

CAS 2023/A/9972 FEDERACIÓN MEXICANA DE FÚTBOL
v. FIFA. DISCRIMINATORY BEHAVIOUR

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ABSTRACT:

The following is an analysis of the legal proceedings involving the *Federación Mexicana de Fútbol* (FMF) and FIFA, concerning the discriminatory behaviour of FMF's supporters at two matches played in the context of the FIFA World Cup Qatar 2022. The FIFA Disciplinary Committee found the FMF in breach of the anti-discrimination rule of the FIFA Disciplinary Code (FDC). The matter ultimately reached the Court of Arbitration for Sport (CAS), where the FMF's appeal centred on the limits of the strict liability principle and on the proportionality of the sanction. The CAS confirmed the applicability of strict liability to member associations for the discriminatory conduct of their supporters. However, it slightly reduced the sanction imposed by FIFA, citing the "passive attitude" of FIFA's officials in responding to the incidents as a mitigating factor. The award reaffirmed that discriminatory chants have no place in football and suggested that, in future, FIFA may need to impose harsher sanctions on associations to eradicate this misbehaviour.

KEYWORDS:

CAS, disciplinary proceedings, appeal, discrimination, supporter misconduct, strict liability, proportionality, mitigating circumstances.

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Summary: 1. Factual background. 1.1. The discriminatory incidents. 1.2. The disciplinary proceedings against the FMF. 2. CAS Appeal. 2.1. Arguments of the Parties. 2.2. The Panel's decision. 3. Conclusions

1. FACTUAL BACKGROUND

1.1. THE DISCRIMINATORY INCIDENTS

On 22 November 2022, the representative teams of Mexico and Poland faced off in the FIFA World Cup Qatar 2022. Before entering the stadium, a small group of 5-10 Mexican supporters chanted "*Poropopo poropo el que no salte es un polaco maricon*" (which translates in English to "*Poropopo poropo he who doesn't jump is a Polish faggot*"). During the match, two further discriminatory incidents took place. At minute 18:55, about 200 Mexican supporters engaged in the same chant for around 10 seconds. The chant was again repeated in minute 85:40 of the match, this time by the majority of the Mexican fans in the stadium. In response to this second chant, a stadium announcement was made reminding the supporters to refrain from discriminatory chants, to uphold the principles of fair play, and to take part in football in the spirit of respect and equality.

On 30 November 2022, the Mexican team played Saudi Arabia in the same competition. At minutes 94 and 96, the Mexican supporters throughout the stadium in the 11 sections shouted “Eeeeeh puto” at the Saudi Arabian goalkeeper as he was taking the goal kick.

1.2. THE DISCIPLINARY PROCEEDINGS AGAINST THE FMF

In view of these discriminatory incidents, disciplinary proceedings were opened against the FMF for a potential breach of Article 13 FDC (2019 ed.) on discrimination. The case was heard first by the Disciplinary Committee and then on appeal by the Appeal Committee, before ultimately reaching the CAS. The main points of the decisions of the FIFA judicial bodies are summarised below.

1.2.1. The Decision of the Disciplinary Committee

On 13 January 2023, the FIFA Disciplinary Committee rendered its decision on the matter, finding the FMF in breach of Article 13 FDC¹ and ordering the FMF to pay a fine to the amount of CHF 100,000 and to play its next (A level) FIFA competition match without spectators, with such sanction being suspended for a probationary period of two years.

In reaching its conclusion, the Committee, noting that the FMF had not challenged the occurrence of the incidents or that they were discriminatory in nature, found the FMF strictly liable for the offence committed by its supporters. The Committee recalled that through the application of strict

¹ “1. Any person who offends the dignity or integrity of a country, a person or group of people through contemptuous, discriminatory or derogatory words or actions (by any means whatsoever) on account of race, skin colour, ethnic, national or social origin, gender, disability, sexual orientation, language, religion, political opinion, wealth, birth or any other status or any other reason, shall be sanctioned with a suspension lasting at least ten matches or a specific period, or any other appropriate disciplinary measure.

2. If one or more of an association’s or club’s supporters engage in the behaviour described in paragraph 1, the association or club responsible will be subject to the following disciplinary measures:

a) For a first offence, playing a match with a limited number of spectators and a fine of at least CHF 20,000 shall be imposed on the association or club concerned;

b) For reoffenders or if the circumstances of the case require it, disciplinary measures such as the implementation of a prevention plan, a fine, a points deduction, playing one or more matches without spectators, a ban on playing in a particular stadium, the forfeiting of a match, expulsion from a competition or relegation to a lower division may be imposed on the association or club concerned.

(...)”

liability, an association is responsible for the discriminatory acts of its supporters, even if it is not at fault, and that FIFA is empowered to sanction not only the supporter, but also the association in order to implement FIFA's zero-tolerance policy on discrimination. The Committee underlined that this principle served as one of the few legal tools available to FIFA to prevent misconduct by supporters from occurring and going unpunished.

While the Committee commended the FMF for the various anti-discrimination efforts and initiatives it implemented prior to the FIFA World Cup Qatar 2022 and acknowledged that the FMF lacked authority over security logistics and organisation of the competition, it underlined that this did not excuse or absolve the FMF of its strict liability for the misconduct of its supporters.

In determining the appropriate sanction, the Committee took into account: (i) FIFA's zero tolerance policy towards discrimination; (ii) that discrimination should be met with a sanction that reflects the seriousness of the offense; (iii) that the incidents occurred during two matches of the FIFA World Cup 2022 – the most prestigious and widely-viewed sporting event in the world; (iv) the efforts of the FMF in combatting discrimination through various measures and initiatives; and (v) the fact that the FMF was a recidivist.

The FMF appealed this decision of the Disciplinary Committee.

1.2.2. The Decision of the Appeal Committee

On 1 June 2023, the FIFA Appeal Committee rendered its decision on the matter (the "Appealed Decision").

In application of the *lex mitior* principle enshrined in the FDC, the Committee decided to apply Article 15 of the 2023 FDC, instead of Article 13 of the 2019 FDC, which had been used by the first instance. In this respect, the Committee noted that the two provisions were nearly identical except for one substantive change that benefitted the FMF, specifically, the addition of paragraph 3², which gave the FIFA judicial bodies the right to deviate from

² "The competent judicial body may deviate from the above minimum sanctions if the association and/or club concerned commits to developing, in conjunction with FIFA, a comprehensive plan to ensure action against discrimination and to prevent repeated incidents. The plan shall be approved by FIFA and shall include, at least, the following three focus areas:

a) educational activities (including a communication campaign aimed at supporters and the general public). The effectiveness of the campaign will be reviewed regularly.
b) Stadium security and dialogue measures (including a policy on how offenders will be identified and dealt with through football sanctions, a policy on escalation to

the above minimum sanctions if an association, in conjunction with FIFA, implemented or further developed an anti-discrimination plan.

On the substance, the Committee first held that the Appellant could not be exonerated from its strict liability for the misconduct of its supporters. In this respect, the Committee relied on well-established CAS jurisprudence, which held that the purpose of applying strict liability was *"not simply to sanction the association as such, but above all to ensure that the association assumes liability for the offence committed by its fans. Accordingly, the provision is of a highly preventive and dissuasive nature... [T]he punitive aspect of the sanction is therefore of secondary importance or the preventative and dissuasive role that sanctions must perform in the interest of internal order in football"* (citing CAS 2022/A/8751).

The Committee found irrelevant – in determining liability – that the FMF had taken preventative measures against discrimination and that it was not in charge of the organisation of the matches. The Committee underlined that the principle of strict liability was independent from the behaviour of the FMF and/or from any external organisation aspect. The Committee considered that these elements could only constitute potential mitigating circumstances, but they did not affect the strict liability of the FMF.

Having found the FMF liable, the Committee then assessed the proportionality of the sanction. The Committee considered that, as a matter of principle, the fine imposed by the first instance was entirely appropriate and proportionate to the offence committed. In this respect, the Committee found that, contrary to the FMF's position, the FMF had been correctly qualified as a recidivist and the association's efforts to combat discrimination were duly acknowledged and taken into account by the first instance. The Committee noted that the first instance had correctly departed from the "standard" sanctions usually imposed on recidivists of discriminatory offences. Instead of ordering the FMF to play a match without spectators – which is the default sanction for such recidivism – the first instance body suspended that sanction, subject to a probationary period.

Nonetheless, in application of Article 15.3 FDC and in view of the various measures against discrimination taken by the FMF, as well as the FMF's pledge to continue working towards the eradication of discriminatory chants and implementing awareness-raising measures and actions to combat such behaviour, the Committee found it appropriate to partially amend the

state (criminal) legal authorities, and a dialogue with supporters and influencers on how to create change).

c) Partnerships (including working with supporters, NGOs, experts and stakeholders to advise on and support the action plan and ensure effective and ongoing implementation)".

sanction imposed by the first instance, by reducing the stadium closure to 20 percent and modifying the fine as follows: CHF 50,000 to be invested in implementing or developing an anti-discrimination plan in line with Article 15.3 FDC and CHF 50,000 suspended for a period of 6 months, with all CHF 100,000 becoming due only if the FMF failed to implement/develop the anti-discrimination plan as required.

2. CAS APPEAL

On 8 September 2023, the FMF filed an appeal against the Appealed Decision.

2.1. ARGUMENTS OF THE PARTIES

In the appeal, the Parties disputed: (a) the application of the principle of strict liability; (b) the existence and effects of concurrent contribution by FIFA as organiser of the matches; and (c) the proportionality of the sanction imposed by FIFA. The main points of contention between the FMF and FIFA are summarised below.

2.1.1. Strict liability for misconduct of supporters

2.1.1.1. *The FMF's position*

The FMF submitted that the principle of strict liability cannot extend to a competition in which the member association does not have any possibility to direct, affect or control the discriminatory behaviour of its fans, nor to intervene in the execution of the Three-Step Protocol designed to deal with such incidents at a match.

The FMF set out the cumulative conditions which must be met under Swiss law for no-fault strict liability to apply –wrongful conduct, damage and a causal link between the two. Furthermore, the FMF argued that, pursuant to Swiss law, for a member association to be strictly liable for the actions of a third party, it must have direction and/or control over said party. As there was no causal link between the Mexican supporters and the FMF, the principle of strict liability could not be applied.

The FMF pointed out that FIFA was the exclusive organiser of the final stage of the FIFA World Cup Qatar 2022. As a result, FIFA had control of security and access to the stadiums and of the public address system. The FMF posited that this absence of control and direction over the organisation of the matches and, in turn, of the fans, led to the non-imputability of the FMF.

2.1.1.2. FIFA's position

FIFA posited that the FMF's reliance on Swiss law was misplaced, as the applicable laws were the FIFA regulations (in particular the FDC) and that there was no need to apply Swiss law subsidiarily. On this point, FIFA advanced that Article 15 FDC did not contain a *lacuna* or require an interpretation so as to necessitate the application of Swiss law on a subsidiarity basis. In FIFA's view, as confirmed by CAS jurisprudence, the principle of strict liability established in articles 8.¹³ and 17⁴ FDC was valid and compatible with Swiss law, the broad regulatory autonomy it enjoys as an association, and public order. Furthermore, FIFA emphasised that the strict liability principle applicable to Article 15 FDC served a justified and valuable purpose in meeting the association's objective of eradicating violence, discrimination and homophobia in football.

FIFA also argued that the FMF could not be exempted from its strict liability based on the measures it had taken to combat discrimination or the fact that FIFA was the organiser of the matches.

2.1.2. FIFA's concurrent contribution to the infringement

2.1.2.1. The FMF's position

The FMF contended that FIFA contributed to the infringement by ignoring the FMF's invitation to collaborate in discrimination prevention campaigns, allowing access in the second match to the supporters who engaged in the discriminatory chants in the first match, not making a stadium announcement after the first incident that occurred in each match, not implementing the Three-Step Protocol pursuant to FIFA Circular 1682, and not identifying the perpetrators with the aim of expelling them from the stadium or preventing them from attending future matches of the competition. In the FMF's opinion, the above circumstances warranted the exoneration of liability of the FMF, or at least, the mitigation of sanctions. Furthermore, the FMF

³ "Unless otherwise specified in this Code, infringements are punishable regardless of whether they have been committed deliberately or negligently. In particular, associations and clubs may be responsible for the behaviour of their members, players, officials or supporters or any other person carrying out a function on their behalf even if the association or club concerned can prove the absence of any fault or negligence".

⁴ "All associations and clubs are liable for inappropriate behaviour on the part of one or more of their supporters as stated below 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..."

advanced that the existence of strict liability did not imply that sanctions had to be imposed. In a justified and appropriate circumstance, a sanction could be reduced or eliminated despite the application of strict liability.

2.1.2.2. *FIFA's position*

FIFA rejected the idea that it contributed to the misconduct of the Mexican supporters. FIFA did not ignore the FMF's invitation to collaborate on an anti-discriminatory campaign but rather communicated that it was working on its own initiatives. Regarding the FMF's allegation that FIFA did not make stadium announcements, FIFA submitted that, in the first match, the FIFA officials did not make such an announcement after the first incident because it was not very audible or of great intensity (as compared to the chant in the 85th minute which was followed by an announcement). Furthermore, FIFA submitted that it did not make an announcement in the second match because the incidents occurred in the 94th and 96th minutes. With the match ending in the 97th minute, this resulted in limited time to implement the protocol. Lastly, FIFA recalled that the referee had the exclusive power to activate the Three-Step Protocol under FIFA Circular 1682.

2.1.3. *Proportionality of the sanction*

2.1.3.1. *The FMF's position*

The FMF maintained that Article 15.3 FDC (ed. 2023) allowed FIFA to diverge from the minimum sanctions set out in Article 15 FDC or to even eliminate the sanction altogether based on the particular circumstances of the case.

The FMF considered that the circumstances of the present case warranted the reduction or elimination of the sanction. In its view, the sanction imposed was disproportionate considering FIFA's praise of the FMF in the fight against discrimination, the preventive and reactive actions taken by the FMF to combat discrimination, the fact that the FMF's measures against discrimination have proven to be effective, and the minor nature of the incidents that occurred.

2.1.3.2. *FIFA's position*

FIFA posited that the Appealed Decision had taken into consideration all mitigating factors. FIFA considered the sanction imposed on the FMF to be proportionate to the offense committed in view of the fact that: (i) FIFA has zero tolerance policy regarding discriminatory behaviour; (ii) the chants were

highly homophobic and insulting; (iii) the chants occurred in two different matches; (iv) the chants were shouted by a majority of the spectators; (v) the chants occurred during the FIFA World Cup; (vi) the FMF was a recidivist; (vii) the Appealed Decision took into account the measures taken by the FMF to combat discrimination; and (viii) the sanction was very low by FIFA standards in cases of recidivism.

2.2. THE PANEL'S DECISION

2.2.1. Strict liability for misconduct of supporters

The Panel rejected the FMF's proposition that the strict liability of third parties is incompatible with Swiss law, given the doctrinal recognition of the autonomy FIFA enjoys to regulate, at the global level, matters concerning the disciplinary liability of its members. This includes the ability to define, within the FDC, the categories and forms of strict liability, as well as the conditions for applying the principle in specific disciplinary cases.⁵

The Panel concluded that, since there was no *lacuna* in this regard, there was no need to apply Swiss law on a subsidiary basis.⁶ In this respect, it should be noted that, indeed, the CAS has previously confirmed the wording of art. 15 FDC to be clear, unequivocal and leaving no room for ambiguity.⁷

The Panel reinforced that, according to well-established CAS jurisprudence, the principle of strict liability is fundamental to FIFA's efforts to combat hooliganism and discriminatory behaviour by fans and represents one of the few legal mechanisms available to effectively enforce its disciplinary rules. In this context, the Panel explained that the *ratio legis* behind FIFA's strict liability regime is that FIFA relies on its member associations to implement and uphold its statutory objectives, particularly in cases involving discriminatory conduct by supporters.

The Panel does not cite the CAS jurisprudence on which it relies. However, this author notes that the application of strict liability against a member association for the misconduct of its fans is not a novel concept, and one that has been repeatedly accepted by the CAS, for example, in TAS 2022/A/8751 *FENAFUTH v. FIFA*, which eloquently held:

⁵ On the broad regulatory autonomy of FIFA as an association under Swiss law see e.g., CAS 2022/A/8708, CAS 2020/A/7090, CAS 2018/A/5622, among others.

⁶ The Panel's finding is supported by consistent CAS jurisprudence establishing that Swiss law is only applicable in the event of a *lacuna* or if there is a need to interpret the FIFA regulations. See e.g., CAS 2019/A/6241, CAS 2016/A/4471 and CAS 2020/A/7180.

⁷ CAS 2022/A/8751, at paras. 101 and 115.

"116. The liability contemplated here is direct - since liability is imputed to the association as a legal person regardless of the fact that it did not perform directly or through its organs the acts in question - and strict - since liability is attributable beyond the diligence or care provided by the subject in question-.

117. Case law has uniformly commended this system of liability, as it is on the basis of this principle that FIFA has the possibility to deal with cases of spectator misconduct and to impose indirect sanctions on spectators through their association (ex multis: CAS 2009/A/1944, para. 78). The intention of this provision is not only to sanction the association as such, but above all to ensure that the association assumes responsibility for offenses committed by its fans; as such, the provision has an eminently preventive and dissuasive character. The punitive element of the sanction, it has been held, thus assumes a secondary importance behind the preventive and dissuasive function that sanctions must play in the interest of the internal order of football (vide e.g., CAS 2022/A/423, cited expressly and with approval in CAS 2013/A/3094).

118. Therefore, there is no doubt here for the Sole Arbitrator: not only that this liability is applicable to the particular case, but also that it is highly valuable from an axiological point of view, as it embodies one of the most effective tools that the world of football has to eradicate general violence - and discrimination in particular - from its fields".⁸

Moreover, it should be noted that the CAS has accepted the principle of strict liability as applicable not only within the regulatory framework of FIFA, but also in relation to other federations and confederations.⁹

The Panel further reasoned that if the FMF could avoid liability by claiming it had taken all reasonable measures to prevent the misconduct, then supporters could continue to engage in discriminatory behaviour without consequence, as there would be no effective means of holding anyone accountable. The Panel considered that allowing liability to be avoided in such cases would reduce binding obligations to mere recommendations, thereby undermining the preventive and deterrent purpose of the strict liability regime. It emphasised that the aim of applying strict liability in discrimination cases is not to punish the member association for its own fault – which may be absent – but rather to assign responsibility in a way

⁸ Translated from the Spanish original; see also CAS 2013/A/3094, CAS 2009/A/1944 and CAS 2002/A/423.

⁹ See CAS 2015/A/3874 *Football Association of Albania v. UEFA and Football Association of Serbia*, which held that "the principle [of] strict liability for the behaviour of supporters is a fundamental element of the current football regulatory framework" and "one of the few legal tools available to football authorities to deter hooliganism and other improper conduct on the part of supporters". The Panel further noted that "strict liability is widely used in many legal systems to deter activity that is seen as being particularly harmful to social values and interests in circumstances in which it would be very difficult to prove the negligence of the responsible party"; see also CAS 2013/A/3047 at para. 98, and CAS 2018/A/6040.

that ensures discriminatory conduct is addressed through responses that are both effective and dissuasive.

The Panel considered it irrelevant – in determining the application of strict liability – whether the FMF had any direction or control over its supporters. This is consistent with past CAS jurisprudence, holding that even where a club or member association is the away team, it must be held responsible for the conduct of its fans.¹⁰

In any event, in the Panel's view, the FMF could not claim that it was completely uninvolved or absolved of responsibility simply because FIFA was the organiser. The Panel noted that the FMF still had a duty to cooperate and take part in the organisation. For example, that FMF officials actively participated in the pre-match coordination meetings and were involved in organisational and control measures. In addition, the FMF received extensive information from FIFA on the measures to be taken in cooperation with FIFA's fight against discrimination during the competition. As part of the cooperation, FIFA called for the FMF to designate a representative to be responsible during the competition for the coordination of activities related to anti-discrimination and, in particular, to act as a constant point of contact with fans, act as a proactive mediator, and use and distribute the latest version of the FARE Global Guide to Discriminatory Practices in Football.

The Panel concluded that the FMF – in accordance with the principle of strict liability established in the FDC and grounded in FIFA's regulatory autonomy – bore liability for the discriminatory conduct of its supporters. This liability would – in line with past CAS jurisprudence – apply even if the FMF had not been involved in organising the matches and even if only a single supporter had engaged in the discriminatory conduct. The Panel added that, in any event, because the FMF did participate in the organisation and oversight of security and crowd control measures, its claim of non-imputability had to be rejected.

2.2.2. Mitigating circumstances

Notwithstanding the strict liability of the FMF, the Panel found that FIFA officials did not take adequate action in response to certain incidents, demonstrating what it described as a "passive attitude".

With regard to the first match, the Panel found that if the supporters who chanted homophobic slurs had been identified and expelled prior to kick-off, such action could reasonably have had a deterrent effect on the misconduct that followed during the match. Moreover, the Panel found that there was

¹⁰ See e.g., CAS 2009/A/1944, CAS 2014/A/3944 and CAS 2020/A/6920.

sufficient time to identify and even expel from the stadium those offenders who could have been identified during the incidents at minutes 18 and 85 of the match. The Panel also considered that the stadium announcement in the first match was delayed, having been made in the 90th minute. Lastly, the Panel noted that the referee is a FIFA official and that he did not activate the Three-Step Protocol.

As to the second match, the Panel agreed with FIFA that it may have been impracticable and useless to activate the Three-Step Protocol considering that the incidents occurred in minutes 94 and 96 of the match.

The Panel concluded that the “passive attitude” of the FIFA officials in the first match – while it did not excuse or absolve the FMF of its strict liability – constituted a mitigating circumstance and one that had not been considered in the Appealed Decision.

2.2.3. Proportionality of the sanction

Despite the aforementioned mitigating circumstance, the Panel only slightly reduced the sanction imposed on the FMF in the Appealed Decision.

In assessing the proportionality of the sanction, the Panel first observed that the sanction imposed in the Appealed Decision was significantly lower than those established by the FDC for discrimination. The Panel noted that the Appealed Decision imposed a first fine of CHF 50,000 and a second suspended fine of CHF 50,000, which would only become due if the FMF failed to invest the first fine towards the implementation and/or further development of an anti-discrimination plan in accordance with Article 15.3 FDC. In addition, the FMF was sanctioned with only a 20% stadium closure in its next (A level) FIFA competition match, this sanction being suspended for a probationary period of two years.

The Panel found that the new mitigating circumstance, i.e., the FIFA officials’ “passive attitude”, required only a slight modification of the sanction by reducing the probationary period of the stadium closure from two years to one year.

In this respect, it should be noted that pursuant to an established line of CAS jurisprudence, a sanction imposed by FIFA can only be amended by the CAS if the sanction concerned is “*evidently and grossly disproportionate*” to the offence committed.¹¹ While not explicitly stated, the Panel did not modify the sanction imposed by FIFA on this basis. On the contrary, the Panel accepts that the sanction imposed by FIFA was proportionate to the offence

¹¹ *Ex multis*: CAS 2018/A/5863, CAS 2018/A/6239, CAS 2017/A/5401, CAS 2016/A/2762, CAS 2014/A/3562 and CAS 2009/A/1817; CAS 2012/A/2762,

and even appears to suggest that the sanction may have been too lenient, since it was “*significantly lower than those established by the regulations for cases of discriminatory acts*”.¹² Instead, the Panel’s reduction of the sanction is grounded on the fact that there was this new mitigation circumstance that had not been taken into consideration by the FIFA judicial bodies.¹³ Even so, it should be noted that the Panel, in respect of past decisions requiring the CAS to show “*reservation and restraint*” when “*re-assessing*” a sanction,¹⁴ lowered FIFA’s sanction only slightly.

The Panel concluded by acknowledging the FMF’s concern that, despite its efforts to combat discrimination, the unacceptable conduct of its supporters had not been eradicated. Nonetheless, the Panel importantly affirmed that discriminatory chants seriously undermine both the reputation of the FMF and FIFA, and, ultimately, the integrity of the sport itself. The Panel stressed that such chants have no place in football and must be eradicated. While the Panel recognised that Article 15 FDC allows for FIFA to reduce sanctions from the minimum – as occurred here – it remarked that such behaviour may be “*dealt with more harshly, energetically and vigorously in accordance with the [FDC], which allow, among others, for the exclusion of the member associations from competitions organised by FIFA*”.

3. CONCLUSIONS

This Panel’s decision reinforces the notion, well-established and accepted by the CAS, that under the FDC a member association bears strict liability for the discriminatory conduct of its supporters, regardless of fault or control and, in particular, of whether it was the organiser of the match.

The decision further cements – as per long-standing CAS jurisprudence – that this form of liability is not intended to punish associations for their own misconduct, but to ensure that discriminatory behaviour in football is addressed through responses that are both effective and dissuasive. As emphasised by the Panel, strict liability remains one of FIFA’s most important regulatory tools for achieving its statutory objectives, particularly

¹² See para. 98 of the decision.

¹³ In this respect, it should be noted that the CAS has previously re-assessed a sanction due to the fact that it found fewer infractions committed than the FIFA judicial bodies (see e.g., CAS 2019/A/6301 and CAS 2016/A/4785). Doing so is not a determination that the sanction was “*evidently and grossly disproportionate*”, but rather that it needed adjustment based on a new factual element.

¹⁴ *Ex multis*: CAS 2012/A/2824; CAS 2012/A/2702; CAS 2012/A/2762; CAS 2009/A/1817 & 1844; and CAS 2007/A/1217.

in addressing misconduct such as homophobic and discriminatory chants, which undermine the values of fairness and inclusivity in the sport.

The decision raises a new element to consider when determining the proportionality of a sanction and that is the match organiser's conduct. Indeed, the Panel deemed relevant FIFA's own conduct as match organiser, acknowledging that inaction or passivity by the organiser may constitute a mitigating element. Notwithstanding, it firmly held that such inaction or passivity does not absolve a member association of liability for its supporters' conduct – even where the association lacks direct control over the organisation of the competition. The Panel – in keeping with CAS jurisprudence concerning the review of a sanction's proportionality and, in particular, that it must show a high degree of reservation and restraint when reassessing a sports governing body's sanction – concluded that the fact the member association was not the organiser of the match justified only a limited reduction in the sanction imposed.

Finally, it is important to note the Panel's observation that the sanction imposed on the FMF was at the lower end of the spectrum and its reminder that FIFA retains the authority under the FDC to impose significantly harsher penalties – including exclusion from competitions – in cases of discriminatory conduct. The decision suggests – quite directly – that stricter and more forceful disciplinary measures may be necessary to safeguard the integrity of the sport should these discriminatory chants persist. This leaves us to question whether FIFA's current approach is too lenient and whether sanctions such as full stadium closures are necessary to truly educate supporters and eradicate discrimination from the sport.