**Arbitration CAS 2022/A/8692 Football Association of Albania (FAA) v. Fédération Internationale de Football Association (FIFA), award of 14 June 2023**

Panel: Mr Patrick Stewart (United Kingdom), President; Mr Jacopo Tognon (Italy); Mrs Anna Bordiugova (Ukraine)

*Football*
*Disciplinary dispute*
*Burden and standard of proof in disciplinary proceedings*
*Assessing the consistency of a sport federation in its imposition of sanctions*
*Possibility to impose a fine and a spectator ban for the same violation*
*Notion of aggravating factor*

1. **In accordance with article 36 (2) of the FIFA Disciplinary Code (FDC), *"any party claiming a right on the basis of an alleged fact shall carry the burden of proof of this fact. During the proceedings, the party shall submit all relevant facts and evidence of which the party is aware at that time, or of which the party should have been aware by exercising due care"*. It follows therefore that each party must fulfil its burden of proof to the required standard by providing and referring to evidence to convince the CAS panels that the facts it pleads are established. As provided in article 35 (3) of the FDC, the applicable standard of proof is the comfortable satisfaction.**

2. **In order to assess the amount of a fine imposed, it is reasonable to identify precedent decisions of sufficient proximity and similar to the current case to enable it to draw sensible and reasonable comparison to the relevant challenged decision. While precedents need to be similar, they do not need to address identical circumstances in order to be relevant.**

3. **Article 6(6) of the FDC provides for a combination of penalties to be imposed, therefore the imposition of a fine and a spectator ban does not constitute *ne bis in idem*.**

4. **As described in Article 25 of the FDC, for any offence relating to order and security, recidivism occurs if another offence of a similar nature and gravity is committed within two years and that recidivism counts as an aggravating factor. Only prior offence having been duly notified to the relevant party prior to taking the decision can be used as aggravating factor.**

## I. PARTIES

1. The Football Association of Albania (the "Appellant" or the "FAA") is the national governing body for football in Albania with its registered office in Tirana, Albania and a member of the Fédération Internationale de Football Association.

2. The Fédération Internationale de Football Association (the "Respondent" or "FIFA") is an association incorporated under Swiss law with its registered office in Zurich, Switzerland. FIFA is the governing body for international football. It exercises regulatory, supervisory and disciplinary functions over continental confederations, national associations, clubs, officials and players worldwide.

3. Collectively, FAA and FIFA will be referred to as the Parties.

## II. FACTUAL BACKGROUND

### A. Background Facts

4. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, this Award refers only to the submissions and evidence the Panel considers necessary to explain its reasoning.

5. On 12 October 2021, a match was played between the representative teams of Albania and Poland in Tirana, Albania in the Preliminary Competition of the FIFA World Cup Qatar 2022™, European Zone (the "Match").

6. Following the Match, the referee submitted a report which contained the following references with respect to incidents during the Match:

*"Minute 55 Referee activated step 1 following plastic bottles were thrown by Albanian supporters from the South stand onto the pitch in the direction of Poland players so the referee decided that the safety of the Poland players was not guaranteed anymore.*

*The match was stopped for 1 minute. An announcement was made to the crowd to stop throwing missiles and the game restarted after the announcement.*

*Minute 77 following Poland goal scoring, dozens of plastic bottles (minimum 40) were thrown by Albanian supporters in the South stand onto the pitch in the direction of Poland players, who were cheering their goal scoring, Minimum two Poland players were hit by the bottles in the field of play and many of them try to protect themselves by their arms. Again, the referee decided that the safety of the Poland players was not guaranteed anymore and activated step 2 of the procedure and sent the players of both teams back to the dressing room.*

*The match was suspended for 23 minutes and 30 seconds after the police commander told to the FIFA match commisioner* (sic) *that the safety within the stands and the pitch were re-established.*

*The Match was restarted with a kick-off due to the goal scoring".*

7. Also following the Match, the Match Commissioner submitted a report which described incidents during the Match (the "Relevant Incidents") as follows:

a) Security incidents affecting the Match (home team)

*"Around minute 65, Albenian* (sic) *supporters located in Sectors V1O1/102 & 103 of the South stand lower and Polish supporters located in the overseatng* (sic) *sectors V201/202 threw plastic drinking bottles at each other for about five minutes.*

*Minute 55: At the time a Polish player would take a corner kick in the Southeast corner, Polish players in that corner of the playing field were targeted with 4 [to] 5 plastic drink bottles thrown from Sector S102 of the South stand. Sector S102 was exclusively occupied by Albanian supporters.*

*The referee judged that the safety of the Polish players was at risk at the time and he halted the game (Step 1) Following the request by the referee to the Home Match Manager, a PA announcement was made to warn the supporters asking them to immediately desist from further throwing missiles. The match was stopped for 1 minute. The match restarted after the announcement.*

*FIFA Match Commissioner informed UEFA Match Center accordingly.*

*Minute 77: following Poland goal scoring, the Polish players cheering their goalscoring were pelted with "a rain" of plastic drinks bottles from Sector S102 of the South Stand lower tier and Sectors S203 & 204. The Sector S102, S203 & 204 in the South stand were exclusively occupied by Albenian* (sic) *supporters. The referee confirmed to the FIFA Match Commissioner that the amount of thrown plastic drink bottles was more than 40.*

*Minimum two Polish players were hit by the plastic bottles on the field of play but no reported injuries. Many Polish players tried to protect themselves by their arms. Again, the referee judged that the safety of the Polish players was at high risk at the time. The referee prompting them to leave the pitch into their dressing room (Step 2).*

*Following a second request by the referee to the Home Match Manager, another PA announcement was made to warn the supporters asking them to immediately desist from further throwing missiles and if incidents should reoccurred* (sic)*, the match could be abandoned.*

*The FIFA Match Commissioner and the FIFA Security Assessor called both Team Managers, Home Security Officer and the Police Match Commander, to discuss the issue about the unsafety of the players on the pitch and asking the Police Match Commander whether he could guarantee the security within the stadium after a restart of the match.*

*The Police Match Commander confirmed the meeting group that he already called for police forces within the stands and that the safety within the stadium was re-established and guaranteed.*

*After the meeting group had to wait 18 minutes for the Police Match Commander to join the group, the match was suspended for 23 minutes and 30 seconds.*

*After the conclusion of the match, around 20 plastic drink bottles were thrown from Sectors N102 & 103 of the North stand onto the pitch in the direction of the Poland goalkeeper.*

*The throwing of the plastic drink bottles was in response to the Polish goalkeeper's provocation (challenging hand clapping) and frustration after losing the match".*

b) Security incidents affecting the Match (away team)

*"Around minute 65, Polish supporters located in the sectors V201/202 and Albenian* (sic) *supporters located in Sectors V101/102 & 103 of the South stand lower were throwing plastic drinking bottles at each other for about five minutes. In addition, some seats were thrown to the underneath sectors occupied by Albanian supporters".*

c) Pyrotechnics

*"In minute 60, 3 or 4 Bengal flares were ignited in Sector S204 of the South stand upper tier, exclusively occupied by Albanian fans. Stewards were reacting promptly and the fireworks were allowed to burn out in the stand".*

d) Conduct of teams (away team)

*"After the conclusion of the match plastic drink bottles were thrown from the North stand in the direction of the Poland goalkeeper. The throwing of the plastic drink bottles was in response to the Polish goalkeeper's provocation (challenging hand clapping) and frustration after losing the match (Please, refer to Security incidents affecting the match (home team) invasion, throwing of objects, above".*

e) Crowd behaviour (home team)

*"1/ Albanian fans in both North and South stand booed the entire Poland national anthem by whistling.*

*2/ Stairways between Sectors N101/102 - N102/103 - N103/104 - N104/105 in the North stand lower and between Sectors S102/103 and S103/104 in the South stand lower were obviously congested by persistently standing Albanian spectators during the entire match, and there were no free space for spectators in case of emergency evacuation. No reaction by stewards observed".*

## B. Proceedings before FIFA's disciplinary bodies

8. Based on the Reports of the match officials, FIFA opened disciplinary proceedings against the FAA on 13 October 2021 for alleged breaches of Article 16 of the FIFA Disciplinary Code (the "FDC"). Article 16 states as follows:

*"1. Host clubs and associations are responsible for order and security both in and around the stadium before, during and after matches. They are liable for incidents of any kind and may be subject to disciplinary measures*

*and directives unless they can prove that they have not been negligent in any way in the organisation of the match. In particular, associations, clubs and licensed match agents who organise matches shall:*

*a) assess the degree of risk posed by the match and notify the FIFA bodies of those that are especially high-risk;*

*b) comply with and implement existing safety rules (FIFA regulations, national laws, international agreements) and take every safety precaution demanded by the circumstances in and around the stadium before, during and after the match and if incidents occur;*

*c) ensure the safety of the match officials and the players and officials of the visiting team during their stay;*

*d) keep local authorities informed and collaborate with them actively and effectively;*

*e) ensure that law and order are maintained in and around the stadiums and that matches are organised properly.*

*2. 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:*

*a) the invasion or attempted invasion of the field of play;*

*b) the throwing of objects;*

*c) the lighting of fireworks or any other objects;*

*d) the use of laser pointers or similar electronic devices;*

*e) the use of gestures, words, objects or any other means to transmit a message that is not appropriate for a sports event, particularly messages that are of a political, ideological, religious or offensive nature;*

*f) acts of damage;*

*g) causing a disturbance during national anthems;*

*h) any other lack of order or discipline observed in or around the stadium".*

9. In the first instance, the alleged breaches of Article 16 of the FDC were considered by the FIFA Disciplinary Committee. On 21 October 2021, the FIFA Disciplinary Committee made the following decision (the "First Instance Decision"):

*"1. The Football Association of Albania is ordered to pay a fine to the amount of CHF 150,000 for incidents related to order and security as well as for the inappropriate behaviour of its supporters (failure to comply with and implement existing safety rules – blocked stairways –, failure to ensure that law and order are maintained in the stadium, throwing of objects, lighting of fireworks, disturbance during national anthems, lack of order or discipline in the stadium) in connection with the match Albania v. Poland played on 12 October 2021 in the scope of the Preliminary Competition for the FIFA World Cup Qatar 2022™, European Zone.*

2. *The Football Association of Albania is ordered to play its next home match of the Preliminary Competition for the FIFA World Cup Qatar 2022™ (i.e. Albania v. Andorra to be played on 15 November 2021) without spectators.*

3. *The fine is to be paid within 30 days of notification of the present decision".*

10. The terms of the First Instance Decision were notified to the FAA on 22 October 2021, and upon request of the FAA, the grounds were communicated on 3 November 2021.

11. On 5 November 2021, the FAA served notice of its intention to appeal the First Instance Decision to the FIFA Appeal Committee.

12. On 9 November 2021, the FAA submitted its reasons for appeal. The FAA submitted that the level of the fine imposed by the FIFA Disciplinary Committee was disproportionately high and cited the following reasons:

    a) The level of fine imposed by FIFA Disciplinary Committee significantly deviated from past practice, caused the Appellant undue financial harm and exceeded the level required to deter further breaches of Article 16 of the FDC.

    b) The FIFA Disciplinary Committee failed to take into account a series of mitigating factors which would have justified a lower level fine.

    c) The FIFA Disciplinary wrongly applied a previous fine against the Appellant and the fact that the Match had been suspended twice as aggravating factors.

13. On 18 January 2022, the FIFA Appeal Committee made the following determination with respect to the appeal against the First Instance Decision (the "Challenged Decision"):

    *"The appeal lodged by the Albanian Football Association against the decision passed by the FIFA Disciplinary Committee on 21 October 2021 is dismissed. Consequently, said decision is confirmed in its entirety".*

14. On 9 February 2022, the grounds of the Challenged Decision were notified to the FAA.

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

15. On 1 March 2022, pursuant to Article R48 of the Code of Sports-related Arbitration (the "Code"), the FAA filed a Statement of Appeal at the Court of Arbitration for Sport (the "CAS") appealing the Challenged Decision and nominating Mr. Jacopo Tognon, Attorney-at-law in Padova, Italy, as arbitrator. The FAA also requested an extension until 18 March 2022 to file its Appeal Brief.

16. On 8 March 2022, CAS acknowledged receipt of the Statement of Appeal and invited the Respondent to nominate an arbitrator from the list of CAS arbitrators and confirmed that the CAS Director General had agreed to the FAA's request of an extension to file its Appeal Brief.

17. On 15 March 2022, FIFA nominated Dr. Anna Bordiugova, Attorney-at-law in Kyiv, Ukraine, as an arbitrator.

18. On 18 March 2022, following an agreed-upon extension of time and in accordance with Article R51 of the Code, the FAA filed its Appeal Brief.

19. On 21 March 2022, the CAS Court Office requested FIFA to submit its Answer pursuant to the Code and, additionally, noted that the FAA's Appeal Brief contained a request for the production of documents by FIFA.

20. On 8 April 2022, FIFA requested that the deadline to file its Answer be extended until 29 April 2022 and advised that the FAA had agreed to this request.

21. On the same day, the CAS Court Office confirmed that FIFA's request for an extension was granted.

22. On 13 April 2022, the CAS Court Office, on behalf of the President of the CAS Appeals Arbitration Division, confirmed the constitution of the Panel as follows:

    President: Mr. Patrick Stewart, Solicitor in Manchester, United Kingdom

    Arbitrators: Mr. Jacopo Tognon, Attorney-at-law in Padova, Italy

    Dr. Anna Bordiugova, Attorney-at-law in Kyiv, Ukraine

23. On 29 April 2022, in accordance with Article R55 of the Code, the Respondent submitted its Answer, including an objection to the FAA's production order request.

24. On 2 May 2022, the CAS Court Office invited the Parties to advise by 9 May 2022 whether they requested a hearing.

25. On 3 May 2022, the Respondent requested that the dispute be determined on the written submissions, without a hearing.

26. On 9 May 2022, the Appellant requested that a hearing be held and also repeated its production order request.

27. On 16 May 2022, the CAS Court Office informed the Parties that the Panel had dismissed the Appellant's production order request and advised that reasons would be provided in the final Award.

28. On 7 June 2022, the CAS Court Office informed the Parties that the Panel had decided to hold a hearing and invited the Parties to indicate their availability for a hearing on the dates proposed by the Panel.

29. On 9 June 2022, the CAS Court Office confirmed that the hearing would take place by video conference on 20 September 2022.

30. On 19 July 2022, the Appellant signed and returned the Order of Procedure.

31. On 25 July 2022, the Respondent signed and returned the Order of Procedure.

32. On 20 September 2022, a hearing was held by videoconference as provided for in Article R44.2 of the Code. In addition to the Panel and Ms. Delphine Deschenaux-Rochat, Counsel to the CAS, the following persons attended the hearing:

For the Appellant:

- Mr. Giulio Palermo – Legal Counsel
- Mr. Panagiotis A. Kyriakou – Legal Counsel
- Ms. Erisa Vora, FAA Legal Counsel

For the Respondent:

- Mr. Alexander Jacobs – Senior Legal Counsel
- Mr. Roberto Najera Reyes – Senior Legal Counsel

33. At the opening of the hearing, the Parties confirmed they had no objections to the constitution of the Arbitral Tribunal nor to the procedure adopted by the Panel so far.

34. The Parties were given full opportunity to submit their arguments in opening and closing statements and to answer the questions posed by the Panel. Before the hearing was concluded, the Parties confirmed that their right to be heard had been respected.

35. At the end of the hearing, the Appellant requested the Panel's approval to submit a brief statement on costs and to submit the PowerPoint presentation which the Appellant had used as a reference document during the hearing. The Respondent did not object to either request.

36. On 27 September 2022, the CAS Court Office: (a) confirmed that the Panel had granted the Appellant's request to submit a statement on costs and set a deadline of 29 September 2022 for it to be filed; and (b) acknowledged receipt of the Appellant's PowerPoint presentation which had been submitted by the Appellant on 26 September 2022.

37. On 28 September 2022, the Appellant submitted its statement on costs.

## IV. SUBMISSIONS OF THE PARTIES

38. The following summary of the Parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by them. The Panel, however, has carefully considered all the submissions made by the Parties, even if no explicit reference is made in this section IV of the Award.

## A. Submissions of the Appellant / the FAA

39. In its Appeal Brief, the Appellant filed the following prayers for relief:

*"(i) That the Respondent be ordered to disclose:*

*a. All decisions rendered by its judicial bodies under Article 16 of the FDC in the context of the Preliminary Competition for the FIFA World Cup Qatar 2022; and*

*b. All decisions rendered by its judicial bodies under Article 16 of the FDC in the context of the Preliminary Competition for the FIFA World Cup Russia 2018;*

*(ii) That the Challenged Decision be annulled;*

*(iii) That the fine of CHF 150,000 imposed on the Appellant by the Respondent be reduced to:*

*a. CHF 38,450; or, alternatively*

*b. An amount close to CHF 38,450 which shall, in any event, not exceed CHF 75,000; and lastly*

*(iv) That the Respondent be ordered to reimburse the Appellant's CAS Filing Fee of CHF 1,000 as well as its legal fees".*

40. The Appellant did not dispute the Challenged Decision's account of the Relevant Incidents. Accordingly, its appeal related purely to the level of the fine imposed by the First Instance Decision and confirmed by the Challenged Decision.

41. The Appellant acknowledged that, pursuant to Article 6(4) of the FDC, FIFA has a degree of discretion in determining the appropriate amount of a fine for a violation of Article 16 of the FDC, subject to the lower and upper limits of CHF 100 and CHF 1,000,000 respectively. However, with reference to CAS 99/A/246 and CAS 2019/A/6278, the FAA submitted that it is a *"widely accepted general principle of sports law that the severity of a penalty must be in proportion with the seriousness of the infringement"*.

42. The FAA further submitted as follows:

a) Proportionality requires there to be *"a reasonable balance between the kind of misconduct and the sanction"* (see CAS 2005/C/976, paragraph 138) and that *"the sanction must not exceed what is reasonably required in the search of a justifiable aim"* (see CAS 2005/C/976, paragraph 139).

b) The principle of proportionality also requires FIFA's judicial bodies to: (i) consider whether the sanction is consistent with sanctions applied in previous similar cases; and (ii) sufficient to serve as a deterrent against future breaches. The Appellant cited the following FIFA jurisprudence in support of its position: (i) Decision 190684 of the FIFA Disciplinary Committee; (ii) Decision 190737 of the FIFA Disciplinary Committee; (iii)

Decision 191532 APC of the FIFA Appeal Committee; (iv) Decision FDD-7965 of the FIFA Disciplinary Committee.

43. The Appellant also referred to Article 24(1) of the FDC which states as follows:

*"The judicial body determines the type and extent of the disciplinary measures to be imposed in accordance with the objective and subjective elements of the offence, taking into account both aggravating and mitigating circumstances".*

44. The Appellant argued that a fine of CHF 150,000 was disproportionate to the Relevant Incidents for the following reasons:

a) The level of fine significantly deviated from fines previously imposed by FIFA's judicial bodies.

b) The level of fine caused the FAA undue financial harm beyond the level required to deter further breaches of Article 16 of the FDC.

c) A series of mitigating factors which would have justified a lower fine were wrongly disregarded.

d) A previous disciplinary decision against the Appellant was wrongly taken into account as an aggravating factor.

45. The Appellant's submissions on each of these grounds are further described in the following paragraphs.

***The Respondent's established practice***

46. In support of its contention that the Challenged Decision was inconsistent with past practice, the Appellant referred to decisions of FIFA's judicial bodies which complied with the following criteria (the "Relevant Criteria"):

a) Decisions dealing with three or more separate breaches of Article 16 of the FDC, meaning that the Appellant was only comparing the Challenged Decision to decisions dealing with similar levels of misconduct.

b) Decisions relating to matches played since 2019 in the Preliminary Competition of the FIFA World Cup Qatar 2022™, meaning that the Appellant was only comparing the Challenged Decision to decisions with close temporal relevance.

47. The Appellant cited the following precedents which complied with the Relevant Criteria (the "Cited Precedents"):

a) On 11 October 2021, Romania received a fine of CHF 25,000 for failure to ensure the maintenance of law and order in the stadium, use of gestures to transmit inappropriate

messages, throwing of objects and a violation of Article 12 of the FDC in a match against Armenia.

b) On 5 September 2019, Albania received a fine of CHF 37,500 for invasion of the field of play, lack of order in the stadium, the use of a drone and the use of objects to transmit a message inappropriate for a sports event in a match against Hungary.

c) On 31 March 2021, Armenia received a fine of CHF 18,500 for lack of order or discipline observed in the stadium and in the tunnel after the game, the fact that players and substitutes at the tribune were standing hugging during the national anthem, as well as the throwing of smoked bombs in a match against Romania.

d) On 5 September 2019, Indonesia received a fine of CHF 45,000 for invasion of the field of play, fireworks, use of gestures, words and objects to transmit an inappropriate message and lack of order in and around the stadium in a match against Malaysia (the "First Indonesia Case").

e) On 19 November 2019, Indonesia received a fine of CHF 200,000 and a ban of one match without spectators for the lighting of fireworks, throwing of objects, acts of damage, lack of order or discipline observed in the stadium and misconduct of players and officials (delayed kick-off) (the "Second Indonesia Case").

f) On 14 and 19 November 2019, Iraq received a fine of CHF 15,000 for failure to comply with and implement existing safety rules, invasion of the field of play, throwing of objects, use of objects to transmit a message that was not appropriate for a sports event and causing a disturbance during national anthems in relation to its matches against Iran and Bahrain.

g) On 10 October 2019, Jordan received a fine of CHF 30,000 for the lighting of fireworks, use of words to transmit a message that was not appropriate for a sports event and the invasion of the field of play during a match against Kuwait.

h) On 19 November 2019, Malaysia received a fine of CHF 50,000 for the lighting of fireworks and/ or other objects, throwing of objects, acts of damage and lack of order or discipline observed in the stadium in the context of a match against Indonesia.

i) On 8 September 2019, Sierra Leone received a fine of CHF 50,000 for an invasion of the field of play, throwing of objects as well as lack of order or discipline observed in or around the stadium during a match against Liberia.

48. The Appellant made the following observations:

a) The Appellant's fine of CHF 150,000 was the second highest in cases meeting the Relevant Criteria.

b) The highest fine (i.e. CHF 200,000 imposed in the Second Indonesia Case) was distinguishable from the Appellant's fine because: (i) the Indonesian football association

had breached both Article 16 and Article 12 of the FDC; and (ii) the fine reflected the recidivist conduct of the Indonesia football association who had already been fined CHF 45,000 for similar offences in the First Indonesia Case.

c) Excluding the Second Indonesia Case, fines in the Cited Precedents ranged from CHF 15,000 to CHF 75,000, with the average fine amounting to approximately CHF 38,450.

49. For these reasons, the Appellant submitted that a fine of CHF 150,000 is inconsistent with the established practice of FIFA's judicial bodies.

***Undue financial harm and above the level required to achieve a deterrent effect***

50. The Appellant acknowledged that a key objective of any sanctioning regime is to deter recidivism by creating significant jeopardy for a repeat offence. For this reason, the Appellant chose not to appeal the one-match spectator ban which has a deterrent effect on both host associations and fans.

51. However, the Appellant made the following submissions in objection to the level of the fine:

a) The financial losses resulting from a spectator ban plus a significant fine amount to a double disciplinary sanction for the same offence. This is contrary to the *ne bis in idem* principle (recognised in CAS jurisprudence e.g. CAS 2010/A/2139) whereby no one shall be sanctioned twice because of the same offence.

b) The one-match spectator ban had caused the FAA between circa EUR 213,975 and EUR 392,226 in lost revenue. When combined with a fine of CHF 150,000, this has caused a crippling effect on its finances, particularly when considering: (i) its limited financial resources relative to other European football associations; (ii) its legal costs in successfully defending FIFA charges in 2021; (iii) its legal costs in this case; (iv) the fine of CHF 37,500 imposed in Decision FDD-9088; (iv) the cost of rebuilding infrastructure following an earthquake in 2019; and (v) the cost of subsidising footballers and employees during the COVID-19 pandemic. The Appellant emphasised that the foregoing are not being cited as mitigating factors, but rather as reasons for its poor finances.

c) Crippling fines are counter-productive as acknowledged in CAS 2019/A/6278 in which the panel found that *"it is not the intention of the FIFA DC or the logic behind art. 64 of the FDC to impose sanctions that engender additional financial difficulties for the debtor which might compromise the payment of the outstanding amount due to another football stakeholder subject to enforcement"*.

d) Excessive fines are also contrary to Article 27(2) of the Swiss Civil Code, which expressly prohibits excessive restrictions on the economic freedom of contractual parties. The Appellant referenced Swiss Federal Tribunal Decision 4A_558/2011 (the "Matuzalem Case") in which the Tribunal stated that, in determining whether a curtailment of economic freedom is excessive within the meaning of Article 27(2), the Tribunal will take into account a situation where *"the obligee is subjected to another person's arbitrariness, gives up his*

*economic freedom or curtails it to such an extent that the foundations of his economic existence are jeopardized"*. This is what has occurred in this case.

52. The Appellant emphasised that it is not seeking immunity from financial sanction or to diminish the seriousness of the offences. However, it is asking that the principle of proportionality be applied and that the level of the fine be reduced to reflect the FAA's financial circumstances and to avoid it suffering serious financial harm.

***The Challenged Decision disregarded the existence of mitigating factors***

53. The Appellant submitted that the Challenged Decision failed to take into account various mitigating factors.

54. Firstly, the Appellant noted that its expression of remorse (as set out in its letter to FIFA of 16 October 2021) had been disregarded by the FIFA Appeal Committee as it was *"not expressed immediately after the Match (namely after the incidents occurred) but rather once the disciplinary proceedings had already been opened"*. While CAS panels have discounted remorse displayed after a sanction has been imposed, that is not the case for remorse expressed following a disciplinary charge. In any event, FIFA instigated disciplinary proceedings on the day after the Match, leaving insufficient time before the bringing of charges for the FAA to conduct its own review into the Relevant Incidents and conclude that an apology was appropriate.

55. Secondly, the Appellant submitted that, contrary to CAS jurisprudence (for example CAS 2013/A/3139), the Challenged Decision failed to attribute sufficient weight to the preventative measures which it had put in place. The Appellant cited the following measures in particular (the "Preventative Measures"):

    a) On 23 September 2021, it sent a notice to the Albanian State Police, officially requesting security assistance during and after the Match so that the safety and security of the Polish and Albanian teams would be guaranteed.

    b) On 24 September 2021, it requested the General Directorate of Traffic Police to provide security to the Polish team and staff.

    c) It requested the American Hospital of Tirana to provide an ambulance and medical staff for the Match and the Tirana Electric Power Supply Company to provide backup supply.

    d) On 6 October 2021, it held a safety and security meeting with the police and stewarding company.

    e) It engaged in extensive correspondence with the Polish Football Association with respect to security matters.

    f) It performed a site inspection together with the Polish Football Association, the stewarding company and the police.

g) It appointed 356 security and stewarding staff for match day;

h) It requested the closure of all shops, bars and restaurants within the perimeter of the stadium.

i) It held meetings with UEFA's Venue Operating Broadcasting Manager, Match Manager, Security Officer and Delegate in the days leading up to the Match.

j) It held a security meeting on the match day with the UEFA Delegate, the Tirana Police Commander, the referees and the team managers.

56. With respect to the Preventative Measures referred to at sub-paragraphs i) and j) above, the Panel assumes that the FAA intended to refer the FIFA Match Commissioner (as opposed to the UEFA Delegate).

57. Lastly, it was submitted by the Appellant that the Challenged Decision failed to take into account the provocative behaviour of Polish fans. The Appellant gave the following examples:

a) Polish players celebrated in front of Albanian fans after scoring. A Polish player subsequently commented in an interview that *"the fact that the fans reacted like that was partly my fault"*.

b) Polish fans threw objects towards Albanian fans, damaged the stands and used offensive gestures. This resulted in a fine of CHF 50,000 for the Polish Football Association.

***Decision FDD-9088 was wrongly taken into account as an aggravating factor***

58. On 5 September 2019, Albania received a fine from FIFA of CHF 37,500 for invasion of the field of play, lack of order in the stadium, the use of a drone and the use of objects to transmit a message inappropriate for a sports event in a match against Hungary. The Appellant was formally notified of this (Decision FDD-9088) on 2 November 2021 – i.e. over three weeks after the Match.

59. The Appellant submitted that, if at the time of the Match it had not been formally notified of decision FDD-9088, then that decision could not be taken into account as an aggravating factor. However, in determining that a one-match spectator ban should be imposed, the FIFA Disciplinary Committee observed that the FAA had *"already been sanctioned recently as a result of the inappropriate behaviour of its supporters (decision under reference FDD-9088)"*.

60. The Appellant submitted that, if Decision FDD-9088 was considered as a relevant factor by the FIFA Disciplinary Committee when imposing a one-match spectator ban, then it was in all likelihood taken into account (wrongly) when considering the level of the fine.

**B. Submissions of FIFA / the Respondent**

61. In its Answer to the Appeal Brief, the Respondent filed the following prayers for relief:

*"(a) Reject the requests for relief sought by the Appellant;*

*(b) Confirm the Appealed Decision;*

*(c) Order the Appellant to bear the full costs of these arbitration proceedings;*

*(d) Order the Appellant to make a contribution to FIFA's legal costs".*

62. FIFA noted that the FAA's appeal to CAS concerns only the proportionality of the CHF 150,000 fine imposed by the FIFA Disciplinary Committee and made the following observations:

a) Notwithstanding CAS's *de novo* power of review pursuant to Article R57 of the Code, CAS jurisprudence has clearly established that a panel should only intervene with respect to a sanction if: (i) the judicial body has acted arbitrarily; and (ii) the sanction is evidently and grossly disproportionate to the offence. FIFA cited, *inter alia*, the following CAS jurisprudence in support of this position: CAS 2014/A/3562; CAS 2009/A/1817; CAS 2009/A/1844; CAS 2004/A/690; CAS 2005/A/830; CAS 2006/A/1175; CAS 2007/A/1217; CAS 2009/A/1870, CAS 2005/0976 & 986, CAS 2016/A/4595; CAS 2015/A/4271 and CAS 2018/A/5657.

b) FIFA does not consider a CHF 150,000 to be evidently and grossly disproportionate to the Relevant Incidents and nor does it consider the FIFA Disciplinary Committee or the FIFA Appeal Committee to have acted arbitrarily in determining the First Instant Decision or the Challenged Decision.

63. In response to the FAA's argument that the Challenged Decision disregarded FIFA's own established practice, FIFA submitted *inter alia* as follows:

a) None of the Cited Precedents involved as many breaches of Article 16 of the FDC as this case (i.e. six breaches).

b) This case was more serious than the Cited Precedents as it involved three instances of player-endangerment and two match suspensions due to concerns for player-safety. FIFA noted the following comments by the panel in CAS 2018/A/6040 (emphasis added):

*"The Bus Attack thus put at risk the health and safety of the guest team players, and there is no need to remind that <u>players are the most fundamental and indispensable component of a match and that their safety and protection is paramount</u> in any football event.*

*[…]*

*Supporters' misconduct of this magnitude, which poses a threat to the security and safety of the players, cannot be taken lightly. <u>An act of violence against the players is an infringement of the most serious kind</u> […]".*

c) Accordingly, the Cited Precedents could not be considered as evidence of the disproportionality of the fine.

d) In any event, Article 24 of the FDC requires FIFA's judicial bodies to determine each case based on its specific factors. As confirmed in CAS 2012/A/2750 *"similar cases must be treated similarly, but dissimilar cases could be treated differently"*.

64. FIFA made *inter alia* the following submissions in response to the FAA's claim that the Challenged Decision: (i) will inflict undue financial harm; and (ii) exceeds the level required to achieve its deterrent effects:

a) Legal costs incurred in defending FIFA charges and fines arising from other disciplinary decisions are not relevant factors when considering the proportionality of the fine in this case. Indeed, the FAA's ability to pay all previous fines, including fines totalling CHF 250,000 relating to matches in the Preliminary Competition of the FIFA World Cup Russia 2018™, is evidence that they can afford to pay a fine of CHF 150,000.

b) While FIFA has sympathy for the financial losses suffered by the FAA as a consequence of the COVID 19 pandemic, it: (i) disagrees with their assertion that it is the *"least financially resourceful"* of European member associations; (ii) notes that the FAA has received financial support from a variety of sources, including interest free loans from FIFA, a universal solidarity grant of USD 1 million from the FIFA Forward Programme and a EUR 4.3 million grant from UEFA; and (iii) notes that the FAA has also generated healthy ticket revenues from matches which it has staged in 2021. Additionally, if the FAA genuinely has financial difficulties, FIFA would be open to discussing a payment plan with the FAA once these proceedings have concluded.

c) The FAA's estimate of lost revenue from the one-match spectator ban (between EUR 213,975 and EUR 392,226) cannot be relied on. Firstly, the documents submitted to evidence prior seasons' ticket revenues are contradictory. Exhibit A-15 (i.e. a consolidated statement of the FAA's financial position as at 31 December 2019) shows ticket revenue for the year as ALL 92,098,000, whereas Exhibit A-21 (i.e. an attestation of ticket revenues) shows ticket revenue for the year as ALL 48,136,250. Secondly, the FAA's estimate of lost revenues arising from the one match spectator ban appears high. Andorra was the opposition for the affected match and FIFA would expect revenues from that match to have been similar to those generated from Albania's home match against San Marino (EUR 44.672,03). The FAA's estimate, however, appears to be based on ticket revenue generated from matches against larger associations such as France or Poland.

d) FIFA disagrees that the imposition of both a high fine and a one-match spectator ban constitutes *ne bis in idem*. CAS 2010/A/2139, which the FAA references in support of its position, is not on point. Conversely, there is CAS jurisprudence confirming that a sanction comprising both fine and spectator ban is a proportionate one. In CAS 2020/A/6920 it was held that a *"sanction consisting of 3 matches to be played behind closed doors in combination with a fine of USD 60,000 is, in principle, necessary, adequate and proportionate"*. Furthermore, Article 6 of the FDC sets out a range of disciplinary measures which may

be imposed on a football association (including fines and playing matches without spectators) and Article 6(6) of the FDC expressly provides that *"[t]he disciplinary measures provided for in this Code may be combined"*.

e) The Appellant has misapplied Article 27(2) of the Swiss Civil Code by reference to the Matuzalem Case. That case concerned a natural person (i.e. a player) who was banned from playing football and thereby deprived of his ability to generate an income from his only profession to fund a monetary sanction. Conversely, the FAA has multiple means of generating revenue to pay for a fine.

65. In response to the FAA's claims that the Challenged Decision disregarded mitigating circumstances, FIFA made the following submissions:

a) The FAA's expression of remorse is not a significant mitigating circumstance because it was only expressed after the proceedings had been opened. Reference is made to CAS 2014/A/3665, 3666 and 3667, in which the panel commented that *"remorse and apologies shown by the [Respondent] after having already been sanctioned cannot have the same impact as a remorse expressed immediately after the event and before any disciplinary proceeding is started and/or sanction is imposed"*. The FAA's claim, that the period between the end of the Match (on the evening of 12 October 2021) and the opening of the disciplinary proceedings (at 18:34 hours on 13 October 2021) was insufficient for the FAA to assess the situation and issue an apology, lacks credibility. In CAS 2019/A/6432, the panel commented that *"it is evident that in the absence of any remorse or clear recognition of guilt, a more lenient sanction than the one currently imposed would lack the necessary deterrent effect, since it would not stop The FA from repeating such conduct in the future"*.

b) The Preventative Measures were outweighed by various aggravating factors, including: (i) the FAA's lack of intervention to missile throwing, meaning that fans were able to repeat this misdemeanour; (ii) the number of Relevant Incidents; (iii) the Match being interrupted twice; and (iv) the endangerment to players and supporters. Further, it is evident that the preventative actions were insufficient. Although the FAA cited CAS 2013/A/3139 to argue that the refusal to factor in security measures in determining the level of fine is contrary to CAS jurisprudence, this case is not on point as: (i) it concerned the behaviour of fans outside of the stadium during a behind-closed-doors match; and (ii) while the panel acknowledged the existence of mitigating circumstances, the panel ultimately decided that there was no justification for reducing the fine.

c) With respect to the FAA's claim that provocation by Polish players and fans was wrongly disregarded, provocation can never be considered a mitigating factor, particularly when player safety is endangered. In CAS 2017/A/5299, the panel commented that *"violence displayed by one side cannot and should not, as a matter of principle, justify or mitigate further violence displayed by the other side"*. Furthermore, Article 16(1) of the FDC creates strict liability for the host association *"unless they can prove that they have not been negligent in any way in the organisation of the match"*. Acts of provocation by Polish players and fans do not assist the FAA in demonstrating a lack of negligence.

66. With respect to the FAA's argument that Decision FDD-9088 was wrongly considered as an aggravating factor, FIFA submitted *inter alia* as follows:

    a) The First Instance Decision, as upheld by the Challenged Decision, made no reference to the Appellant being regarded as a recidivist or to Article 25 of the FDC.

    b) It is clear from the First Instance Decision that Decision FDD-9088 did not impact the amount of the fine imposed, only the imposition of a spectator ban.

## V. JURISDICTION

67. Article R47 of the Code provides as follows:

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

68. Article 49 of the FDC states that:

    *"Decisions passed by the Disciplinary and Appeal Committees may be appealed against before CAS, subject to the provisions of this Code and articles 57 and 58 of the FIFA Statutes".*

69. The Parties did not dispute the jurisdiction of CAS and confirmed it by signing the Order of Procedure.

70. Accordingly, CAS has jurisdiction to decide the present dispute.

## VI. ADMISSIBILITY

71. Article R49 of the 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 […]".*

72. Article 57 (1) of the FIFA Statues (2021 Edition) provides as follows:

    *"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question".*

73. The FIFA Appeal Committee rendered the Challenged Decision on 18 January 2022 and notified its grounds to the Parties on 9 February 2022.

74. The last day of the 21-day period by which the FAA was required to have filed the Statement of Appeal was therefore 2 March 2022.

75. As the appeal was duly submitted on 1 March 2022 and fulfilled all of the requirements set out in Article R48 of the Code, the Appellant's appeal to CAS is admissible.

## VII. APPLICABLE LAW

76. Article R58 of the 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".*

77. Article 56 (2) of the FIFA Statutes (2021 Edition) provides as follows:

*"The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law".*

78. Both the Appellant and Respondent agree that the various regulations of FIFA should be applied with Swiss law being applied subsidiarily.

79. Accordingly, the Panel is satisfied that primarily, the various regulations of FIFA are applicable to this Appeal (including the FIFA DC) and that Swiss law shall apply subsidiarily to fill in any gaps or lacuna when appropriate.

## VIII. PRELIMINARY ISSUE

80. As referenced in Section III of this Award, the Panel was required to address a preliminary matter.

81. Pursuant to Article 44.3 of the Code *"A party may request the Panel to order the other party to produce documents in its custody or under its control. The party seeking such production shall demonstrate that such documents are likely to exist and to be relevant".*

82. In its Appeal Brief, the Appellant requested that FIFA discloses:

*"(i) All decisions rendered by FIFA's judicial bodies under Article 16 of the FDC in the context of the Preliminary Competition for the FIFA World Cup Qatar 2022; and*

*(ii) All decisions rendered by FIFA's judicial bodies under Article 16 of the FDC in the context of the Preliminary Competition for the FIFA World Cup Russia 2018".*

83. The Appellant submitted that such disclosure *"is necessary so that the Appellant may obtain full knowledge of the legal materials and procedures relied upon by the Appeal Committee in upholding the fine of CHF 150,000* […] *since the Respondent has not published all relevant decisions on its official website, the Appellant has filed the present Appeal Brief without having the benefit of consulting the full range of cases constituting the Respondent's established practice on fines for lack of order and security, and is thus not on equal footing with Respondent, nor is it able to fully exercise its right to be heard and to present its case. The Respondent, naturally, is in full knowledge and possession of the decisions forming the practice of its own judicial bodies and can, in the present proceedings, rely on the decisions of its choosing, without the Appellant possessing an opportunity to verify whether any (conveniently) omitted decisions could militate in favor of its case"*.

84. In its Answer, FIFA responded as follows:

*"Such request is not only unsubstantiated but equally farfetched. FIFA has continuously published overviews of all disciplinary sanctions imposed in relation to both the Preliminary Competition for the FIFA World Cup Qatar 2022 as well as the FIFA World Cup Russia 2018 on its website (fifa.legal.org) or via media releases redirecting to the same. In the same sense, FIFA has continuously published its (motivated) decisions. Case in point: the Appellant itself managed to retrieve the overview of disciplinary sanctions as well as specific decisions like the one relating to the Football Association of Indonesia etc.*

*As a result, it is clear that the Appellant was perfectly capable of retrieving any jurisprudence it wished to rely on. Additionally, the document production request is in any case vague and therefore does not meet the standards for production under Article R44.3 of the CAS Code. It is not specific at all. CAS has recently confirmed that the filing of an excessively broad and vague request for production of documents was a cause for rejection of said request.*

*Concluding, the Appellant's request cannot be construed in any other way than constituting a fishing expedition and, therefore, the requirements of Article R44.3 of the CAS Code are not fulfilled"*.

85. Having reviewed the First Instance Decision and the Challenged Decision, the Panel sees no evidence of FIFA's judicial bodies having relied upon information and/or decisions which were not: (a) publicly available on FIFA's website; or (b) pleaded by the Parties. For example, FIFA's judicial bodies did not refer to any jurisprudence that was not available to the Appellant. Furthermore, the Panel does not consider that the Appellant demonstrated the likely existence and relevance of the requested materials. For example, the Appellant did not refer to decisions which it knew, or suspected, had been made by FIFA's judicial bodies but which were not available to it. Accordingly, the Panel rejects the Appellant's request for the production of documents by FIFA.

## IX. MERITS

86. According to Article R57 paragraph 1 of the Code, the Panel has *"full power to review the facts and the law"*. As repeatedly stated in CAS jurisprudence, by reference to this provision the CAS appeals arbitration procedure entails a *de novo* review of the merits of the case and is not confined merely to deciding whether the ruling appealed was correct or not. Accordingly, it is the function of the Panel to make an independent determination as to the merits (see CAS 2007/A/1394).

87. Prior to addressing the merits, the Panel shall briefly address the issues of the burden of proof and the standard of proof.

88. In accordance with Article 36 (2) of the FDC, *"Any party claiming a right on the basis of an alleged fact shall carry the burden of proof of this fact. During the proceedings, the party shall submit all relevant facts and evidence of which the party is aware at that time, or of which the party should have been aware by exercising due care"*.

89. The concept of burden of proof has been considered in many CAS decisions and is well established CAS jurisprudence. It was set out in CAS 2007/A/1380 as follows:

*"According to the general rules and principles of law, facts pleaded have to be proved by those who plead them, i.e., the proof of facts, which prevent the exercise, or extinguish, the right invoked, must be proved by those against whom the right in question is invoked. This means, in practice, that when a party invokes a specific right it is required to prove such facts as normally comprise the right invoked, while the other party is required to prove such facts as exclude, or prevent, the efficacy of the facts proved, upon which the right in question is based. […] It is well established CAS jurisprudence that any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. must give evidence of the facts on which its claim has been based. […] The two requisites included in the concept of "burden of proof" are (i) the "burden of persuasion" and (ii) the "burden of production of the proof". In order to fulfil its burden of proof, the Club must, therefore, provide the Panel with all relevant evidence that it holds, and, with reference thereto, convince the Panel that the facts it pleads are true, accurate and produce the consequence envisaged by the Club. Only when these requirements are complied with has the party fulfilled its burden and has the burden of proof been transferred to the other party"* (see also CAS 2005/A/968 and CAS 2004/A/730).

90. In CAS 2003/A/506, it was held:

*"[In] CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue… Hence, if a party wishes to establish some facts and persuade the deciding body, it must actively substantiate its allegations with convincing evidence"*.

91. It follows therefore that each party must fulfil its burden of proof to the required standard by providing and referring to evidence to convince the Panel that the facts it pleads are established.

92. As to the question of what the standard of proof is, the Panel observes that neither Party has expressed any position in its written submissions. However, the Panel notes that the applicable rules, i.e. the FDC, contain an explicit standard of proof in Article 35 (3) which states as follows: *"The standard of proof to be applied in FIFA disciplinary proceedings is the comfortable satisfaction of the competent judicial body"*. The Panel sees no reason to apply a different standard in the present case.

93. The Panel makes the following observations:

a) Neither FIFA nor the FAA contested the factual accuracy of the description of the Relevant Incidents as set out in the Challenged Decision. Accordingly, the Panel assumes that the Relevant Incidents took place as described in the Challenged Decision.

b) The FAA admitted that it committed the breaches of Article 16 of the FDC as alleged in the disciplinary proceedings brought by FIFA.

c) The sanction imposed by the FIFA Disciplinary Committee in the First Instance Decision, and subsequently upheld by the FIFA Appeal Committee in the Challenged Decision, consists of two elements as follows: (i) For the FAA to host the home match of the preliminary competition for the FIFA World Cup Qatar 2022 against Andorra without spectators (the "Spectator Ban"); and (ii) For the FAA to pay a fine of CHF 150,000 (the "Fine").

d) The FAA is not challenging: (i) the Spectator Ban; (ii) the imposition of the Fine; or (iii) the discretion afforded to FIFA by Article 6(4) of the FDC to impose fines of up to CHF 1,000,000.

e) However, the FAA is challenging the level of the fine on the basis of proportionality. Accordingly, the only issue to be considered by the Panel is whether the Fine should be reduced pursuant to the principle of proportionality.

94. As referenced in the Parties' submissions, the jurisprudence of CAS and FIFA's judicial bodies has established the following principles with respect to proportionality:

a) When considering whether a sanction is proportionate, a judicial body should take the following into account:

i. Whether the sanction is consistent with sanctions applied by that judicial body previously.

ii. Whether the sanction exceeds what is reasonably required in the search of a justifiable aim. In the context of this case, the Panel and the Parties agree that deterrence against future breaches is a justifiable aim.

iii. Any aggravating and mitigating circumstances.

b) A CAS panel should only amend the disciplinary sanction imposed by a FIFA judicial body if: (i) that body has acted arbitrarily; and (ii) the sanction is evidently and grossly disproportionate to the offence.

95. Accordingly, the Panel requires to consider the following issues when considering the proportionality of the Fine:

a) Is the level of Fine inconsistent with previous fines?

b) Does the level of the Fine exceed what is reasonably required to deter the FAA from committing future breaches of Article 16 of the FDC?

c) Did the FIFA judicial bodies wrongly disregard or give insufficient weight to any mitigating circumstances?

d) Did FIFA's judicial bodies wrongly treat Decision FDD-9088 as an aggravating factor?

If the answer(s) to a), b), c) and/or d) is in the affirmative:

e) Did FIFA's judicial bodies act arbitrarily??

f) Is the Fine disproportionate?

**A. Is the level of Fine inconsistent with previous fines?**

96. FIFA does not consider the Cited Precedents to be relevant when considering the proportionality of the Fine, as the incidents addressed in the Cited Precedents were less serious than the Relevant Incidents. FIFA emphasises that the Relevant Incidents involved: (a) a higher number of breaches of Article 16 of the FDC; and (b) (in contrast to the Cited Precedents) acts of violence against players resulting in the Match being suspended twice. FIFA considers acts of violence to the most serious infringement of Article 16 of the FDC.

97. The Panel considers that: (i) the Appellant applied a reasonable methodology in seeking to identify precedent decisions of sufficient proximity to the Challenged Decision; and (ii) the Cited Precedents were sufficiently similar to the current case to enable it draw sensible and reasonable comparisons. While the Relevant Incidents may be more material than the incidents addressed within certain of the Cited Precedents, that does not mean that those Cited Precedents ceased to be informative to the Panel in assessing the consistency of the Challenged Decision with prior decisions of FIFA's judicial bodies. Furthermore, the Panel agrees with submissions made by the Appellant that neither FIFA nor CAS jurisprudence limits valid precedent to only those prior decisions which address identical circumstances. Accordingly, the Panel accepts the Cited Precedents as valid reference-points when considering the proportionality of the Fine.

98. Even when taking into account FIFA's comments about the seriousness of the Relevant Incidents, the Panel considers the Fine to be somewhat of an outlier relative to the fines imposed in the Cited Precedents. The notable exception to this is the Second Indonesia Case, in which a fine of CHF 200,000 was imposed. However, that fine reflected: (i) the recidivist nature of the case; (ii) that breaches of both Articles 12 and 16 of the FDC had occurred; and (iii) that the death of a spectator occurred. Subject to that exception, fines imposed in the Cited Precedents have ranged from CHF 15,000 to CHF 75,000.

99. Accordingly, the Panel considers that, *prima facie*, the Fine is inconsistent with prior decisions of FIFA's judicial bodies. However, that alone is not a decisive factor in determining whether the Fine lacks proportionality. The Panel must also consider whether there are factors specific to this case which justify the higher fine of CHF 150,000.

**B. Does the level of Fine exceed what is reasonably required to deter future breaches?**

100. The Appellant submits that the Fine, when combined with the Spectator Ban, will have a crippling effect on it. The burden of proof in this regard sits with the Appellant and the Panel is not satisfied that it successfully discharged that burden. Specifically:

a) The Appellant did not prove to the comfortable satisfaction of the Panel the quantum of lost revenue it suffered as a consequence of the Spectator Ban affected a home match against Andorra in the Preliminary Competition of the FIFA World Cup Qatar 2022™, European Zone. The FAA estimated its lost revenue at between EUR 212,975 and EUR 392,226. FIFA highlighted that, for the home match against San Marino (also in the Preliminary Competition of the FIFA World Cup Qatar 2022™, European Zone), the FAA only generated revenue of EUR 44,672 and argued that this was a more accurate reflection of what FAA could reasonably have expected to generate from the Andorra match. At the hearing, the FAA argued that the Andorra match would have generated much greater revenue as it was a decisive match in terms of qualification into the next stage of the competition. However, the FAA did not provide any evidence to substantiate this and, based on publicly available information, it is the Panel's understanding that it was not actually possible for Albania to qualify to the next stage of the competition, irrespective of the outcome of the match against Andorra.

b) The Appellant did not submit any evidence, such as a financial forecast, demonstrating that a CHF 150,000 fine would create an overall budgetary deficit.

101. As such the Panel is not comfortably satisfied that the Fine will have the financial impact claimed by the Appellant.

102. Furthermore, the Panel is not persuaded by the Appellant's arguments that the imposition of both the Fine and a Spectator Ban constitutes *ne bis in idem*. As noted by FIFA, Article 6(6) of the FDC expressly provides for a combination of penalties to be imposed and CAS jurisprudence supports the imposition of both a fine <u>and</u> a spectator ban.

103. Finally, the Panel agrees with FIFA's position that the Matuzalem Case is not on point for this case and that, accordingly, Article 27(2) of the Swiss Civil Code is not relevant. As FIFA reasons, that case concerned a natural person (i.e. a player) who was banned from playing football and thereby deprived of his ability to generate an income from his only profession to fund a monetary sanction. Conversely, the FAA has multiple means of generating revenue to pay for a fine.

104. Accordingly, the Panel does not consider that the Fine exceeds what is reasonable to deter future breaches.

**C. Did the FIFA judiciary bodies wrongly disregard or give insufficient weight to any mitigating circumstances ?**

105. The Appellant submits that the Challenged Decision failed to take into account the following mitigating factors:

a) The expression of genuine remorse shown by the Appellant.

b) The preventative measures put in place by the Appellant.

c) The provocative behaviour of the Polish players and fans.

106. With regard to the expression of remorse, the Panel has sympathy with the Appellant's position. The FIFA Appeal Committee did not consider this to be a significant mitigating factor as it was only expressed after the proceedings had been opened. In reaching this conclusion, they referenced CAS 2014/A/3665, 3666 and 3667, in which the panel commented that *"remorse and apologies shown by the [Respondent] after having already been sanctioned cannot have the same impact as a remorse expressed immediately after the event and before any disciplinary proceeding is started and/or sanction is imposed"* (emphasis added). Rather than supporting FIFA's position, this case appears to support the Appellant's contention that only an apology made after a sanction is imposed may be discounted as a significant factor, not an apology made after a disciplinary proceeding is opened. Furthermore, the Panel does not share FIFA's scepticism for the Appellant's claim that there was insufficient time between the end of the Match and the commencement of proceedings for the Appellant to have issued an apology. It is reasonable that a football association would wish firstly to conduct its own preliminary investigation into security incidents and share its findings internally before issuing a formal apology. A period of less than 24 hours to complete this is challenging for any football association or governing body. Accordingly, the Panel considers that the FIFA Appeal Committee failed to give sufficient weight to the Appellant's expression of remorse as a mitigating factor.

107. With regard to the Preventative Measures taken by the Appellant, it was established during the hearing that the majority were: (a) mandatory measures required of any host football association hosting a match under FIFA's jurisdiction and/or (b) standard measures taken for any match, irrespective of any specific security risks. The Appellant did not provide any evidence of enhanced measures put in place, such as: (a) thoroughly searching fans on entry to the stadium for missiles and pyrotechnics; and/or (b) deploying additional stewards in the areas of the stadium from which plastic bottles were being thrown. Accordingly, the Panel does not agree with the Appellant's contention that the FIFA Disciplinary Committee and the FIFA Appeal Committee wrongly disregarded this as a mitigating factor.

108. With regard to the Appellant's submissions on provocation, the Panel has the following observations:

a) The Panel does not agree that celebrations by Polish players in-front of the Albanian fans should be treated as a mitigating factor. It is a fundamental to any spectator-sport that its participants can celebrate success without fear of retribution from the fans.

b) The Panel also disagrees that the behaviour of Polish fans (which included the throwing of missiles at Albanian fans) should be treated as a mitigating circumstance. The Panel shares the views of its with its colleagues in CAS 2017/A/5299 who declared that *"violence displayed by one side cannot and should not, as a matter of principle, justify or mitigate further violence displayed by the other side"*.

109. Accordingly, it is the Panel's conclusion that the sole mitigating factor which was given insufficient weight in the Challenged Decision was the Appellant's expression of remorse.

**D. Did FIFA's judicial bodies wrongly treat Decision FDD-9088 as an aggravating factor?**

110. As described in Article 25 of the FDC, for any offence relating to order and security, recidivism occurs if another offence of a similar nature and gravity is committed within two years. Article 25 goes on to state that recidivism counts as an aggravating factor.

111. FIFA acknowledges that Decision FDD-9088 had not been formally notified to the Appellant prior to the Match and should therefore not have been taken into account by the FIFA Disciplinary Committee when making the First Instance Decision. However, it is evident that the opposite was the case, as the FIFA Disciplinary Committee expressly referenced the prior decision in the First Instance Decision, noting that the FAA had *"already been sanctioned recently as a result of the inappropriate behaviour of its supporters (decision under reference FDD-9088)"*.

112. While the FIFA Appeal Committee accepted that the FIFA Disciplinary Committee had taken the decision into account, they concluded that *"at no point did this […] impact <u>the amount of the fine</u> imposed on the Appellant"* (emphasis added). They did so because the grounds for the First Instance Decision only referred to Decision FDD-9088 in the context of the Spectator Ban, not the Fine.

113. The Panel has misgivings about the FIFA Appeal Committee's reasoning. Just because Decision FDD-9088 was not expressly referenced elsewhere in the grounds of the First Instance Decision, does not mean that the FIFA Disciplinary Committee disregarded it for all other purposes. Indeed, given that they considered it to be a relevant and admissible factor in the context of the Spectator Ban, there is no reason why they would have disregarded it in the context of the Fine. During the hearing, FIFA: (i) conceded that they could not know what was in the minds of the FIFA Disciplinary Committee when determining the level of the Fine; and (ii) could not explain how it happened that the FIFA Disciplinary Committee had knowledge of this decision to be able to refer to it in its reasoning. Accordingly, the Panel does not consider that the FIFA Appeal Committee should have given the benefit of the doubt to the FIFA Disciplinary Committee on this point. It is essential that FIFA's judicial bodies strictly adhere to due process when administering disciplinary proceedings, as any deviation could create a perception of partiality.

114. The Panel's misgivings are enhanced by the similarities between: (i) the step-up in sanction from the First to the Second Indonesian Case; and (ii) the step-up in sanction from Decision FDD-9088 to the First Instance Decision. In both instances the sanction in the initial case was a fine only (CHF 45,000 in the First Indonesian Case and CHF 37,500 in Decision FDD-9088),

whereas the sanction in the second case was a one match spectator-ban plus a fine of approximately four-times the amount of the initial fine (CHF 200,000 in the Second Indonesian Case and CHF 150,000 in the First Instance Decision). Recidivism was a relevant and admissible aggravating factor in the Second Indonesian Case, which would suggest that this may have also been the case in the First Instance Decision.

115. Accordingly, the Panel considers that, in the absence of any evidence to the contrary, it is reasonable to conclude that Decision FDD-9088 was considered an aggravating factor when the level of the Fine was being set.

**E. Did FIFA's judicial bodies act arbitrarily?**

116. The Panel considers that:

a) The FIFA Disciplinary Committee acted arbitrarily as: (i) it failed to give sufficient weight to a key mitigating factor (i.e. the Appellant's genuine expression of remorse); and (ii) it wrongly treated Decision FDD-9088 as an aggravating factor.

b) The FIFA Appeal Committee acted arbitrarily in failing to address these issues when making the Challenged Decision.

**F. Is the Fine disproportionate?**

117. When excluding the Second Indonesian Case, fines in the Cited Precedents range from CHF 15,000 to 75,000, with the average fine amounting to approximately CHF 38,450. However, the Panel makes the following observations:

a) The Relevant Incidents were particularly serious, with players and fans being endangered by missiles on multiple occasions throughout the Match and the referee being required to suspend the Match on two occasions.

b) The re-occurrence of similar incidents throughout the Match suggests that the Appellant's attempts to restore order were lacking. The failure of stewards to take action over staircases being blocked by standing spectators is a further indication of this.

c) The FIFA Disciplinary Committee imposed a fine of CHF 50,000 on the Polish Football Association for the actions of its fans during the Match. The Panel considers the Appellant's breaches of Article 16 of the FDC to be considerably more serious than those of the Polish Football Association.

118. Notwithstanding the above observations, when taking into account the Cited Precedents and the arbitrary actions of the FIFA's judicial bodies, the Panel considers that a fine of CHF 150,000 is disproportionate in comparison to precedents involving similar Relevant Incidents. Equally, the above observations do lead the Panel to conclude that the fine should exceed the upper-level of the range from the Cited Precedents.

119. In all the circumstances, the Panel considers a fine of CHF 100,000 to be appropriate.

## ON THESE GROUNDS

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

1. The appeal filed by the Football Association of Albania on 1 March 2022 against the decision passed on 18 January 2022 by the Appeal Committee of the Fédération Internationale de Football Association is partially upheld.

2. The decision issued on 18 January 2022 by the Appeal Committee of the Fédération Internationale de Football Association is annulled and replaced by the following:

   *"The appeal lodged by the Football Association of Albania against the decision passed by the FIFA Disciplinary Committee on 21 October 2021 is partially upheld.*

   *The said decision is confirmed, save for point n.1 which is amended as follows:*

   *"1. The Football Association of Albania is ordered to pay a fine to the amount of CHF 100,000 for incidents related to order and security as well as for the inappropriate behaviour of its supporters (failure to comply with and implement existing safety rules – blocked stairways –, failure to ensure that law and order are maintained in the stadium, throwing of objects, lighting of fireworks, disturbance during national anthems, lack of order or discipline in the stadium) in connection with the match Albania v. Poland played on 12 October 2021 in the scope of the Preliminary Competition for the FIFA World Cup Qatar 2022™, European Zone".*

3. (…).

4. (…).

5. All other motions or prayers for relief are dismissed.