

CAS 2023/A/9443 Anatoliy Tymoshchuk v. Ukrainian Association of Football (UAF)

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition

President: Mr Klaus Reichert S.C., Barrister, London, United Kingdom
Arbitrators: Mr Wouter Lambrecht, Attorney at law, Geneva, Switzerland
Mr Maciej Bałaziński, Attorney at law, Kraków, Poland

in the arbitration between

Mr Anatoliy Tymoshchuk, St Petersburg, Russian Federation

Represented by Mr Georgi Gradev and Mr Marton Kiss, Attorneys at law, Sofia, Bulgaria

Appellant

and

Ukrainian Association of Football (UAF), Kyiv, Ukraine

Represented by Mr Anton Sotir, Mr Riccardo Coppa, Attorneys at law and Mr Robert Kerslake
BL, Lausanne, Switzerland

Respondent

* * *

I. THE PARTIES

1. The Appellant, Anatoliy Tymoshchuk (“Appellant”) is a Ukrainian professional football coach currently working as an assistant at Zenit St Petersburg. In the past he was one of the most famous and successful Ukrainian professional football players of all time, winning multiple domestic titles, captaining the national team and holds a record number of international caps. His club career outside of Ukraine was also stellar particularly in his time with Zenit St Petersburg and Bayern Munich winning respectively the UEFA Cup and the UEFA Super Cup with Zenit St Petersburg and the UEFA Champions League with Bayern Munich.
2. The Respondent, the Ukrainian Association of Football (“UAF”) is the governing body of football in Ukraine, member of FIFA (Fédération Internationale de Football Association) and UEFA (Union des Associations Européennes de Football).

II. FACTUAL BACKGROUND

3. The Panel now sets out the relevant factual background up to the moment of the Appellant’s filing his appeal with CAS. The Panel has taken into consideration all the facts presented to it by the Parties however that which is set out below is, in its view, most relevant for the outcome of this case.
4. In October 2015, the Appellant successfully completed a UEFA coaching course conducted by the UAF and was awarded the UEFA A Licence, which was valid until 31 December 2018. In 2017, the Appellant acquired a UEFA Pro coaching licence from the UAF Licensing Centre, valid until 31 December 2020. Finally, in 2020 the Appellant completed additional courses with the UAF, thereby extending his UEFA Pro coaching licence until 31 December 2023.
5. From 2017 onwards the Appellant has been working in a coaching capacity with Zenit St Petersburg. Further, the Appellant’s personal circumstances are centered on St Petersburg where he lives with his partner (a Russian national) and her children.
6. The Appellant’s Appeal Brief sets out the following (para. 8):

“On February 24, 2022, the date of the Russian invasion of Ukraine, the Appellant posted a story on his personal Instagram profile with the following message: “We need peace. For the sake of our children and parents, for the sake of life on earth” and added a hashtag [Ukrainian language] (“no to war”).
7. The Appellant’s Instagram message appears to have been made in both Ukrainian and English and is timed at 19.28 on 24 February 2022. In addition, there is an image just underneath the text of message which shows a left palm and a right palm joined together with a map of the world superimposed, and then within is a map of Ukraine (that map included Crimea in its indication of Ukrainian territory) in its national colours with the phrase “Pray for Ukraine” (in English) across the middle. The Instagram message is as follows:



8. At some point shortly after the Appellant posted his Instagram message it ceased to be visible online after 24 hours, which the Panel understands, and this was not disputed by the Parties, is a routine aspect for stories on that internet platform.
9. The Appellant has not made any subsequent public comment either for or against Ukraine or the Russian Federation. He has remained silent and the only stance he has publicly taken was the Instagram message.
10. The UAF Committee on Ethics and Fair Play (“the Ethics Committee”) held a meeting 8 March 2022. The record of that meeting indicates that various social media postings and other publicly-available information were considered in connection with the Appellant. That committee noted that as the Appellant remained in Russia working with Zenit St Petersburg as well as not making any public statements in support of Ukraine, this had the following consequence, namely, he damaged the reputation of football as per article 4(1)(1.4) of the Code of Ethics and Fair Play (“the Ethics Code”). The Ethics Committee decided as follows:

“1. To recognize Tymoshchuk Anatoliy Oleksandrovysh, 30.03.1979, as having violated clause 1.4. Part 1 of Art. 4 of the UAF Code of Ethics and Fair Play;

2. To instruct the secretary of the UAF Committee on Ethics and Fair Play to contact the UAF CDC with the following proposals:

- deprive Tymoshchuk A.O. Pro level coaching license issued by the UAF Licensing Center;

- instruct the UAF Administration to contact the state authorities regarding the deprivation of Tymoshchuk A.O. all state awards and honorary titles;

- deprive Tymoshchuk A.O. all titles of the winner and silver medalist of the championship of Ukraine, the Cup of Ukraine, the Super Cup of Ukraine;

- exclude Tymoshchuk A.O. from the official register of players of UAF national teams.

3. Submit the Committee's conclusion for consideration to the UAF Control and Disciplinary Committee.”

11. On 9 March 2022, the UAF Control and Disciplinary Committee (“the Disciplinary Committee”) resolved as follows, based on its receipt and review of the Ethics Committee (recorded just above):

“1. To open proceedings in the case “About the statement of the UAF Ethics and Fair Play Committee regarding possible violations of the Code of Ethics and Fair Play by A.O. Tymoshchuk” and assign the registration number №CDC-04/2022.

2. Set the date of the meeting of the UAF CDC on the issue specified in paragraph 1 of this resolution to 11.03.2022. The meeting should be held using modern means of communication.

3. A.O. Tymoshchuk should provide to the UAF CDC an explanation (if there are any) regarding this issue till 10.03.2022 (inclusive).

4. Send this resolution to A.O. Tymoshchuk (via FC “Zenit” St. Petersburg).”

12. On 10 March 2022, the Appellant sent a letter to the Disciplinary Committee and its text is now recorded in full:

“Yesterday, I received a copy of the statement of the UAF Ethics and Fair Play Committee (hereinafter referred to as the Committee), which contains accusations against me that I violated the UAF Code of Ethics and Fair Play. The Committee accuses me of having carried out actions that harm the reputation of football. According to the Committee, I caused damage by not leaving my job at FC “Zenit” and not made no public statements regarding the situation in Ukraine after 24.02.2022. The Committee added to its accusations

screenshots of publications in the Internet, which contain the words of the General director of “Zenit” Oleksandr Medvedev, that “the entire coaching and medical staff continue working in the blue white-blue club.” The committee never contacted me or asked for any explanation. During my career, I worked in Ukrainian, European and Russian clubs, and for me, the main criterion was always to honestly and conscientiously fulfill my duties to the fans, to the team, to the club. This, in my opinion, is the most important thing when we talk about the reputation of football. Football, like sports in general, should not become a means of political manipulation. For me, the words “reputation of football” are more than just a phrase from the UAF Code, and if the Committee accuses me of such a serious violation, then I would like to see stronger evidence than just angry and obscene statements of individual football players. For me, the reputation of football is not something that can be manipulated at will in accordance with emerging political issues. It is likely that for the Committee it is just an opportunity to arrange a news occasion in the mass media. How else can one explain such a number of publications in less than a day in all possible and impossible news portals with the text of their statement? I strongly advocate for peace in my native land, and the only thing I can think about right now is that the parties sit down at the negotiating table as soon as possible and find a consensus that will restore peace. If, in the opinion of the Committee, my suspension, expulsion and deprivation of my license will in some way help to achieve peace, then I am ready to renounce all this myself. But as a professional athlete and a person for whom the reputation of football is more than just words, I will never allow myself to become a tool of political manipulation.”

13. On 11 March 2022, the Disciplinary Committee held a meeting and came to the following decisions (as per the record of that meeting):

“Upon analysis of the available case files, the UAF CDC concludes that Tymoshchuk’s cooperation with a football club from the aggressor state during the martial law in Ukraine against the backdrop of most Ukrainian footballers not only being unable to play football but also finding themselves in deep worry every day about their lives and the lives of their loved ones, constitutes conduct that brings both football and the UAF into disrepute. According to applicable provisions of Article 2.2.16 and Articles 6, 36, 41, and 75 of the UAF Disciplinary Rules [“Disciplinary Rules”] and Article 4.1.4 of the UAF Code of Ethics and Fair Play,—

THE UAF CONTROL AND DISCIPLINARY COMMITTEE HAS DECIDED AS FOLLOWS:

- 1. Tymoshchuk shall be prohibited from carrying out any football-related (administrative, sport, etc.) activity for life (as a result of conduct that brings both football and the UAF into disrepute).*
- 2. Tymoshchuk shall be deprived of all his titles of the winner and the silver prize-winner of Ukraine championships, the Cup of Ukraine, and the Super Cup of Ukraine.*

3. The UAF Licensing Centre shall be advised to adopt appropriate measures to revoke (cancellation) the UEFA Pro-level coaching license issued to Tymoshchuk.

4. The UAF Administration shall apply to public authorities seeking the revocation of all Tymoshchuk's state awards and honorary titles.

5. This Decision shall become effective on the date of its adoption.

6. As per Articles 78 and 80 of the UAF Disciplinary Rules, a statement of appeal against this Decision may be filed with the UAF Appeals Committee within ten (10) days from the date of receipt of the text hereof with an analysis part."

14. On 19 July 2022, the Appellant appealed to the UAF Appeal Committee ("Appeal Committee") against the foregoing decisions of the Disciplinary Committee.
15. On 24 January 2023, the Appeal Committee made the following decisions, the operative of which was communicated to the Appellant on 1 February 2023 and the motivated part on 16 May 2023 (extracted from the record of its meeting that day) ("the Appealed Decision"):

"144. Having analyzed all available materials of the case (including those not directly referred to in the text of this decision), the UAF Appeal Committee has come to the conclusion that the Control and Disciplinary Committee (CDC) of UAF correctly assessed the actual circumstances of the case and properly applied respective provisions of the UAF Disciplinary Regulations and of the Code of Ethics and Fair Play. Consequently, the Appeal Committee has no grounds to annul the decision taken by the Control and Disciplinary Committee (CDC) of UAF on March 11, 2022. In consideration of the above, and guided by Article 85 of the UAF Disciplinary Regulations, the Appeal Committee of UAF – Decided as follows:

1. The appellate complaint filed by Mr. A.O. Tymoshchuk against the decision of the Control and Disciplinary Committee (CDC) of UAF in the case No. CDC-04/2022 "On the statement by the UAF Committee on Ethics and Fair Play concerning possible violations of the Code of Ethics and Fair Play by Mr. A.O. Tymoshchuk" – shall be dismissed in full.

2. The decision of the Control and Disciplinary Committee (CDC) of UAF in case No. CDC-04/2022 dated March 11, 2022, "On the statement by the UAF Committee on Ethics and Fair Play concerning possible violations of the Code of Ethics and Fair Play by Mr. A.O. Tymoshchuk" – shall remain unchanged.

3. The Decision shall come into force from the moment of its adoption.

4. In accordance with the UAF Disciplinary Regulations, Article R49 of the CAS Code, the decision taken by the Appeal Committee of UAF may be appealed to

the Court of Arbitration for Sport (CAS), city of Lausanne, not later than within 21 days upon receipt thereof.”

16. On 1 February 2023, the Appellant received the Appealed Decision. On 4 February 2023, the Appellant requested the grounds of the Appealed Decision, which were finally delivered to him on the 16th of May 2023. Pending receipt of the motivated decision, the Appellant filed his appeal with CAS on 16 February 2023 seeking to overturn the Appealed Decision.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

17. On 16 February 2023, the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport (the “CAS”) against the UAF with respect to the Appealed Decision in accordance with Article R47 and R48 of the Code of Sports-related Arbitration (the “Code”).
18. In his Statement of Appeal, the Appellant asked for a bifurcation from the outset so that it could be established whether the Respondent had jurisdiction over the Appellant as well as determining an argument on preclusion.
19. On 9 March 2023, upon request of the Respondent and in accordance with Article R32(3) of the Code, the Deputy President of the CAS Appeals Arbitration Division decided to suspend the present procedure.
20. On 11 April 2023, the suspension of the present procedure was lifted.
21. On 1 May 2023, the Deputy President of the CAS Appeals Arbitration Division decided to submit the present procedure to a Panel of three arbitrators. Accordingly, on the same day, the Appellant was invited to nominate an arbitrator within 10 days, failing which the appeal would be deemed withdrawn.
22. On 8 May 2023, the Appellant nominated Mr Wouter Lambrecht, Attorney-at-Law in Barcelona, Spain, as an arbitrator.
23. On 30 May 2023, the Respondent nominated Mr Maciej Bałaziński, Attorney-at-law in Krakow, Poland, as an arbitrator.
24. On 27 June 2023, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, informed the Parties that the Panel constituted to decide this appeal was as follows:

President: Mr Klaus Reichert S.C., Barrister in London, United Kingdom

Arbitrators: Mr Wouter Lambrecht, Attorney at law, Barcelona, Spain
Mr Maciej Bałaziński, Attorney at law, Kraków, Poland

25. On 4 July 2024, the Panel, in relation to the Appellant’s request for bifurcation and the Respondent’s reply thereto, requested further clarification from the Appellant on the precise nature of the dispositive language he sought and having considered his replies

as well as observations from the Respondent, the following message was sent to the Parties on 8 August 2023 by the CAS Court Office on behalf of the Panel:

“The Parties are advised that the Panel has considered all of the correspondence and filings to date and appreciates that there is common ground that a question of “jurisdiction” can be dealt before other issues (if such were to later arise). However, having carefully reflected on the matter, the Panel has come to the conclusion that it is preferable for the Appellant to first put his case in full in writing, followed then by the Respondent. The Panel will then, with the benefit of a full briefing of all aspects of this arbitration, consider the appropriate next steps.”

26. In accordance with Article R51 of the Code, the Appellant filed his Appeal Brief on 18 September 2023.
27. In accordance with Article R55 of the Code, the Respondent filed its Answer on 6 November 2023.
28. On 7 November 2023, the Appellant renewed his application (as above) for bifurcation.
29. On 4 December 2023, having considered all of the submissions and exhibits filed by the Parties, and further having reflected carefully and appropriately on the Appellant’s bifurcation request, the Panel issued the following direction:

“The Tribunal has given careful consideration to the Appeal Brief and to the Answer in order to determine whether, as the Appellant wishes, it is appropriate to bifurcate this arbitration and determine “jurisdiction and estoppel”. The Appellant suggests these matters may be decided without the holding a hearing “as they are of a legal nature”.

The Tribunal does not consider that the Appellant’s case on estoppel is one which can readily or easily be disentangled from contested matters of predicate fact. This observation is readily discernible from the Appeal Brief and the Answer, and the Tribunal does not consider it necessary to delve much further into a detailed rationale; save to say that in order for the Tribunal to fairly and thoroughly decide such issue it would require the fullest possible understanding and determination of all applicable factual matters carefully articulated in a chronological fashion. That is not a process readily amenable to a documents-only, legal determination at this time. Thus, insofar as the Appellant seeks bifurcation of that issue, it is denied and held over for disposition (if necessary) in due course.

Turning to the question of jurisdiction of the UAF Control and Disciplinary Committee (“UAF CDC”) and the UAF Appeals Committee (“UAF AC”), the Tribunal recalls, in particular, the second paragraph of the Respondent’s letter of 13 July 2023, and perceives that there is apparent common ground which expresses a desire for early determination of issues which may fall, in a general sense, into the sphere of jurisdiction. However, having reviewed the Appeal

Brief and the Answer, the Tribunal considers that prior to finally determining the Appellant's application for bifurcation, assistance is necessary to more fully understand certain points of interest.

Thus, as a first step in that regard the Parties are invited to set out in writing, in no more than 5 pages, their exact position on the following question:

• at the time of initiation of the process against the Appellant by the UAF CDC, what was the legal relationship (including its nature and content), if any, as between the Appellant and the UAF CDC?

In answering this question, the Parties should refer the Tribunal to such existing portions of the record as they see fit, and, if there is some other factual or legal exhibit of particular materiality, such can be added to the record. The Parties should not stray into discussing consequences but focus with care on an articulation of the extent of the legal relationship (if any) at the precise moment in time."

30. On 14 December 2023, upon the foregoing request of the Panel, the Appellant filed his submissions on the legal relationship between the Appellant and the UAF Control and Disciplinary Committee (the "UAF CDC") at the time of initiation of the process against the Appellant by the UAF CDC. In essence, the Appellant submitted that there was no such legal relationship between him and the UAF CDC. The Appellant underlined that Mr. A.O.Tymoshchuk is no longer involved in working in football in Ukraine, he does not have any contractual relationship with any club or federation in Ukraine and that the dispute (disciplinary proceeding) regarding Mr. A.O.Tymoshchuk is not an internal dispute. The Appellant refused to consider a coaching licence as a relevant factor in the case.
31. On 26 December 2023, upon foregoing request of the Panel, the Respondent filed its submissions on the legal relationship between the Appellant and the UAF CDC at the time of initiation of the process against the Appellant by the UAF CDC. In essence, the Respondent submitted that there were three applicable legal relationships, namely, (a) the Appellant's Ukrainian citizenship; (b) the Appellant's UEFA Pro-level coaching licence issued via the Respondent; and (c) the Appellant's prior professional contracts with two Ukrainian football clubs.
32. On 23 January 2024, having carefully considered the Parties' submissions on the legal relationship between the Appellant and the Respondent, the Panel enquired of them as follows:

"Thus, the precise question for determination now is: whether or not the Appellant and the Respondent were in a relevant legal relationship as of 9 March 2022; whether arising from one, other, or all three of the argued-for bases put forward by the Respondent in its letter of 26 December 2023. Turning to procedure, do the Parties wish to be heard on this precise question? Or are the Parties content for the Panel to resolve the precise question on the basis of the materials filed to date? If a hearing is held, the Panel considers that no more

than two hours (preferably by virtual means) would be necessary. Please reply to these questions by 29 January 2024. If the Panel were to find that there was a relevant legal relationship between the Parties (on one, other, or all three of the argued-for bases), this finding would be communicated to the Parties by way of letter from the CAS with reasons to follow in the award. If the Panel were to find that there was no relevant legal relationship between the Parties, then this would be notified by way of an award”

33. The Parties both later confirmed that a hearing was not sought by either of them in respect of the question posed by the Panel (as recorded just above).
34. The Panel then took time to deliberate and on 15 February 2024 the following decision was shared with the Parties:

“The Panel recalls its message to the Parties communicated to them by the CAS on 23 January 2024 wherein the following question was set out for determination:

“..... whether or not the Appellant and the Respondent were in a relevant legal relationship as of 9 March 2022; whether arising from one, other, or all three of the argued-for bases put forward by the Respondent in its letter of 26 December 2023.”

The Panel further notes that the Parties have stipulated that they were content for it to rule on this question without a hearing and on the basis of the written filings.

The Panel has deliberated and now communicates its decisions (reasons will follow in the award in due course).

- 1. The Appellant’s citizenship and prior contracts with two Ukrainian clubs (as well as the titles he won while playing with those clubs) are not relevant legal relationships with the Respondent as of 9 March 2022.*
- 2. The Appellant’s UEFA Pro Coaching Licence gives rise to a relevant legal relationship with the Respondent as of 9 March 2022 (noting the expiry of such Licence on 31 December 2023). However, the Panel makes no finding at this time as to the content of such legal relationship, or as to the relevance thereof for what concerns the material and be dealt with in due course.*

The Panel now turns to the subsequent conduct of this arbitration.

First, in light of the decisions set out above, do the Parties wish to be heard on the remaining issues in this arbitration, or are the Parties content for the Panel to decide such issues on the basis of the existing written record (subject, as always, to the Panel’s authority to call for a hearing)?”

35. The Appellant did not request a hearing. The Respondent did request a hearing. The Panel considered the matter and decided to hold an in-person hearing (with the Parties themselves and any witnesses permitted to attend remotely) with such decision being communicated to the Parties on 4 March 2024.
36. On 23 March 2024, the Appellant communicated the names of the persons who would attend the hearing, namely, his two Counsel. No witnesses were indicated.
37. On 25 March 2024, the Respondent communicated its list of attendees and witnesses:

“Please note that the Respondent will be represented by Mr Anton Sotir and/or Mr Riccardo Coppa and/or Mr Loïc Theilkaes, all from Kellerhals Carrard, at the hearing scheduled for 22 April 2024 (with 23 April 2024 in reserve).

Mr Igor Gryshchenko, UAF General Secretary and Ms Oksana Zalizko, UAF Legal Counsel will be attending the hearing as party representatives by videoconference.

With regard to the list of witnesses, we would like to confirm to the CAS Court Office that, subject to any possible changes related to the war in Ukraine that may occur between now and the hearing date, the following witnesses of the Respondent will be attending the hearing via videoconference:

- *Volodymyr Yezerskyi, former football player and Appellant’s team-mate in the national team*
- *Yevhen Levchenko, former football player and Appellant’s team-mate in the national team*
- *Serhii Stakhovskyi, former professional tennis player*
- *Stanislav Horuna, Ukrainian karate athlete*
- *Anatolii Demianenko, football coach and former player (who ultimately did not testify before the Panel)*
- *Oleh Protasov, former professional player and football coach (who ultimately did not testify before the Panel)*
- *Ihor Bielanov, former football player (who ultimately did not testify before the Panel)*
- *Serhii Rebrov, football coach and former professional player*
- *Ihor Tsyhanyk, Ukrainian sports journalist specialising in football*
- *Oleksandr Denysov, Ukrainian sports journalist specialising in football”*

Further, Mr. Alexei Mikhailitchenko – a witness mentioned in the Answer to the Appeal Brief of the Respondent was not referenced in the letter delivered as preparation for the hearing.

38. On 10 April 2024, an Order of Procedure was issued.
39. On the same day, the Respondent signed and returned the Order of Procedure.

40. On 16 April 2024, the Appellant signed and returned the Order of Procedure.
41. On 22 April 2024, a hearing took place at the CAS premises in Lausanne. The Panel, Ms Delphine Deschenaux-Rochat, CAS Counsel, Counsels for the Appellant and Counsels for the Respondent (including Mr Kerslake BL) were present in person. The Parties delivered short opening statements followed by witness testimony from the following persons (all tendered by the Respondent): Serhii Stakhovskyi, Ihor Tsyhanyk, Serhii Rebrov, Yevhen Levchenko, Oleksandr Denysov, and Volodymyr Yezerskyi. The Parties then delivered full closing statements followed each by an opportunity for rebuttal. They were given a full opportunity to present their case, submit their arguments and submissions, and answer the questions posed by the Panel. At the end of the hearing, neither side raised any issue with the conduct of the proceedings and both parties confirmed that their right to be heard has been satisfied.
42. After the parties' final arguments, the Panel closed the hearing and announced that its award would be rendered in due course.
43. The Panel notes two points arising at and from the hearing.
44. First, insofar as an aspect of the decision of the Disciplinary Committee (as upheld by the Appeal Committee) was concerned, namely, the Appellant being prohibited from carrying out any football-related (administrative, sport, etc.) activity for life (as a result of conduct that brings both football and the UAF into disrepute), it was confirmed at the hearing by the UAF that this was solely confined to Ukraine and had no wider consequence.
45. Secondly, insofar as another aspect of the decision of the Disciplinary Committee (as upheld by the Appeal Committee) was concerned, namely, that the UAF Licensing Centre shall be advised to adopt appropriate measures to revoke (cancellation) the UEFA Pro-level coaching license issued to the Appellant, two matters were confirmed at the hearing: (a) the UAF Licensing Centre did not move to revoke or cancel the Appellant's UEFA Pro-level coaching licence which ran to the end of its indicated life, *i.e.* 31 December 2023; and (b) the Appellant is now possessed of a UEFA Pro-level coaching licence obtained via the Russian football authorities.
46. Further, after the completion of the hearing, on 29 April 2024 the Panel received the UAF's communication as follows (in relevant part) which constituted a written confirmation of an oral submission of the Respondent, which has taken place during the hearing, as follows:

“According to applicable provisions of Article 2.2.16 and Articles 6, 36, 41, and 75 of the UAF Disciplinary Rules and Article 4.1.4 of the UAF Code of Ethics and Fair Play,

***THE UAF CONTROL AND DISCIPLINARY COMMITTEE HAS
DECIDED AS FOLLOWS:***

Sanctions:

1. *Tymoshchuk shall be prohibited from carrying out any football-related (administrative, sport, etc.) activity for life in Ukraine (as a result of conduct that brings both football and the UAF into disrepute).*
2. *Tymoshchuk shall be deprived of all his titles of the winner and the silver prize-winner of Ukraine championships, the Cup of Ukraine, and the Super Cup of Ukraine.*

Ancillary relief / recommendations:

3. *To recommend the UAF Licensing Centre ~~shall be advised~~ to adopt appropriate measures to revoke (cancellation) the UEFA Pro-level coaching license issued to Tymoshchuk.*
4. *To ask the UAF Administration ~~shall~~ to apply to public authorities seeking the revocation of all Tymoshchuk's state awards and honorary titles.*

*This Decision shall become effective on the date of its adoption.”
As per Articles 78 and 80 of the UAF Disciplinary Rules, a statement of appeal against this Decision may be filed with the UAF Appeals Committee within ten (10) days from the date of receipt of the text hereof with an analysis part.”*

IV. SUBMISSIONS OF THE PARTIES

47. The Panel does not provide an exhaustive list of the Parties' contentions, but, rather, a summary of the Parties' main arguments. In considering and deciding upon the Parties' claims, the Panel has accounted for and carefully considered all of the submissions made and evidence adduced by the Parties.

A. The Appellant

48. The Appellant requested the following reliefs in his Appeal Brief:

- “(1) *Bifurcate this proceeding, issue a preliminary award on the UAF jurisdiction, and determine that the UAF judicial bodies did not have jurisdiction to sanction the Appellant.*
- (2) *Annul the Appealed Decision.*
- (3) *Order the UAF to reimburse UAH 2,500 to the Appellant for the internal appeal fee.*
- (4) *Order UAF to bear all costs incurred with this proceeding.*

(5) *Order UAF to pay the Appellant a contribution towards his legal and other costs in the amount of EUR 20,000.”*

49. In support of his requests for relief, the Appellant’s Appeal Brief commences with the following overall position which, in the Panel’s appreciation, summarises/d the arguments made on his behalf:

“2. This case is a textbook example of discrimination for political reasons against one of the best players in the history of Ukrainian football. UAF was used as a baseball bat for political reasons to punish the Appellant for not quitting his coaching job in Russia when the Russian invasion of Ukraine started in February 2022 and for not making public comments denouncing the invasion. In other words, UAF sanctioned the Appellant, without having jurisdiction or legal basis whatsoever, for being an exemplary husband and father and a dedicated coach (but in the “wrong” country according to UAF), whose behaviour does not fit in UAF’s political agenda.

3. The Appellant submits that the UAF judicial bodies did not have personal and material jurisdiction to sanction him as he is not registered for a Ukrainian club with UAF. In any event, the Appellant has not violated any UAF rule, and the sanctions imposed on him lack legal basis.

[...]”

50. Besides, the Appellant holds that UAF was, in any event, “*precluded from sanctioning him due to preclusion*”, referring further to the legitimate expectations of the Appellant, as well as the fact that he worked in the Russian club FC Zenit since 2017.

51. Furthermore, the Appellant made submissions to the limitation in legitimate sanctioning of a person in disciplinary proceeding such as principle of fault, principle of equal treatment and principle of proportionality. His representatives underlined insufficient proof of actual disrepute of the Respondent, and, further, legal circumstances of living in Russia at the time of the alleged disciplinary offence.

B. The Respondent

52. In its Answer, the Respondent requested the following reliefs:

“(a) To dismiss the appeal filed by Mr Anatoliy Tymoshchuk on 16 February 2023 in its entirety..

(b) To confirm the decision of the Appeals Committee of the Ukrainian Association of Football dated 24 January 2023.

(c) To order Mr Anatoliy Tymoshchuk to bear the full CAS arbitration costs, if any.

(d) *To order Mr Anatoliy Tymoshchuk to make a significant contribution to the legal and other costs of the Ukrainian Association of Football in connection with these proceedings.”*

53. In support of its requests for relief, the Respondent’s Answer commences with the following overall position which, in the Panel’s appreciation, summarise the arguments made on its behalf

“3. This case relates to the Appellant’s behaviour after 24 February 2022 when Russia started a full-scale invasion of Ukraine. The UAF judicial bodies, i.e. the UAF Control-Disciplinary Committee (“UAF CDC”) and the UAF Appeals Committee (“UAF AC”), were comfortably satisfied that the Appellant’s behaviour caused harm and damage to the reputation of the UAF and football in Ukraine. The UAF eventually imposed on the Appellant a lifetime ban from taking part in any football-related activity in Ukraine and a forfeiture of all the titles that he won in Ukraine.”

54. The Respondent underlined that the Appellant is a public figure and that the UAF bodies have established to their comfortable satisfaction that his actions and omission have placed Ukrainian Football in disrepute, as confirmed by the witnesses presented at the hearing. The representatives of the Respondent underlined that the principle of equal treatment has been observed, sanctions were proportionate and legitimate.

V. CAS JURISDICTION

55. The jurisdiction of the CAS, which is not disputed, derives from the Article 54 of the UAF Statutes (2020) and Article 39.1 of the 2021 UAF Disciplinary Rules. It is further confirmed by the signature of the Order of Procedure.

56. It follows that the CAS has jurisdiction to decide the Appeal.

VI. ADMISSIBILITY

57. Article R49 of the CAS Code provides as follows:

“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. [...]”

58. The chronology of events detailed above confirms that the Appeal was filed within the applicable deadline, and the Respondent has not objected to its admissibility. It follows that the Appeal is admissible.

VII. APPLICABLE LAW

59. Article R58 of the CAS Code provides as follows:

“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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.”

60. In accordance with Article R58 of the CAS Code, the following are relevant to this case:

- The UAF Statutes (2020); and
- The UAF Disciplinary Rules (2021).

61. The UAF Ethics Code is not applicable to the matters at issue whether now, or in the period between 24 February 2022 and 11 March 2022. Due to the fact that there has been a difference in translations presented by the parties, the Panel requested clarification. During the course of the hearing a finalised and independent translation of the provision thereof which describes the UAF Ethics Code’s ambit was made available to the Panel. The UAF Ethics Code only applies to individuals and legal entities *“that are involved in or are working in football directly or indirectly permanently or temporarily on the territory of Ukraine”*. The Appellant does not fall into that category of persons as he was not at the time of the alleged misconduct working in football on the territory of Ukraine.

VIII. MERITS

62. The Panel arranges this section of this Award as follows: (a) the Panel will, as foreshadowed in its communication to the Parties on 15 February 2024, set out its reasoning in connection with its decisions on the relevant legal relationships, or not as the case may be; and (b) analyse the merits of this appeal.

A. Relevant Legal Relationships

63. On 15 February 2024, the Panel notified the Parties that the Appellant’s citizenship and prior professional contracts were not relevant legal relationships which would justify the Appellant being subject to scrutiny of UAF bodies; however, the Appellant’s holding of a UEFA PRO Licence (granted by the UAF and valid as of the date of the alleged misconduct the disciplinary / appeal proceeding) was such a relevant legal relationship. The Panel now sets out its reasoning in respect of each such ground.

64. Insofar as the Appellant’s citizenship is concerned, this is a relationship as between him and the Ukrainian state. It is, as a matter of its ordinary meaning, the legal status and relation between an individual and a state that entails specific rights and duties. It does not mean that a particular private law body, even if supported by the state, can assert

authority of whatever kind over a citizen merely due to the happenstance of such person holding such citizenship or nationality.

65. Insofar as the Appellant's prior professional contracts with two Ukrainian clubs are concerned, those agreements had run through to the end of their terms well before 9 March 2022. At the latest, the Appellant's time as a club player in Ukraine came to an end in 2007. Once the term of those contracts was over and the parties thereto had completed all of their rights and obligations, the Panel cannot ascertain any reason why there would be a spill-over of some (at least) 15 years keeping a residual authority alive, particularly when it seems that the UAF was not a party thereto.
66. Turning to the Appellant's UEFA PRO Licence, the Panel has been presented with a series of documents by the UAF from October and November 2020 which record a training programme for the extension of the validity of certain such licences. Amongst the names listed is the Appellant.
67. Specifically, within a table entitled "LIST on obtaining licenses by coaches who have completed a training course under the "PRO" program - UEFA diploma (extending the validity of the license)" which is stated to have taken place on 9-10 November 2020 at the Licensing Centre of the Respondent, one clearly sees the Appellant's name. Adjacent to his name in the table in the original Ukrainian language document is his signature.
68. Further, it is unequivocally the case that the Appellant held a UEFA PRO Licence thereafter with a validity period up to 31 December 2023. Clearly marked on that UEFA PRO Licence (no. 152) is "Ukrainian Association of Football". This UEFA PRO Licence unquestionably was the Appellant's means of being able to work as a professional coach with Zenit St Petersburg.
69. Next, when one reads the UEFA Coaching Convention 2020 it is made explicit that a requirement of such a licence-holder is as follows (emphasis added):

"Article 32 – Validity

1 A UEFA coaching licence is valid for three calendar years, until no later than 31 December three years after it was first issued, e.g. from 25 August 2020 to 31 December 2023.

2 When a UEFA coaching licence expires, its holder loses the right to coach and must undertake further education organised by a convention party to be reissued a licence.

3 The validity of any UEFA licence is subject to the licence holder's undertaking to adhere to the statutes, regulations, directives and decisions of UEFA and the convention party that issued that licence. It may be subject to further conditions defined by the issuing convention party."

70. The Respondent's Answer (para. 39) makes the following submission: *“Since Mr Tymoshchuk obtained his coaching licence in Ukraine, he is also bound by and subject to the UAF statutes, regulations and directives. It is a package deal – having both the license and adherence to the rules – or having nothing at all. He cannot possess the licence without being subject to the UAF jurisdiction; otherwise, his licence would be deemed invalid.”*
71. The Panel does not discern any cognisable or persuasive argument on the part of the Appellant against this position. The fact that the Appellant is not an express signatory to the UEFA Coaching Convention is neither here nor there. Calling the argument “absurd” or drawing misplaced analogies with certain very famous coaches does not persuade.
72. Further, it does not matter that the Appellant would never have been in a position to himself sign the UEFA Coaching Convention. That was never, truly, a relevant question to pose.
73. It is perfectly legitimate for any member of UEFA to set certain rules and set legitimate expectations to the candidates for coaches and coaches itself.
74. The correct framing of the question, and its answer is as follows. The Appellant chose to obtain, via the UAF Licencing Centre, a UEFA PRO Licence. That choice comes with the unequivocal and concomitant obligation to adhere to the UAF's statutes, regulations, directives and decisions. The UEFA Coaching Convention could not be more clear; the holding of a UEFA PRO Licence is not an obligation-free benefit. Therefore, by engaging with the Respondent for the purpose of obtaining, and then holding a UEFA PRO Licence, he assumed the obligation to conduct himself in a way prescribed by a specific document, namely, the UEFA Coaching Convention. Incorporating a document (even if a third party document) by reference into a contractual arrangement is an unremarkable and mundane matter of no novelty whatsoever.
75. Thus, the Panel concludes that as on 9 March 2022, by reason of the Appellant holding a UEFA PRO Licence issued via the UAF Licencing Centre he must be taken to adhere to the UAF's statutes, regulations, directive and decisions.

B. Merits of the Appeal

76. The Panel commences with a number of observations which are, in its view, appropriate and necessary to frame the discussions which now follows.
- a. Without fear of contradiction the Panel agrees with the Appellant that it is most likely that no-one in the field of international sports legal dispute-resolution has even seen anything like the set of circumstances which has arisen in this appeal.
 - b. The context for this appeal involves one of the most significant geo-political circumstances of this age. Even the nomenclature surrounding the events in Ukraine since 2022 (and even earlier since 2014) prompts the strongest reactions.

- c. The Panel’s appreciation of the Respondent’s witnesses who testified, in some instances with passion, is that they were undoubtedly heartfelt and truthful in their testimony, opinions and views. It also has to be remarked that at no stage did Counsel for the Appellant gainsay or seek to contradict the views and opinions each of the witnesses held in respect of the wider events in Ukraine since 2022.
 - d. It was made expressly clear to the Panel at the hearing by Counsel for the Respondent that the temporal ambit of the enquiry before it was confined to the period from 24 February 2022 to 11 March 2022. Thus, the Panel’s discussion and disposition as to the merits of this appeal are strictly confined to the events between those two dates. Nothing herein should, or could possibly be construed to indicate, even inferentially, any view of the Panel as to whatever might or might not have happened either: (a) before 24 February 2022; or (b) after 11 March 2022.
 - e. As noted at para. 61 above, the Respondent’s Ethics Code was and is inapplicable. This fact renders highly problematic the Ethics Committee’s actions on 8 March 2022 (recorded above at para. 10) as they were entirely premised on the Ethics Code. The original initiation by an organ of the Respondent of the process against the Appellant had its basis in an applicable set of regulations. Further, the Disciplinary Committee (upon the invitation of the Ethics Committee) set in train its process on the sole basis of the Ethics Code (recorded above at para. 11). It was only with its decision on 11 March 2022 that the Disciplinary Committee referenced the Respondent’s Disciplinary Rules. The factual record before the Panel indicates that at no point prior to the Appealed Decision being made by the Disciplinary Committee was the Appellant expressly made aware that he was in peril insofar as the Disciplinary Rules were concerned. The legal case he was required to meet was premised on the inapplicable Ethics Code.
77. The Panel has had the benefit not just of the Parties’ written submissions and their assistance at the hearing, but also the necessary opportunity to carefully reflect on the unique and challenging circumstances presented by this appeal. The Panel has not, as is obvious from the procedural history recorded earlier, rushed headlong into what might have been a precipitate decision sacrificing mature consideration and rigour on the altar of supposed “efficiency”.
78. In the Panel’s view there is a highly complex set of intersecting and, in some instances, not-easily-reconcilable issues which are in play. These might include, and indeed there may well be several other such factors:
- an individual’s right to free expression which can include unpopular and for many ears, offensive views;
 - free expression could well also include a choice to say nothing;

- the obligation of fidelity and loyalty to a nation which can often be a concomitant aspect of citizenship of that nation, particularly acute in times of peril;
- if the individual is also a public, but not a political, person, how are each of the foregoing points to be analysed;
- how do all of these points interact with a person's private and family situation; and
- how do all of the foregoing points arise in a sporting context, particularly rising to the extent of bringing a particular body and sport in a state into disrepute;
- if and to what extent is the role of a leading sportsman exceptional; and
- what is the relationship between the expectations of people, federation, colleagues and obligations set by the rules of law;

79. It can be fairly stated that the underlying rationale for imposing sanctions on the Appellant engages exceptionally complex factors. On any view it would be challenging to balance all of these points in order to come up with a cognisable standard by which a professional sportsman might be measured objectively as to whether specific acts or omissions would trigger a serious finding of bringing a sport or body into disrepute. However, before any such considerations might be examined the Panel will assess the facts in the relevant period between 24 February 2022 and 11 March 2022.

80. The Respondent's case, in its Answer, on the facts for the aforementioned relevant period is as follows:

“8. On the morning of 24 February 2022, Russia started a full-scale invasion of Ukraine. Missiles and airstrikes hit across Ukraine, including Kyiv, shortly followed by a large ground invasion along multiple fronts (Exhibit 4).

9. On that day, Mr Tymoshchuk posted on his Instagram account a picture with the shape of Ukraine without part of its territory and the hashtag “#notowar” (see Appellant's exhibit A8). The post did not contain any condemnation of the Russian invasion. Shortly after, Mr Tymoshchuk deleted this post.

10. On 2 March 2022, it was reported that a Ukrainian football player Yaroslav Rakitskyi, who worked at FC Zenit at that time, terminated his employment contract with the Russian club and left the country (Exhibit 5). It was also reported that the Appellant continued his work in FC Zenit (Exhibit 6, p.4)”

81. The Panel has carefully examined the Appellant's Instagram message and does not immediately see how the Respondent's characterisation of the map of Ukraine is “without part of its territory”. The Appellant's use of a map clearly indicates Crimea and eastern districts within the colours of the Ukrainian flag superimposed on the image.

It is unclear exactly what precise area of Ukraine (*i.e.* prior to the events of 2014) is stated by the Respondent to be missing.

82. Secondly, insofar the Instagram message is concerned, the Panel does not understand that the removal of that story was an intentional step by the Appellant; rather, its ceasing to be visible after 24 hours is an inherent part of that social media platform.
83. The hearing before the Panel was of considerable assistance in facilitating an understanding of what was happening in football in Ukraine during the relevant period of 24 February 2022 to 11 March 2022. This was a point carefully put in cross-examination by the Appellant's Counsel to the Respondent's witnesses as well as questions asked by the Respondent's Counsel and members of the Panel. The Panel's understanding of the thrust of the testimony was that (as per Counsel's closing submissions) nobody was thinking about football at that short period of time. Further, there was no football activity during those few weeks given the circumstances. The Panel considers this submission to be credible and does not understand there to be a positive factual case presented by the Respondent to suggest that football either continued, or that anyone within Ukraine gave it more than a passing thought.
84. The Panel's perception of the witness testimony during the hearing, as already indicated above, was that all were frank and expressed their opinions with sincere conviction. However, it would be hard to draw a fine dividing line between their testimony insofar as it would have spoken to matters of fact prior to 11 March 2022 and their views of the Appellant in the years thereafter. Given the seriousness of the matter, such fine distinctions are important.
85. Bearing the foregoing in mind, the Panel now turns to consider the question of what, in general, is meant by bringing sport into disrepute. The Appellant relies on CAS 2007/A/1291 *Mikhailo Zubkov v. Fédération Internationale de Natation (FINA)* where that panel carefully examined the meaning of the prohibition in the FINA rules of bringing the sport of swimming into disrepute. The factual basis for that case involved a rather public fracas between a coach and his daughter (a high level swimmer) as to the latter's choice of boyfriend.
86. In passing the Panel notes that the FINA rules utilise "disrepute" as the conduct which is proscribed, whereas the UAF Disciplinary Code prohibits "behaviour that damages the reputation of football and/or the UAF". There is little, if any real difference between those formulations save only for those committed to pedantry.
87. That panel in the *FINA* matter held that actual disrepute, as opposed to putative or potential disrepute, is what was required in order to establish the charge. The most pertinent passage of that award for present purposes is in para. 20:

"The conduct in question must thus result in the sport of swimming – as opposed to, for example, individuals involved in the sport of swimming – being brought into disrepute. In other words: public opinion of the sport of swimming must be diminished as a result of the conduct in question."

88. The Panel adopts this formulation, suitably adapted, for present purposes. Thus, the Appellant's conduct in the period 24 February 2022 to 11 March 2022 must have resulted in the public opinion of football and the Respondent being diminished. That only goes so far as the factual predicates underlying the *FINA* matter were of a much more limited scope. As noted above at para. 76, the present case involves a most complex array of intersecting issues.
89. Ultimately the Panel has to be persuaded that the conduct of the Appellant in a narrow time period caused actual damage to the sport of football and to the Respondent. Based on the evidence which was put before the Panel, but also taking into account the fact that the origination of the process against the Appellant reposed solely on inapplicable rules, a finding that damage was actually caused to football or to the Respondent is out of reach. It does not mean that there has been no harm to anyone else (including Appellant himself), however in the Panel's view, it has not been established that Ukrainian Football or UAF has been brought into disrepute during the above-mentioned period of time due to Appellant's actions or omissions.
90. In such circumstances, the appeal is upheld and the various sanctions imposed are annulled.
91. The Panel permits itself certain comments in conclusion on the sanctions.
92. The retrospective deprivation of titles for reasons entirely disconnected in both time and scope from the circumstances which led to the Appealed Decision would not have survived a finding by the Panel of actual damage. Those were titles won by the Appellant on the field of play many years ago without any question mark over them. They are not amenable to deprivation in these circumstances. There have been no charges or circumstances which related to winning of the given titles.
93. The ban for life on participation in football was, as it appeared to the Panel and confirmed at the hearing by the Respondent, confined to the territory of Ukraine. Ultimately, as the Appellant is not currently working in football in Ukraine the annulment of the lifetime ban is of no practical moment. The Panel noted however, that the change of the wording of the decision already granted and delivered to the parties, to the proposed extent, is not legitimate.
94. The Appellant never lost his UEFA Pro Coaching Licence as the Respondent's organs did not move ahead with whatever process might have resulted in the actual deprivation of that licence. It now makes no difference as the Appellant is possessed of such a licence via the Russian football authorities.
95. Finally, insofar as the Respondent indicating that it would take steps to request the Ukrainian state authorities to strip the Appellant of any national honours, there appears to be little or no consequence for its annulment as part of the Appealed Decision. Whether or not the Respondent requests the sovereign authorities in Ukraine to do anything, that is a matter solely for the Respondent (as might well be the case for any individual or entity); however, whether such complaint actually results in an honour being revoked pertains solely to the Ukrainian Government and is not amenable to the

present form of arbitral review by the Appellant. The Panel however finds it problematic that such a finding is contained in the operative part of the Appealed Decision since no legal basis for such a ruling can be found in the applicable Disciplinary Regulations.

IX. COSTS

(...).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Appeal filed by Anatoliy Tymoshchuk on 16 February 2024 against the decision of the UAF Appeals Committee dated 24 January 2023 is upheld.
2. The decision of the UAF Appeals Committee dated 24 January 2023, confirming the decision of the UAF Control and Disciplinary Committee dated 11 March 2022, is set aside and annulled.
3. (...).
4. (...).
5. (...).
6. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 18 November 2024

THE COURT OF ARBITRATION FOR SPORT

Mr Klaus Reichert S.C.
President of the Panel

Mr Wouter Lambrecht
Arbitrator

Mr Maciej Bałaziński
Arbitrator