB Adjudicatory Chamber did not take into account the conditions of Bursaspor. First of all, Bursaspor was deeply affected by the match fixing investigation in Turkey. Although not a part of the match fixing investigation, the club has been economically affected and had been unable to attract a main sponsor.
43. In the year 2012, Bursaspor's budget deficit was EUR 8,700,000, in 2013 was EUR 1,800,000; and in the year 2014 just EUR 400,000. As can be clearly seen, the performance of the new board and President has resulted in the drastic reduction in the budget deficit and the club has only made 5 transfer contracts, 2 of which were on a loan basis, in this time. Further, the club has not paid huge transfer fees. Bursaspor was planning to sell its property to put the club in a stronger financial position. The CFCB Adjudicatory Chamber should have taken all these matters into consideration.
44. The Appealed Decision is not appropriate compared with the circumstances of the case. The negligence of 1 employee resulted in the President of Bursaspor not knowing of the investigation; if he had then all arrears would have been paid and the CAS Decision would not have been triggered.
45. At the hearing there was a discussion as to when exclusion from the next UEFA competition Bursaspor qualifies for in the next 4 years actually starts. Bursaspor submitted that it started in 2012 when the CAS Decision was issued.

#### **B. The Respondent's Submissions**

In summary, UEFA submitted the following in its defence:

46. Enforcement of the UEFA Regulations has, over time, fallen under the jurisdiction of several bodies. Initially cases were handled by the UEFA Club Financial Control Panel (hereinafter referred to as the "CFCP") in conjunction with the UEFA Disciplinary Bodies, the UEFA CDB and the UEFA AB. Recently, in 2012, UEFA decided to restructure its disciplinary process under the UEFA Regulations and the CFCB was

established to carry out the functions previously handled by the CFCP and the UEFA Disciplinary Bodies.

47. The existence of the overdue payables giving rise to Bursaspor's breach of the UEFA Regulations has been well established and has even been accepted by Bursaspor. The UEFA Regulations expressly require clubs to prove that they have no overdue payables at certain assessment dates. A failure to do so constitutes a breach of the UEFA Regulations. The payment of overdue amounts after the assessment deadlines does not cure such breaches.
48. The CFCB Adjudicatory Chamber is bound to consider the CAS Decision. To not do so would run contrary to established legal principles and also common sense. The Appealed Decision to enforce the suspended exclusion imposed by the CAS Decision, relates entirely to Bursaspor's failure to comply with the UEFA Regulations within the 3 year probationary period. It is not possible for Bursaspor to reopen an appeal against a disciplinary measure imposed in 2012, which was upheld by the CAS. Further, Bursaspor did not demonstrate how the additional measures are disproportionate. Indeed, it should be noted that the generous conditions attached to the suspension of the exclusion in the Appealed Decision appear to have already been satisfied by Bursaspor.
49. Bursaspor also refers to its past organisational problems, current financial difficulties and enhanced prospects for the future. Such factors are however irrelevant since the existence of the overdue payables cannot reasonably be disputed and any justification for such amounts becoming overdue has no bearing.
50. Among the monitoring requirements, a club must prove that it has no overdue payables towards other football clubs, employees and social/tax authorities as at 30 June. Where a club has any such overdue payables, it triggers "indicator flow" and, accordingly, the club must also prove that it has no overdue payables towards other football clubs, employees and social/tax authorities as at 30 September. Any breach of the UEFA Regulations may be penalised by the CFCB Adjudicatory Chamber in accordance with the Procedural Rules.
51. It must be noted that CAS jurisprudence has highlighted the importance of UEFA's approach to club licensing and financial fair play. Further, various European Union institutions have underlined the importance and need for this system.
52. In the CAS Decision, the CAS found that Bursaspor had breached the 2010 edition of the UEFA Regulations because it had overdue payables towards other football clubs and an exclusion from UEFA Club competitions was imposed on Bursaspor. This exclusion was suspended for a probationary period of 3 years. In the Appealed Decision, the CFCB Adjudicatory Chamber found that Bursaspor had breached the UEFA Regulations because it had overdue payables towards employees of EUR 3,433,000 as at 30 June

2014 and EUR 1,191,000 as at 30 September 2014. As a consequence of such breaches, the CFCB Adjudicatory Chamber imposed, at paragraphs 2 to 5 of the Appealed Decision, a fine of EUR 100,000 and a new exclusion from UEFA club competitions on Bursaspor. However, this new exclusion will not now take effect, as Bursaspor has proved that it has paid the relevant overdue amounts by 31 January 2015.

53. The Appealed Decision has been rendered by the competent UEFA body in accordance with the UEFA Statutes and Procedural Rules. The Appealed Decision is based on Articles 66 and 72 of the UEFA Regulations and Article 29 of the Procedural Rules.
54. Although the CFCB was established to replace the CFCP and the UEFA Disciplinary Bodies with regard to the UEFA Regulations, this did not represent a “cleaning of the slate” for every club that had ever breached the UEFA Regulations. Such a consequence would be “absurd”.
55. Since the adjudicatory function which was previously exercised by the CFCP and the UEFA Disciplinary Bodies was simply transferred to the CFCB Adjudicatory Chamber, it logically follows that responsibility for enforcing past disciplinary measures was also transferred, meaning the CFCB Adjudicatory Chamber was bound to consider the CAS Decision.
56. The CFCB Adjudicatory Chamber and UEFA are legally bound to follow the decisions of CAS. It is wholly inappropriate for Bursaspor to seek to avoid the correct implementation of the CAS Decision by claiming that the competent UEFA body for UEFA Regulations lacks jurisdiction.
57. The significance of Article 53 of the UEFA Regulations should also be noted, which provides that the CFCB must at all times bear in mind the overall objectives of the UEFA Regulations “*to defeat any attempt to circumvent these objectives*”. The importance of this provision cannot be overstated and the general principle in the overall objectives of the UEFA Regulations should be considered when the CFCB seeks to prevent clubs from attempting to circumvent the UEFA Regulations as recently been acknowledged by CAS jurisprudence.
58. Bursaspor also appear to suggest that the CFCB Investigatory Chamber was required to inform Bursaspor of its failure to comply with the probationary period set out in the CAS Decision. This is an ill-founded argument. The CFCB Investigatory Chamber’s duties were fulfilled by presenting the facts of its 2014 investigations to the Adjudicatory Chamber. There was no need for additional investigations or notifications to be made to Bursaspor. Further, the Adjudicatory Chamber gave Bursaspor a chance to comment on the CAS Decision.

Tribunal Arbitral du Sport  
Court of Arbitration for Sport

CAS 2014/A/3870 Bursaspor Kulübü Derneği v. UEFA - Page 13

59. In relation to Bursaspor's argument that the CFCP and UEFA Control and Disciplinary Body were not "professional on financial subjects", it must be recalled that the CFCP was made up of financial and legal experts and the experience and reputation of the UEFA CDB in disciplinary matters cannot be overstated. When the CFCB was created this was principally motivated by a desire to streamline the process.
60. In the CAS Decision, it was determined that the exclusion imposed on Bursaspor from UEFA club competition should be suspended unless there were further breaches of the UEFA Regulations. The facts of the present case clearly demonstrate that Bursaspor committed further breaches. Further, that such breaches relate to "overdue payables". It follows from the foregoing that the CFCB Adjudicatory Chamber is obliged to consider the CAS Decision. In light of the above, Bursaspor is not a "victim" and is merely a club which has been rightly found to be in breach of the UEFA Regulations.
61. The CFCB Adjudicatory Chamber was fully entitled to impose disciplinary measures on Bursaspor, both in respect of the club's recent breaches and also because of the club's non-compliance with the UEFA Regulations during the original probationary period. With regard to proportionality, the CFCB Adjudicatory Chambers' Decision to enforce the suspended exclusion imposed in the CAS Decision relates entirely to Bursaspor's failure to comply with the UEFA Regulations within the probationary period attached to such exclusions. It is not possible for Bursaspor to reopen an appeal against a disciplinary measure imposed in 2012 which has been confirmed by the CAS. There is no room for Bursaspor to challenge the proportionality of the suspended exclusion imposed by the CAS in 2012.
62. At the hearing, UEFA confirmed that it was its position that the disciplinary sanction in the CAS Decision was a ban (or exclusion) from the next UEFA competition Bursaspor qualified for "in the next 4 years". This had a condition attached to it, namely that it was suspended for 3 years and would only be activated if Bursaspor reoffend during the next 3 years. In 2014, Bursaspor did reoffend and the disciplinary sanction then came to life and the 4 years ran from the date of the new offence, not from the date of the CAS Decision.

**V. JURISDICTION OF THE CAS**

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

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

Tribunal Arbitral du Sport  
Court of Arbitration for Sport

CAS 2014/A/3870 Bursaspor Kulübü Derneği v. UEFA - Page 14

64. The jurisdiction of the CAS, which is not disputed, derives from Article 34(2) of the Procedural Rules that provides:

*“Final decisions of the CFCB may only be appealed before the Court of Arbitration for Sport (CAS) in accordance with the relevant provisions of the UEFA Statutes.”*

65. Further, Articles 62 of the UEFA Statutes (2014 Edition) provides:

*“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...”*

66. The jurisdiction of the CAS is further confirmed by the Order of Procedure duly signed by the parties.

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

**VI. APPLICABLE LAW**

68. 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.”*

69. Article 64 of the UEFA Statutes stipulates the following:

*“These Statutes shall be governed in all respects by Swiss Law. The legal forum shall be the headquarters of UEFA. Lausanne (Switzerland) shall be the legal forum for all cases which, in accordance with these Statutes, come under the jurisdiction of CAS.”*

70. The parties agreed to the application of the various statutes and regulations of UEFA, and in particular the UEFA Regulations. Further, UEFA submitted that Swiss law was applicable whereas Bursaspor remained silent on the applicable law. In light of Article 63 of the UEFA Statutes and Article R58 of the CAS Code, the absence of agreement between the parties, and that UEFA, who issued the Appealed Decision is domiciled in Switzerland, the Panel determined that Swiss law applies on a subsidiary basis, should the need arise to fill a possible gap in the various statutes and regulations of UEFA.

**VII. ADMISSIBILITY**

71. The Appeal was filed within the 10 days set by Article 62(3) of the UEFA Statutes. The Appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fee.
72. It follows that the Appeal is admissible.

**VIII. MERITS OF THE APPEAL**

**A. The Main Issues**

73. The Panel observes that the main issues to be resolved are:
- a. Did the CFCB Adjudicatory Chamber have jurisdiction to give effect to a suspended exclusion imposed pursuant to the CAS Decision?
  - b. Are the disciplinary measures imposed by the CFCB Adjudicatory Chamber proportionate?
  - c. When should the 4 year qualification period start and finish?

**Jurisdiction**

74. The Panel noted that once Bursaspor had withdrawn its first prayer for relief, acknowledging it had overdue payables in 2014, in breach of the UEFA Regulations, the main issue to be considered is whether the CFCB Adjudicatory Chamber was entitled or, indeed, obliged to lift the suspension attached to the ban contained in the CAS Decision.
75. The Panel noted that the suspension, relating to previous overdue payables in 2012, was contained in the CAS Decision. The CDB Decision had been replaced by the AB Decision, which in turn had been replaced by the CAS Decision. The Panel noted that UEFA submitted that it and its CFCB Adjudicatory Chamber are obliged pursuant to UEFA's Statutes to recognise and enforce the Decisions of CAS. Indeed, the Panel noted the clear wording of Article 11.2(e) of UEFA's Disciplinary Regulations that UEFA's general principles of conduct would be breached by any body assigned by UEFA to exercise a function (such as the CFCB Adjudicatory Chamber is pursuant to the UEFA Regulations) should it disregard a decision of the CAS.
76. The Panel noted the transition of the UEFA Regulations from the 2010 edition to the 2012 edition saw the transfer of responsibilities to enforce the same from the CFCP to the CFCB. An integral part of such transition was the role of the UEFA CDB and UEFA AB which were transferred to the CFCB Investigatory Chamber and the CFCB

Adjudicatory Chamber. The Panel was satisfied that the result of this transition was that the CFCB Adjudicatory Chamber now is the appropriate body within UEFA to deal with any suspended sanctions arising from the 2010 edition of the UEFA Regulations, whether those sanctions came from decisions of the UEFA CDB, the UEFA AB or from the CAS.

77. There was no dispute between the parties that Bursaspor reoffended within the 3 year period set out in the CAS Decision dated 10 July 2012, when on 15 July 2014, by Bursaspor's own declaration, it had EUR 3,443,000 of overdue payables to its employees in breach of Article 66 of the UEFA Regulations. This new offence lifted the suspensive effect of the competition ban in the CAS Decision and the Panel determined that the CFCB Adjudicatory Chamber had jurisdiction to consider the CAS Decision and to confirm the competition ban contained within the CAS Decision.

### **Proportionality**

78. Bursaspor challenged the proportionality of paragraph 1 of the Appealed Decision on a number of grounds; firstly, that the negligence of one employee caused a delay in clearing the overdue sums that could have been paid by 30 September 2014; secondly, that since the internal changes at UEFA, whereby the CFCB Investigatory Chamber and the CFCB Adjudicatory Chamber replaced the UEFA CBD and the UEFA AB, the sanctioning of UEFA has been far more lenient and Bursaspor would not have been banned under the current regime; and thirdly, that all the actions taken by the new President and by Bursaspor should have been taken into account by the CFCB Adjudicatory Chamber.
79. The Panel noted the allegation that one "rogue" employee failed to notify the President of Bursaspor of the investigations by the CFCB Investigatory Chamber and that by the time he found out it was too late to comply with repaying all overdue sums by 30 September 2014. However, no evidence regarding this employee or his alleged dismissal was provided to the Panel. In any event, the club remains responsible for the actions of its employees. The club was certainly aware that it had significant overdue payables as at 30 June 2014. Even if Bursaspor had settled all its overdue payables by 30 September 2014, the CFCB Investigatory Chamber may still have referred the breach as at 30 June 2014 to the CFCB Adjudicatory Chamber, especially in light of the CAS Decision.
80. The Panel noted that the CFCB Adjudicatory Chamber effectively sanctioned Bursaspor with a EUR 50,000 fine, for having overdue payables of circa EUR 3.4m in June 2014 and EUR 1.2m in September 2014. Compared to previous jurisprudence of the UEFA CDB and the UEFA AB (and indeed the CAS) this does seem to show great leniency by UEFA. The Panel noted that UEFA, in the Appealed Decision gave credit to



Bursaspor for the positive action it had taken and for ensuring all overdue payables were cleared by 31 January 2015. This represents a “carrot and stick” approach by UEFA which effectively brings non-compliant clubs in line with the UEFA Regulations. Bursaspor are, however, attempting to argue that this CAS Panel should rehear the 2012 breaches in light of more recent jurisprudence of UEFA. Unfortunately for Bursaspor, this is not within the Panel’s scope of review, the CAS Decision is final and binding – its 2012 breaches have been fully determined by that CAS Panel, which it should be noted, actually overturned the AB Decision, in Bursaspor’s favour, and provided it with a second chance.

81. Finally, whilst the Panel was impressed by all the actions Bursaspor has taken under the leadership of its new President, as UEFA put it – these actions have “no bearing”. They may well have had a bearing on the leniency the CFCB Adjudicatory Chamber showed in relation to the 2014 breaches, but all the CFCB Adjudicatory Chamber could do is lift the suspension in the CAS Decision and confirm the competition ban should Bursaspor qualify for UEFA’s Club competitions “in the next 4 years”.

#### **Start/Finish of qualification period**

82. The Panel noted that the operative part of the CAS Decision was issued on 22 June 2012, which was before the start of the Europa League in 2012/2013 for which Bursaspor had qualified. The CAS Decision referred to Bursaspor being banned for next competition it qualified for thereafter “in the next 4 years”, but then that ban was suspended. This Panel noted that that wording was taken from the original CDB Decision dated 24 February 2012; at that time Bursaspor had not qualified for the Europa League season 2012/13. However, by the time the first CAS matter was dealt with it had qualified for the 2012/13 Europa League competition. That CAS hearing was dealt with on an expedited basis and if that panel had confirmed the appealed decision (instead of suspending the ban) then the Appellant would have been banned from competing in the UEFA Club Competitions in the 2012/13 season. As such, all parties intended the 4 years to run from the date of the first instance hearings, not from the date of delivery of the CAS Decision.
83. UEFA has now submitted that “the next 4 years” is not from the date of the CAS Decision, but from the date that the suspension was lifted due to Bursaspor reoffending. UEFA prefers in the Appealed Decision to refer to seasons, rather than to refer to a specific day of a year. This interpretation lead to the specific reference to seasons 2015/16 through to 2018/19 seasons in paragraph 1 of the Appealed Decision. On the other hand, Bursaspor, whilst also preferring to deal with footballing seasons, interpreted the CAS Decision as banning them for the next competition it qualified for

“in the next 4 years” as starting from the 2012/13 season that it originally faced being banned from.

84. The argument has an academic value, as the Panel noted Bursaspor lost in the cup final against a team that has already qualified for the UEFA Champions League in the season 2015/16, so it would have qualified itself for the UEFA Europa League for the same season. However, the Panel does wonder why, if UEFA’s interpretation is to be followed, clearer wording confirming that the 4 years (or seasons) would run from the date of reoffending was not used by the UEFA CDB, as that body was the original author of the suspended sanction that was repeated in the CAS Decision. Further, the Panel notes the “carrot and stick” approach to sanctioning by UEFA. In the case at hand, Bursaspor had no overdue payables until 2 years later, so the suspended disciplinary sanction (the stick) had some positive effect on Bursaspor, yet to start the 4 years running from the date of reoffending would show no “reward” (the carrot) for this period of compliance. Further, UEFA can (and did) sanction Bursaspor for the new offence (in addition to lifting the suspension) so could set a new 4 year qualification window running for that new offence. The Panel does note that there is a general issue with suspending sanctions. A club could reoffend, but then fail to qualify on the pitch for the next UEFA Club Competitions, so never actually be banned. However, the ability to issue a sanction for the new offence cures that issue. In conclusion, the Panel, also dealing with seasons, preferred the interpretation of Bursaspor and determines that the CAS Decision obviously gave a suspended ban on Bursaspor regarding the seasons 2012/2013, 2013/2014, 2014/2015 and 2015/2016, and if that suspension was lifted and Bursaspor then qualified for a UEFA Club competition then it would be excluded from the next competition it qualified for in such seasons as remained. Finally, the Panel considers that the role of the CFCB Adjudicatory Chamber is to lift the suspension continued in the CAS Decision, not to effectively rewrite it.

### **Conclusion**

85. The Panel therefore partially allows the Appeal and rather than annulling paragraph 1 of the Appealed Decision, replaces it as follows, to clarify matters:

*“The exclusion imposed in the 2012 Decision shall come into immediate effect and Bursaspor is therefore excluded from participating in any 2015/2016 UEFA Club Competition, should it qualify for the same.”*

86. Any further claims or requests for relief are dismissed.

\*\*\*

Tribunal Arbitral du Sport  
Court of Arbitration for Sport

CAS 2014/A/3870 Bursaspor Kulübü Derneği v. UEFA - Page 19

**IX. COSTS**

87. Pursuant to Art. R65.2 of the CAS Code, the proceedings related to disciplinary cases of an international nature ruled on appeal shall be free. The fees and the costs of the arbitrators are borne by the CAS.

88. However, Article R65.3 of the CAS Code provides:

*“Each party shall pay for the costs of its own witnesses, experts and interpreters. In the arbitral award, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and the outcome of the proceedings, as well as the conduct and financial resources of the parties*

89. In consideration of the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties, the Panel rules that each party shall bear their own legal costs and expenses incurred in connection with these arbitration proceedings.

\*\*\*\*\*

## ON THESE GROUNDS

### **The Court of Arbitration for Sport rules that:**

1. The appeal filed on 25 December 2014 by Bursaspor Kulübü Derneği against the Decision issued on 19 December 2014 by the UEFA Club Financial Control Body Adjudicatory Chamber is partially allowed.
2. That paragraph 1 of the decision issued on 19 December 2014 by the UEFA Club Financial Control Body Adjudicatory Chamber is replaced with:  
  
*“The exclusion imposed in the 2012 Decision shall come into immediate effect and Bursaspor is therefore excluded from participating in any 2015/2016 UEFA Club Competition, should it qualify for the same.”*
3. This award is pronounced without costs, except for the Court Office fee of CHF 1,000 (one thousand Swiss Francs) paid by Bursaspor Kulübü Derneği, which is retained by the CAS.
4. Each party shall be responsible for their own legal fees and expenses incurred in connection with these arbitration proceedings.
5. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 11 June 2015