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**Decision**  
of the  
**Control, Ethics and Disciplinary Body**  
on  
**15 October 2015**

Chairman: Partl Thomas (AUT)

Vice-Chairman: Berzi Sándor (HUN)

Member: Bonett Chris (MLT)

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**Disciplinary Case:** 28736 - UCL - 2015/16

**Incidents:** Improper conduct of supporters (illicit chants and banners) - Art. 16 (2) DR

**Competition:** UEFA Champions League 2015/2016

**Match:** FC Barcelona vs. Bayer 04 Leverkusen , 29.09.2015

**Referee:** Martin Atkinson (ENG)

**Official Delegate:** David Roger Griffiths (WAL)

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## **I. Facts Of The Case**

1. The elements set out below are a summary of the main relevant facts, as established by the Control, Ethics and Disciplinary Body on the basis of the official reports, the written submissions, the exhibits filed and the statements produced in the course of the Control, Ethics and Disciplinary Body proceedings. While this UEFA disciplinary body has considered all the facts, allegations, legal arguments and evidence submitted by the club in these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.
2. Briefly, the most relevant facts of this case can be summarized as follows:
  - In the 17:40 minute of the first and second half of the game chants of independence were heard around the ground for approximately 10 seconds.
  - Furthermore, the so-called "estelada" flags (yellow, red stripes and blue triangle) were also shown from various sectors of the tribunes around the ground.

## **II. The Respondent's position**

3. FC Barcelona (hereinafter also as "the Club" or "FCB") in its statements dated on 11 October 2015, states that the file is about a social question and not a political one.
  4. In this regard, the Club contextualizes the case insofar the match in which the banners and the chants were given was played 48 hours after the elections to the Parliament of Catalonia. It underlines that the elections had a different historical importance as other celebrated in the past as parties were discussing and positioned themselves as whether to get or not the independence of Catalonia from Spain, which the Club compares with the referendum celebrated in Scotland on 18 September 2014.
  5. The Club considers that "within this social pro-independence movement, they have had a major role its representative symbols, highlighting the flag called "estelada". According to the club, "this flag isn't the official flag of Catalonia, but has become the flag pro-independence people of Catalonia commonly used by the people that is agree with the independence positions".
  6. Furthermore the Club holds that UEFA in its aim of disconnecting sport to politics "can end in a more political action" insofar a punitive intervention by UEFA, in such a sensitive time like these weeks lived in Catalan society, could be interpreted by "many people in Catalonia like an invitation to increase their demonstrations of support for the independence of Catalonia in the following UEFA CL". Briefly, UEFA would have entered into the political discussion itself.
  7. The Club again refers to the connection with the elections to the Parliament of Catalonia which evidenced a social division which was exposed than at the match causing hereby spontaneous acts of vindication of the favorable position to YES to independence, and its most used symbol which is the flag "estelada".
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8. The flag "estelada" has never been declared illegal by a court. It has been even declared by the VI / Resolution 497 / X of the Catalan Parliament, on January 29, 2014, as a "symbol of a longing and a legitimate, democratic legal claim, and non-violent".
9. In addition, the Club insists on the fact that these actions have been repeated regularly since mid- 2012. In short, the display of flags "estelada" and cries of protest independence of Catalonia of 17 minutes, 14 seconds (remember 1714, when Catalonia lost its special legal status after the War of Succession), originated in September 2012, after holding the manifestation of the National Day of Catalonia.
10. The Club took care to organize, encourage, or promote any activity or protest gesture set that could involve an explicit expression of will of FC Barcelona in the UEFA Champions League, but the Club is unable to prevent the entrance to their stadium flags as in the eyes of the autonomic police they do not represent in any way a problem of public order or impose any incitement to violence, there is no national law, mainly the Law 19/2007, of 11 July against violence, racism, xenophobia and intolerance in sport that prevents in this regard, and the fundamental right to freedom of expression of Article 20 of the Spanish Constitution supports the displaying of the latter.
11. Finally the Club refers to the consistency with the previous sanction imposed against the latter concerning similar incidents occurred during the UEFA Champions League Final 2015. In this regard, it states that (i) at that time the FCB felt that the party was an event organized by UEFA and the FCB was not even host (in this file FCB hosted), and therefore, from their position, they had to respect the rules and organizational decisions laid down by UEFA, (ii) that the match was held in Germany, a country where there are very strict rules regarding display of some symbols and (iii) FCB understood at the time that the global dimension of an event like the UEFA Champions League, forcing the organization (UEFA) to exercise extreme control of all events that may occur during the game.
12. The more detailed arguments made by the club in support of its written submissions are set out below in as far as they are relevant.

### **III. Merits of the Case**

#### **A. UEFA's competence**

13. Pursuant to Article 52 of the UEFA Statutes, as well as Article 23 of the UEFA Disciplinary Regulations (DR), the Control, Ethics and Disciplinary Body is competent to deal with the case.
  14. In light of the above, the UEFA Statutes, rules and regulations, in particular the UEFA DR are applicable to these proceedings.
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B. The displaying of illicit banners and use of illicit chants

*a) Applicable legal framework and general remarks*

15. According to Article 16 (2) (e) DR, all associations and clubs are liable for the following inappropriate behaviour on the part of their supporters and may be subject to disciplinary measures and directives even if they can prove the absence of any negligence in relation to the organisation of the match: the use of gestures, words, objects or any other means to transmit any message that is not fit for a sports event, particularly messages that are of a political, ideological, religious, offensive or provocative nature.
16. According to Article 38 DR, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided.

*b) The responsibility of the club*

17. The Control, Ethics and Disciplinary Body takes this opportunity to recall, that it cannot allow football matches organised by UEFA to become forums for people who want to abuse the game's popularity to publicise opinions which are not fit for sporting events, irrespective if the latter are from political, religious, offensive, violent, social or whatsoever nature. This is the reason why Article 16 (2) (e) DR expressly forbids the transmission of any message which is not fit for a sport's event during football matches.
  18. It shall be stressed that Article 16 (2) (e) DR refers to behaviours perpetrated mainly by supporters which as a matter of fact, either because the latter were reported by an UEFA official report, or for instance by a UEFA Ethics and Disciplinary Inspector, are put under the scrutiny of the UEFA disciplinary bodies which will then declare if the said conducts are fit for a sport's event or not.
  19. In this regard it needs to be insisted that Article 16 (2) (e) DR is not only aimed at political, religious and/or violent messages, but at all those conducts and messages that are not fit for a sport's event.
  20. In this line, there is no need that the gesture or the messages are not prohibited by the national law or do not to create any sort of security issue. The key point here, again, is whether the gesture and/or the message is in fact suitable for a sport's event.
  21. It is not less true that in cases where the background, context and the facts present elements having political roots and/or connotations, or are in fact of a political nature, the task of the Control, Ethics and Disciplinary Body encompassed whilst analysing these kind of infringements is notably simplified.
  22. Obviously political messages and gestures are not fit for sport's event. Politics has no room in UEFA competitions and in sport in general.
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23. In the present case, during the first and second half of the game chants in favour of the independence of Catalonia were heard around the ground for approximately 10 seconds. "Estelada" flags (yellow, red stripes and blue triangle) were also shown from various sectors of the tribunes around the ground.
  24. The above has been reported by an UEFA official report which in accordance to Article 38 DR, is presumed to be accurate. Proof of their inaccuracy may, however, be provided.
  25. The Club does not dispute the above mentioned facts, recognizing that the above facts did indeed take place.
  26. The meaning and background of the banners and the chant have been comprehensively put forward by the Club. On the one hand, it is within the pro-independence movement existing in Catalonia (i.e independence from the Spanish state), that the so called "estelada" banner plays a major role, becoming the flag pro-independence which people of Catalonia use to demonstrate their agreement to the said movement. On the other hand, the cries of protest of independence, as so exposed by the Club, are shouted at the 17:14 min of each match played by FC Barcelona, and remember 1714, when Catalonia lost its special legal status after the War of Succession.
  27. The Club raises the idea that the case in hand does not deal with a political matter but with a social question, being the incident contextualized by the situation lived in Catalonia during the days prior to the match in which elections to the Parliament of Catalonia took place and in which the public opinion was split between those wanting the independence of Catalonia and those who don't.
  28. The Control, Ethics and Disciplinary Body notes that the Club has not provided any argument as to sustain that the chants claiming for "independence" and/or the banners displaying the so called "estelada" and/or the combination of both actions are fit for a sport's event in accordance with Article 16 (2) DR and the above considerations.
  29. In particular, no relation between these attitudes and a sport's event has been demonstrated or is to be appreciated, all the more when the core arguments used by the Respondent, with all due respect to the Club, refer, first, to a political matter, in particular to elections celebrated prior to the match in question, being elections nothing else than one of the most outstanding political expressions of modern and democratic societies, and, second, to a political claim undergone by one part of the Catalonian citizens who ambition to be separated from the State, one of the most recurrent political claims in Western societies during the past centuries, see for instance the cases of Albania, Kosovo, Croatia, Cyprus, Palestina, etc. It needs to be highlighted that all the latter examples of similar political claims have also been examined by UEFA disciplinary bodies at the occasion of other disciplinary proceedings opened against clubs and associations, resulting in disciplinary sanctions against the latter.
  30. Bearing the above in mind, the context and content of the claim presented in this particular case does not differ substantially from the above mentioned examples, being, thus, not possible to give to the current case a different treatment and/or approach. If it
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were so, this, contrary to the assertion of the Club, would indeed position UEFA disciplinary bodies in the political discussion referred by the Club in its statements and not the other way round, as intended by the Club whilst requesting UEFA not to enforce its regulations and legal framework.

31. It appears obvious, even more after analysing the statements of the Club, that the banners and the chants have a clear political background that leads to the sole conclusion that these actions are not fit for a sport's event. It is so in the extent that the Club was not able to submit one sole argument as why the content of the banners and the chants shall be perceived as being fit for a sport's event.
  32. It is worth to mention that the Respondent places the whole discussion mainly on the following arguments:
    - Regarding the "esteladas" the club states that "this flag isn't the official flag of Catalunya, but has become the flag pro-independence people of Catalonia commonly used by the people that is agree with the independence positions. " or "Its design and use has been opposing the use of the official flag of Catalonia (yellow background with four red stripes) that the hardliners in favour of the independence of Catalonia consider the use of the official flag, with the official flag of Spain (in all public institutions are in Catalonia), cancel the power of the official flag as a symbol of a future independent country. This, so the Club, "is the explanation of the use of the flag "estelada" to express support for pro-independence of Catalonia postures".
    - Concerning the chants, the club states that they "remember 1714, when Catalonia lost its special legal status after the War of Succession".
  33. Taking the above into account, it is in the eyes of this disciplinary body, that these arguments have clear and obvious political connotations, to say the least, and no relation whatsoever with the UEFA competition match played that day, the UEFA competition itself, football or any kind of sport or sporting event.
  34. In any case and irrespective of the arguments put forward by the club by means of its statements filed before this disciplinary body, it must be concluded that in the eyes of an objective onlooker the "estelada" flag and/or the chants in favour of the independence of Catalonia have an obvious political character which UEFA cannot accept at football venues.
  35. Regarding the responsibility of the Club, the Control, Ethics and Disciplinary Body wishes to emphasize that those arguments raised by the Club trying to portray that there is a difference between this match and the Final of the UEFA Champions League 2015 played in Berlin on 6 June 2015, are not only irrelevant also totally unintelligible. The Control, Ethics and Disciplinary Body wishes to highlight that the current disciplinary proceedings have been opened for exactly the same specific offences (illicit banner and illicit chants) as those which triggered a disciplinary decision rendered against the Club on 23 July 2015. At that time and contrary to its contemporaneous wish, the Club not only accepted the latter decision and did not challenge it before the UEFA Appeals Body, but did not
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even request the grounds of the said decision. It is difficult to understand from a strictly legal point of view how after accepting this decision imposed for the same offences as those in the case in hand, only three months later FCB tries to persuade this UEFA disciplinary body to take a different approach.

36. The Control, Ethics and Disciplinary Body takes the opportunity to recall that CAS has continuously supported UEFA's autonomy to regulate its own affairs. Remarkably, in a very recent CAS award, CAS 2015/A/3926 FC Gelsenkirchen-Schalke 04 v. UEFA, the latter arbitration court stated that "the Swiss law of private associations provides in Art. 60 et seq. Swiss Civil Code (CC) a very wide degree of self-determination, autonomy and independence". It continues by stating that "private associations may issue rules concerning their governance, membership and their own competitions".
  37. According to Article 2 of the UEFA DR, the UEFA Disciplinary Regulations apply to any breach of UEFA's Statutes, regulations, directives or decisions, with the exception of any breach of the UEFA Club Licensing and Financial Fair Play Regulations which may be penalised by the Club Financial Control Body in accordance with the Procedural rules governing the UEFA Club Financial Control Body. The Club is always bound by the rules.
  38. It shall be insisted that any conduct resulting in a breach of the above mentioned legal instruments conforming UEFA's legal framework falls within the scope of the material application of the UEFA Disciplinary Regulations.
  39. Amongst those breaches stands certainly those misconducts of supporters violating the UEFA Disciplinary Regulations, see for instance Article 16 DR, which trigger the responsibility of a club and/or an association towards its supporters inappropriate behaviour. Briefly, the well-established principle of strict liability applies.
  40. Indeed and according to Article 8 DR, which stipulates the said principle of "strict liability", and Article 16 (2) DR, which builds on this principle, a club and/or an association is to be held responsible for the improper conduct of its supporters, even if it might not be at fault itself, irrespective where and when the match was played (CAS 2013/A/3047 FC Zenit St. Petersburg vs Football Union of Russia).
  41. It follows that even in cases where the Club bears no fault it is strictly liable for the misconducts of its supporters in accordance to the referred principle of strict liability.
  42. In the case in hand, the chants and the banners, which as demonstrated in previous paragraphs are definitely not fit for sports and contain both a clear political message, bind the Club's responsibility towards the said misconducts, and this, irrespective, if the match was played in Spain, in Germany or elsewhere, or the said banners and chants were not being prohibited by any national law, or if they were not qualified as inciting to violence symbol or if they were not organized and/or encouraged from the club as stated by FCB in its statements. None of the exposed arguments work against the fact that both the chants and the banners are not fit for a sport's event and trigger the Club's responsibility in accordance with Article 8 and 16 (2) (e) DR.
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43. Bearing the above in mind and after having evaluated the UEFA official report, the arguments of the Club, and thoroughly analysing the context and nature of the behaviours perpetrated by the FC Barcelona supporters during the said match, the Control, Ethics and Disciplinary Body deems that the said conducts are not fit for a sports event due to its blatant political content, and therefore violate Article 16 (2) (e) DR. Consequently and in accordance to the principle of strict liability referred above, the Club shall, therefore, be held responsible and punished accordingly.
44. As a final remark, it is quite regretful that a renowned institution as FC Barcelona, not even does not abide to the rules and legal framework accepted by the latter and contests UEFA disciplinary proceedings and its UEFA's well-established standing practice as regards Article 16(2) DR and the principle of strict liability (against being coherent to its previous attitude), but is threatening UEFA that in case it decides to punish the Club this will "incentive", in words of the Club itself, further incidents of the same nature. This is obviously not acceptable. Indeed, this disciplinary body expects the full cooperation of the club to avoid this alleged potential issue.

#### **IV. The determination of the appropriate disciplinary measure**

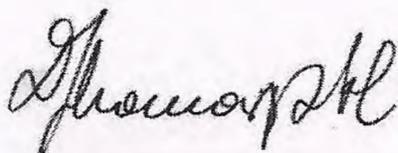
45. Based on Article 17 DR the Control, Ethics and Disciplinary Body determines the type and extent of the disciplinary measures to impose according to the objective and subjective elements of the case, taking account of any aggravating and mitigating circumstances. In the case of multiple offences, the punishment shall correspond to the most serious offence and be increased depending on the specific circumstances.
46. In the present case, the Control, Ethics and Disciplinary Body identified and took into account the following concrete circumstances:
- the seriousness of the offence committed;
  - the club's previous record: FC Barcelona has already been punished for improper conduct of its supporters, and, in particular, for the displaying of illicit banners;
  - the fact that the Club already acknowledged that the displaying of the "estalada" banners and the chants in favour of the independence of Catalonia are against the current UEFA DR, since only three months ago prior to this case the Club was already sanctioned for the use of the cited banners without having considered the possibility to appeal this previous decision.
47. In the light of the above considerations, the Control, Ethics and Disciplinary Body

### **decides**

#### **The Control, Ethics and Disciplinary body decides:**

1. **To fine FC Barcelona € 40'000.**
2. **The above fine must be paid into the bank account indicated below within 90 days of communication of this decision.**

Thomas Partl  
Chairman



**Bank details**  
Union Bank of Switzerland  
CH-3001  
Acc. n° 235-90 186'444.6  
Bank code 235  
Swift: UBS WCH ZH 80A  
IBAN CH30 00235235901864446

Advice as to rights of appeal

**This decision is open to appeal (Article 54 DR).**

**A declaration of the intention to appeal against a decision by the Control, Ethics and Disciplinary Body must be lodged with the UEFA administration, in writing, for the attention of the Appeals Body, within three days of notification of the relevant decision with grounds (Article 53 (2) DR).**

**Within five days of the expiry of the time limit for the declaration of the intention to appeal, the appellant must file, in writing, the grounds for appeal, which must contain a legal request, an account of the facts, evidence, a list of the witnesses proposed (with a brief summary of their expected testimony) and the appellant's conclusions (in particular on whether to conduct the appeal proceedings orally or in writing) (Article 53 (3) DR).**

**The appeal fee is €1,000, payable on submission of the grounds for appeal at the latest (Art. 53 (4) DR).**

*Enrico Costa  
Head of Disciplinary and Appeals*

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