Arbitration CAS 2022/A/8695 Stanislav Toncev v. Football Association of Serbia (FAS), award of 20 April 2023 (operative part of 2 August 2022)

Panel: Mr Hendrik Willem Kesler (The Netherlands), President; Prof. Ulrich Haas (Germany); Mr Patrick Lafranchi (Switzerland)

Football
Disciplinary sanctions for unsporting behaviour and harming the reputation of football
Lack of structural independence of the first instance
Minimum level of engagement of the members of a disciplinary body
Standard of proof
Unsporting behaviour
Conduct that may harm the reputation of the sport of football
Assessment of the measure of the sanction by a CAS panel

1. **A party only has a right to one (structurally) independent adjudicatory body according to Article 6(1) of the European Convention on Human Rights. Considering that CAS fulfils these requirements, arguments in relation to a lack of structural independence of the previous instance must be dismissed from the outset.**

2. **There is no minimum level of engagement for the members of a disciplinary body. Therefore, the alleged passive stance of the members of such disciplinary body is not demonstrative of any alleged bias on their side or otherwise invalidates their decision.**

3. **In case the parties have not agreed upon an applicable standard of proof in disciplinary proceedings, the default standard of proof shall be the flexible standard of comfortable satisfaction of the Court having in mind the seriousness of the allegation which is made.**

4. **Based on the wording of Article 54 FAS Disciplinary Code, protesting at and defying referee's decisions, in whatever manner and context, is constitutive of unsporting behaviour and is prohibited. While the manner and context in which a person protests at a referee's decision may be taken into account in deciding on the proportionality of a sanction, it is in principle not relevant to establish whether Article 54 FAS Disciplinary Code has been violated.**

5. **The fact for an official of a club to enter the referees' dressing room at half time of a match, and to attempt to influence their decision-making during the second half of the match, is a conduct *"that may harm the reputation of the sport of football"*, which is also culpable conduct under Article 54 FAS Disciplinary Code.**

6. **CAS jurisprudence stating that the measure of the sanction imposed by a disciplinary**

body in the exercise of the discretion allowed by the relevant rules can be reviewed only when the sanction is evidently and grossly disproportionate to the offence cannot be interpreted to mean that a CAS panel in appeals arbitration proceedings would lack the competence or mandate to reduce the sanctions imposed if it would find that a sanction is only somewhat disproportionate, but does not reach the conclusion that the sanction imposed is *"evidently and grossly disproportionate to the offence"*. This interpretation would be incorrect, as CAS panels decide *de novo* and therefore have full competence to review the facts and the law, including the proportionality of the sanction, without restriction. If it would be otherwise, procedural flaws at the previous instance could not be healed in a proceeding before the CAS. This jurisprudence can only be interpreted to mean that, as a matter of courtesy or respect for internal judicial bodies, which are usually in a good position to take into account all relevant factors to decide on an appropriate and proportionate sanction, a CAS panel should not *"easily 'tinker' with a well-reasoned sanction, i.e. to substitute a sanction of 17 or 19 months' suspension for one of 18"*.

I. THE PARTIES

1. Mr Stanislav Toncev (the "Appellant") holds the Serbian nationality and is the President of FC Radnik Surdulica ("FC Radnik"), a football club affiliated to the Football Association of Serbia. The Appellant is also a member of the Executive Board of the Super League and the First League of Serbia (the "AFC").

2. The Football Association of Serbia (the "Respondent" or the "FAS") is the national football association of the Republic of Serbia, with its registered office in Belgrade, Serbia. The FAS is affiliated to the *Fédération Internationale de Football Association* ("FIFA").

3. The Appellant and the FAS are hereinafter jointly referred to as the "Parties".

II. INTRODUCTION

4. This case revolves around the allegation that the Appellant committed the offence of *"unsporting behaviour"* as stipulated in the FAS Disciplinary Code, by – together with his father, Mr Novica Toncev – entering into the referees' dressing room at half time of the match in the 10th round of the Serbian Super League between FC Radnik and FC TSC played on 24 November 2021 (the "Match"), questioning certain decisions of the (assistant) referees and engaging into a discussion with them.

5. The FAS Disciplinary Committee sanctioned the Appellant with a ban on performance of duties for a period of six months, which decision was confirmed by the FAS Appeals Committee on appeal (the "Appealed Decision").

6. With the present appeals arbitration proceedings before the Court of Arbitration for Sport ("CAS"), the Appellant is challenging the Appealed Decision, maintaining that no sanction should be imposed on him or, alternatively, that the sanction imposed should be reduced, whereas the FAS argues that the sanction imposed should be upheld.

III. FACTUAL BACKGROUND

7. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the Parties, the hearing and the evidence examined in the course of the proceedings. This background information is given for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.

A. Background Facts

8. On 25 January 2016, the Appellant was appointed President of FC Radnik.

9. On 24 November 2021, the Match took place.

B. The Proceedings before the FAS Disciplinary Committee

10. On 26 November 2021, Mr Aleksandar Pivic, the Competition Director of the Association Football Clubs of the Serbian Superleague and First League of Serbia (the "AFC Competition Director"), filed a complaint (the "Disciplinary Report") with the FAS concerning alleged unsportsmanlike behaviour of the Appellant during the Match. The Disciplinary Report contained evidence collected and stated as follows:

> *"Pursuant to Article 127* [FAS Disciplinary Code] *and pursuant to the Disciplinary report of the FA of Serbia Referee commission, on account of the committed violation of Article 54* [FAS Disciplinary Code]*, entering a restricted area, that is the referee's change room at the halftime of the* [Match]*, in the capacity of Competition Director, I file a complaint against* [the Appellant].
>
> *On the day of 24.11.2021, at halftime of the* [Match]*,* [the Appellant] *entered a restricted area and set foot in the referee's change room".*

11. On 2 December 2021, the FAS Disciplinary Committee informed the Appellant that it had taken the following decision (the "Provisional Suspension"):

> *"1. Disciplinary proceedings are initiated against* [the Appellant]*, president of FC Radnik from Surdulica, for violating Article 54* [FAS Disciplinary Code] *made in the* [Match].
>
> *2.* [The Appellant] *is ordered to file a written statement on the circumstances referred to in the Disciplinary Report, which circumstances are presented in the attachment to this Decision, to the*

[FAS Disciplinary Committee] *no later than Tuesday, December 7, 2021 until 5 p.m. by e-mail* […]*, pursuant to Article 129 and 131* [FAS Disciplinary Code].

3. *The measure of suspension is pronounced to* [the Appellant] *and the ban on performance of all duties in football in terms of Article 23* [FAS Disciplinary Code].

4. *The suspension referred to in item 3 of this Decision shall last until the decision on sanction of this Committee is reached, for a maximum of 2 (two) months. Time spent under suspension will be included in the sanction, pursuant to Article 138* [FAS Disciplinary Code]*"*.

12. On 4 December 2021, the Secretary of the FAS Disciplinary Committee informed the Appellant as follows:

> *"I refer to the* [Provisional Suspension] *that was sent to you without the Disciplinary Report and the Additional reports of the other match officials by mistake"*.

13. On 7 December 2021, the Appellant filed his first written defence with respect to the charge filed against him before the FAS Disciplinary Committee.

14. On 9 December 2021, following an "objection" filed by the Appellant to the Provisional Suspension on the basis of Article 139(1) FAS Disciplinary Code, the FAS Disciplinary Committee issued a decision, rejecting the Appellant's objection. This decision contained the following operative part:

> *"[T]o REJECT the Objection of* [the Appellant]*, represented by the attorney at law Petkovic Mico from Belgrade, lodged based on the decision of the* [Provisional Suspension]*, as not permitted, according to Article 139* [FAS Disciplinary Code]*"*.

15. On 16 December 2021, a hearing was held before the FAS Disciplinary Committee.

16. On 23 December 2021, following an appeal filed by the Appellant against the FAS Disciplinary Committee decision dated 9 December 2021, the FAS Disciplinary Committee issued its decision, with the following operative part:

> *"[T]o REJECT the Appeal of* [the Appellant]*, represented by the attorney at law Petkovic Mico from Belgrade lodged based on the decision of the* [FAS Disciplinary Committee] *as NOT PERMITTED, in accordance with Articles 139 and 145 of the* [FAS Disciplinary Code]*"*.

17. On 24 December 2021, the FAS provided the Appellant with video and audio files recorded in the video assistant referee ("VAR") room of the Match, accompanied by a transcript thereof.

18. On 24 and 27 December 2021 respectively, upon the request of the FAS Disciplinary Committee, Mr Dejan Trifkovic, the referee leading the Match (the "Main Referee"), Mr Banovic Bojan, the first assistant referee at the Match (the "First Assistant Referee"), Mr Slobodan Pavlovic, the second assistant referee at the Match (the "Second Assistant

Referee"), and Mr Aleksandar Zivkovic, the fourth referee at the Match (the "Fourth Referee" – collectively the "Referees"), issued additional statements based on the VAR recordings and the transcript thereof, *inter alia*, addressing the authenticity thereof.

19. On 27 December 2021, the Appellant filed his second written defence with the FAS Disciplinary Committee, objecting, *inter alia*, to the admissibility of the VAR recordings and the transcript thereof.

20. On 30 December 2021, the FAS Disciplinary Committee provided the Appellant with additional statements from the Referees.

21. On 10 January 2022, the Appellant filed his third written defence with the FAS Disciplinary Committee, maintaining, *inter alia*, that pursuant to Article 130(2) FAS Disciplinary Code, the FAS Disciplinary Committee should have issued a decision within seven days of receipt of the Disciplinary Report, i.e. by 3 December 2021.

22. On 12 January 2022, the FAS provided the Appellant with a statement of Mr Boban Stamenkovic, the Security Commissioner of FC Radnik (the "Club's Security Commissioner"), a statement of Mr Milos Mitrovic, the Match Delegate at the Match (the "Match Delegate"), and a statement of the AFC Competition Director.

23. On 13 January 2022, the FAS Disciplinary Committee issued its decision on the charge filed against the Appellant (the "First Instance Decision"), with the following operative part:

> *"1.* [The Appellant] *IS HEREBY PENALIZED by a ban on performance of duties for a period of 6 (six) months due to violation of Art. 54, and in connection with Art. 23* [FAS Disciplinary Code]*, committed in the* [Match].
>
> *2. The penalty referred to in item 1 of this Decision shall become effective 24 hours following the entry into force of the* [Provisional Suspension] *dated 2nd December 2021, i.e. from 03rd December 2021 pursuant to Articles 138 and 148* [FAS Disciplinary Code]*".*

24. On the same date, the grounds of the First Instance Decision were communicated to the Appellant, providing, *inter alia,* as follows:

- *"The first instance disciplinary body considers these statements to be clear, convincing, logical and non-contradictory, especially having in mind that even the* [Appellant] *did not make any objections to the mentioned statements during the procedure.*
- *As for the written and oral statements of the* [Appellant]*, they cannot be accepted because they are in contradiction with the statements of the* [Referees] *and are evidently aimed at conscious avoidance of disciplinary responsibility and obvious reduction of guilt.*
- *The statements of the* [Match Delegate] *and the* [Club's Security Commissioner]*, in the opinion of this Commission, are not relevant for decision-making, primarily because according to all*

the presented evidence it is indisputable that they were not in the [Referees'] *dressing room at the time of the critical event.*

- *Based on the above statements, the Committee concluded in a clear, unambiguous and undoubted manner that the* [Appellant] *committed a violation of Art. 54* [FAS Disciplinary Code] *which stipulates that whoever presents with unsportsmanlike conduct shall be penalized, and that unsportsmanlike conduct includes swearing, spitting, indecent gestures, objecting to and defying the referee's decisions and orders as well as the decisions and orders of football organizations and functionaries who perform certain duties, including teasing of players of own and rival's teams, functionaries and viewers verbally, with gestures and otherwise, as well as all the actions that may do harm to the reputation of the football sport.*

- *In the specific legal situation, the elements of the disciplinary offence of complaining about and defying the decisions of the* [Referees] *are clear in the form of addressing a person against whom a disciplinary report was filed in which he asks the referee what did he do.*

- *This position is reached by the first instance disciplinary body by correlating the quoted written statements of the* [Referees] *with the written statements of the* [Referees] *from 24th December 2021 and 27th December 2021 in which the* [Referees] *confirm the identity of the persons with whom they had a conversation in the* [Referees'] *dressing room during the break between the two half-times of the* [Match]*, as well as the material component of the said conversation, which are stated in the audio transcript. The same or similar conclusion is drawn from the written statements of VAR and AVAR referees.*

- *This indicates a clear continuity and several minutes of unsportsmanlike conduct of the* [Appellant] *in the form of objections and defiance to* [Referees'] *decisions, which absolutely excludes even the smallest elements of affectivity in the reaction, given that objections and defiance do not apply to one, but rather to a series of allegedly controversial situations that occurred in the first part of the* [Match].

- *The committee appreciated the allegations from the written and oral statement of* [the Appellant] *and concluded that he did not change his attitude towards the committed acts of disciplinary violation, nor did he show elements of possible remorse for the committed offence. In addition to this, the constant statement that the* [Appellant] *was in the so-called balloon hall, that he toured the construction works being carried out in it, as well as the fact that the front door to the* [Referees'] *dressing room was open.*

- *The unanimous conclusion of the first instance disciplinary body is that there is an element of determination, persistence and ruthlessness in the actions of the* [Appellant]*, and that the offence itself produced significant repercussions on the reputation of the* [Match] *and the integrity and authority of the entire competition.*

- *When determining the penalty for a disciplinary offense, all mitigating and aggravating circumstances that exist in a particular case were taken into account, especially the severity of the disciplinary offense and its consequences, the degree of responsibility of the* [Appellant]*, the motives for misdemeanours and all other circumstances related to the* [Appellant's] *personality.*

- *In his oral statement made on December 16th 2021, the* [Appellant]*, among other things, asserted that he was president of FK "Radnik" Surdulica for 9 years, and points out that during this time no disciplinary proceedings were initiated or conducted against him. The* [FAS Disciplinary Committee] *concludes that those assertions are evidently false, having in mind that a disciplinary report had been submitted against* [the Appellant] *for the breach under Article 54* [FAS Disciplinary Code] *committed after the championship match of the 10th round of Super Liga Serbia in the 2019/20 season FK "Javor Matis" - FK "Radnik", of September 30th 2019 in Ivanjica, when said person entered the pitch and addressed the referee by saying: "You should be ashamed of your refereeing". Due to the preceding, the Disciplinary Committee of the FAS, on the session of October 10th 2019, adjudicated the adequate disciplinary sanction in the ruling number DK-161/19-533. This fact was not considered by the disciplinary organ of the first degree when adjudicating disciplinary penalties at the matter at stake due to the fact that over a year had passed since the earlier and subsequent rulings, but does consider it relevant when assessing the personal credibility of the* [Appellant] *and the dignity of his oral statement.*

- *The credibility of the attached delegate report was determined from the written statement of the person who submitted the disciplinary report from 28th December 2021.*

- *When it comes to the personality of the* [Appellant]*, the position of this Committee is that he performs high functions in the current football system of* [the FAS] *in capacity of a member of the Executive Board of the* [AFC] *and president of FC Radnik, a football club who has been improving its work and results on and off the pitch, from which reason the Commission assesses this circumstance as aggravating one.*

- *The first-instance disciplinary body took the position that all of the above obliges him to a significant extent to act with particular caution in dealing with referees and officials at the match, to carefully weigh his performances.*

- *Article 23* [FAS Disciplinary Code] *stipulates that a person penalised to this type of penalty may not perform functions for which a disciplinary measure has been imposed in any body of the club, association, federation, match, etc., nor represent a club or organisation in any capacity throughout the entire duration of the penalty term. This penalty includes a ban on entering the locker room or access to the reserve players' bench, as well as a ban on entering the club or association's premises.*

- *The Disciplinary Commission deems that the imposed penalty is proportional to the gravity of the committed offense disclosed in the wording of this Decision, that it will have an educational effect on the football worker and at the same time a preventive effect, both on the* [Appellant] *and other persons, so that all can refrain from committing such or similar offenses".*

C. The Proceedings before the FAS Appeals Committee

25. On 14 January 2022, the Appellant filed an appeal against the First Instance Decision with the FAS Appeals Committee.

26. On 14 February 2022, the FAS Appeal Committee rendered its decision (the "Appealed Decision"), with the following operative part:

> *"The appeal of* [the Appellant]*, filed against the* [First Instance Decision]*, is hereby DISMISSED, and the* [First Instance Decision] *is therefore confirmed in its entirety".*

27. On 18 February 2022, the Appealed Decision, with grounds, was communicated to the Appellant, providing, *inter alia,* as follows:

- *"Considering the timely filed and duly taxed appeal of* [the Appellant] *against the* [First Instance Decision]*, which was filed through the attorney Mića Petković, a lawyer from Belgrade, the FAS Appeals Committee found that it was ungrounded.*

- *The* [Appellant] *appealed the decision for all reasons, proposing that the* [First Instance Decision] *be revoked and returned to the first-instance body for a new procedure. He pointed out a significant violation of the disciplinary procedure provisions, which was reflected in the illegal conduct during the decision on suspension i.e. rejecting the appellant's objections. It is further stated that the actions of the* [Appellant] *were incorrectly and incompletely determined, as well as that the decision on the disciplinary sanction was inappropriate and that the accepted practice of the first instance body from previous proceedings was deviated from.*

- *Considering the allegations of the appellant from the case file, the Appeals Committee considers that the first instance body acted correctly when, in accordance with the facts of the disciplinary proceedings, it issued an appellate decision penalizing* [the Appellant]*, by preventing him from performing his duties in football for 6 (six) months due to the violation of Article 54 and in connection with Art. 23* [FAS Disciplinary Code]*, by unequivocally establishing that the* [Appellant] *committed the disciplinary offense specified in paragraph 1 of this explanation. This is due to the fact that the* [Appellant] *entered the* [Referees'] *dressing room without authorization at the half-time of the* [Match] *and objected to and defied the decisions of the* [Referees] *in the* [Match]*, thus committing the act from Article 54* [FAS Disciplinary Code].

- *When determining the penalty, the Disciplinary Committee correctly took the position that the conduct and attitude of the* [Appellant]*, given the functions he performs, had to be at a much higher level, and that this fact is an aggravating circumstance due to which the sentence was adequate.*

- *Regarding the appellate allegations indicating the illegality of the* [Provisional Suspension]*, it was concluded that they are irrelevant, bearing in mind that pursuant to Article 139 of the FAS Disciplinary Code, the disciplinary body responsible for reviewing the suspension decision made the said decision and that no appeal can be filed against such a decision.*

- *The Appeals Committee took the position that the first instance body correctly applied the FAS Disciplinary Code in everything, as well as that the appeal decision was explained in detail, and based on the said it decided to dismiss the appeal of* [the Appellant] *confirming in its entirety the first instance decision".*

IV. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

28. On 28 February 2022, the Appellant filed a Statement of Appeal with CAS, challenging the Appealed Decision, in accordance with Articles R47 and R48 of the 2021 edition of the CAS Code of Sports-related Arbitration (the "CAS Code"). In this submission, the Appellant nominated Mr Ulrich Haas, Professor in Zurich, Switzerland, and Attorney-at-Law in Hamburg, Germany, as arbitrator. Furthermore, the Appellant applied for a stay of execution of the Appealed Decision with regard to the disciplinary sanction imposed on him in accordance with Article R37 CAS Code.

29. On 14 March 2022, the FAS nominated Mr Patrick Lafranchi, Attorney-at-Law in Bern, Switzerland, as arbitrator.

30. On 21 March 2022, the FAS filed its response to the Appellant's application for a stay of execution of the Appealed Decision, requesting for it to be dismissed.

31. On 1 April 2022, the Appellant filed his Appeal Brief in accordance with Article R51 CAS Code.

32. On 8 April 2022, the President of the CAS Appeals Arbitration Division issued an order on the Appellant's application for a stay of execution of the Appealed Decision. The operative part of the order provides as follows:

> *"1. The application for a stay of the* [Appealed Decision]*, filed by* [the Appellant] *is rejected.*
>
> *2. The costs deriving from the present Order will be determined in the final award or in any other final disposition of this arbitration".*

33. On 23 May 2022, the CAS Court Office informed the Parties that the Deputy President of the CAS Appeals Arbitration Division, pursuant to Article R54 CAS Code, had decided that the Panel appointed to decide the case was constituted as follows:

President:	Mr Hendrik Willem Kesler, Attorney-at-Law, Enschede, the Netherlands;
Arbitrators:	Mr Ulrich Haas, Professor and Attorney-at-Law, Hamburg, Germany;
	Mr Patrick Lafranchi, Attorney-at-Law, Bern, Switzerland.

34. On 27 May 2022, the Appellant provided the CAS Court Office with four decisions rendered by the FAS Disciplinary Committee in 2021 in which persons were also sanctioned for violating Article 54 FAS Disciplinary Code and requested such decisions to be admitted on file.

35. On 6 June 2022, the FAS objected to the admissibility of the decisions provided by the Appellant on 27 May 2022.

36. On 8 June 2022, the CAS Court Office, on behalf of the Panel, informed the Parties as follows:

"- The decisions of the Football Association of Serbia filed by the Appellant on 27 May 2022 are admitted into the case file. The reasons of this decisions will be communicated in the final award.

- The Respondent will be allowed to comment on such decisions during the hearing".

37. On 9 June 2022, the CAS Court Office informed the Parties that, for the sake of procedural and costs efficiency and considering that the proceedings in *CAS 2022/A/8694 Novica Toncev v. Football Association of Serbia* and *CAS 2022/A/8695 Stanislav Toncev v. Football Association of Serbia* involve similar issues, the Panel had decided to deal with both proceedings in one single hearing.

38. On 14 June 2022, the CAS Court Office informed the Parties that Mr Dennis Koolaard, Attorney-at-Law in Arnhem, the Netherlands, had been appointed as *Ad hoc* Clerk.

39. On 18 June 2022, the FAS filed its Answer in accordance with Article R55 CAS Code.

40. On 6 and 8 July 2022 respectively, the Appellant and the FAS returned duly signed copies of the Order of Procedure that had been provided to them on 6 July 2022.

41. On 8 July 2022, the CAS Court Office informed the Parties that one of the members of the Panel would only be able to attend the hearing scheduled for 13 July 2022 by video-conference.

42. On 11 July 2022, the CAS Court Office provided the Parties with a tentative hearing schedule, inviting them to provide their comments thereto.

43. On the same date, 11 July 2022, both Parties submitted comments to the tentative hearing schedule. In particular, the Appellant requested that he and his father be permitted to testify and that the Match Delegate was not available to testify due to personal reasons. The FAS objected to hearing evidence from Mr Ninoslav Spasic, Referee Observer at the Match, Dušan Mrakić, FAS Executive Committee Member, the Appellant and his father.

44. On 12 July 2022, the CAS Court Office provided the Parties with an updated tentative hearing schedule and informed them that any outstanding issues would be dealt with at the outset of the hearing.

45. On 13 July 2022, a joint hearing was held at the CAS Court Office in Lausanne, Switzerland, in the matters *CAS 2022/A/8694 Novica Toncev v. Football Association of Serbia* and *CAS 2022/A/8695 Stanislav Toncev v. Football Association of Serbia*. At the outset of the hearing, both Parties confirmed that they had no objection to the constitution and composition of the Panel.

46. In addition to the members of the Panel, Mr Antonio de Quesada, CAS Head of Arbitration, and Mr Dennis Koolaard, *Ad hoc* Clerk, the following persons attended the hearing:

a) For the Appellant:

1) Mr Stanislav Toncev, the Appellant;

2) Mr Novica Toncev, the Appellant's father and appellant in *CAS 2022/A/8694*;
3) Mr Mico Petkovic, Counsel;
4) Ms Ivana Boskovic, Counsel (by video-conference);
5) Mr Milosh Petrik, Interpreter.

b) For the FAS:

1) Mr Zoran Damjanovic, Counsel;
2) Dr Marco del Fabro, Counsel;
3) Mr Ksenija Z. Damjanovic, Counsel;
4) Ms Tatjana Otkovic, Interpreter.

47. The following persons were heard, in order of appearance:

1) Mr Novica Toncev, the Appellant's father, appellant in CAS 2022/A/8694 and witness in CAS 2022/A/8695;
2) Mr Stanislav Toncev, the Appellant;
3) Mr Dušan Mrakić, FAS Executive Committee Member, witness called by the Appellant;
4) Mr Boban Stamenkovic, the Club's Security Commissioner, witness called by the Appellant;
5) Mr Aleksandar Zivkovic, Fourth Referee, witness called by the SFA (by video-conference);
6) Mr Dejan Trifkovic, Main Referee, witness called by the SFA (by video-conference);
7) Mr Bojan Banovic, First Assistant Referee, witness called by the SFA (by video-conference).

48. At the outset of the hearing, and further to the FAS' objection in this respect, the Panel informed the Parties that it had decided that Mr Ninoslav Spasic, Referee Observer at the Match and witness called by the Appellant, would not be heard, because he had not been called as a witness in the Appeal Brief, nor did the Appellant file a witness statement or a summary of his expected testimony.

49. The Panel also informed the Parties, further to the FAS' objection in this respect, that it had decided that Mr Mrakić would be heard as a witness, because the Appellant had provided a witness statement of Mr Mrakić with its Appeal Brief.

50. The Panel also informed the Parties that, further to the Appellants' request and the objection of the FAS, the Appellant and his father would be heard, as they are parties in the procedures *CAS 2022/A/8694 Novica Toncev v. Football Association of Serbia* and *CAS 2022/A/8695 Stanislav Toncev v. Football Association of Serbia*.

51. All witnesses were invited by the President of the Panel to tell the truth subject to the sanctions of perjury under Swiss law. The Appellant and the FAS had full opportunity to examine and cross-examine the witnesses.

52. The Appellant and the FAS were given full opportunity to present their cases, submit their arguments and answer the questions posed by the members of the Panel.

53. Before the hearing was concluded, the Appellant and the FAS expressly stated that they had no objection to the procedure adopted by the Panel and that their right to be heard had been respected.

54. The Panel confirms that it carefully heard and took into account in its decision all of the submissions, evidence and arguments presented by the Appellant and the FAS, even if they have not been specifically summarised or referred to in the present arbitral award.

V. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

A. The Appellant

55. The Appellant's submissions, in essence, may be summarised as follows:

Right to a fair and public hearing

- Pursuant to Article 6 of the European Convention on Human Rights (the "ECHR"), in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Article 6(1) ECHR has also been found to be applicable in relation to disciplinary sanctions in the field of sport. In its judgment in *Ali Riza and Others*, the European Court of Human Rights (the "ECtHR") noted structural deficiencies in the Arbitration Committee of the Turkish Football Federation (the "TFF Arbitration Committee") and the lack of adequate safeguards to protect the members of the Committee from outside pressure. It concluded that the TFF Arbitration Committee lacked independence and impartiality and considered this to be a violation of Article 6(1) ECHR.

- For the same reasons, the FAS Disciplinary Committee and the FAS Appeals Committee also lack independence and impartiality in the disciplinary matter at stake, mostly from an organisational perspective.

- Taking into account that the FAS has been running its operations without President since Mr Kokeza resigned on 22 March 2021, it is clear that these circumstances could have been misused not only to disqualify other potential candidates from

running for President of the FAS, but also to present and promote another candidate as the most suitable one.

- Since Mr Novica Toncev, the Appellant's father, confirmed his determination of running for the presidency of the FAS, the FAS Vice President decided to weaken Mr Novica Toncev's position and the support he had among the members of the FAS Executive Committee by dismissing three members of that body that had not been under the FAS Vice President's control and to appoint new "reliable" members. This process was completed by means of the present disciplinary proceedings and the Provisional Suspension imposed on the Appellant and his father, which was in violation of Article 129(1) FAS Disciplinary Code.

- In light of the FAS's statutory provisions, it is obvious that during the disciplinary proceedings there were inadequate safeguards to protect the members of the judicial bodies from outside pressure, notably from the FAS Executive Committee. The special requirements (in terms of qualifications, experience, special skills or knowledge) to be a member of these bodies were not prescribed, the members of the judicial bodies have not been bound by any rules of professional conduct, neither had to swear an oath or make a solemn declaration before taking up their duties. Moreover, they were not protected from civil liability actions, the FAS's rules had no fixed term for members' term of office, the members of the judicial bodies did not have to disclose circumstances affecting their independence and impartiality and there was no specific procedure to deal with challenges to a member on those grounds.

- In sum, the Appellant has legitimate reason to doubt that the judicial bodies' members would approach his case with the necessary independence and impartiality. There had therefore been a violation of Article 6(1) ECHR.

- Furthermore, pursuant to Article 70(2) FAS Statutes, the FAS Disciplinary Committee is composed of a minimum of 5 members. The members of the FAS Disciplinary Committee that passed the First Instance Decision were appointed by the FAS Emergency Committee at a meeting held on 23 September 2020, by means of which only four members were appointed and a fifth member was to be appointed in due course. However, this never happened.

- Consequently, the FAS Disciplinary Committee that issued the First Instance Decision was composed of only 4 members, i.e. a number smaller than the number provided for by the FAS Statutes.

Right to a fair trial and right to be heard

- The requirement of fairness applies to proceedings in their entirety. The proceedings are examined as a whole in order to determine whether they were conducted in accordance with the requirements of a fair hearing.

- It should be noted that not only did the FAS Disciplinary Committee pass the Provisional Suspension prior to providing the Appellant with the possibility to express his position about the allegations raised in the Disciplinary Report, but also it was asserted, contrary to Article 139(1) FAS Disciplinary Code, that said ruling could not be appealed.

- Furthermore, following the dismissal of the Appellant's objection against the Provisional Suspension, and upon being informed that such decision could be appealed with the FAS Appeal Committee, the Appellant filed an appeal, which was dismissed by the same judicial body, i.e. the FAS Disciplinary Committee.

- The concept of a fair trial comprises the fundamental right to adversarial proceeding and implies that each party must be afforded a reasonable opportunity to present his case including his evidence. It should be taken into account that, contrary to Article 131(2) FAS Disciplinary Code, the FAS was not represented by a disciplinary inspector, in the absence of which it was not clear which side carried the burden of proof to establish the alleged violation.

- It should be noted that the Appellant's alleged breach of the rules was not reported by the match officials. To the contrary, the Match Delegate assessed the organization of the Match as *"good"* and the overall organization as *"very good"*. The Referees were invited by the FAS Referee Committee to submit their additional reports and the Disciplinary Report was filed based on the Referee Committee report that has never been provided to the Appellant.

- The FAS Disciplinary Committee failed to assess the charges on time in order to see if a *prima facie* case/substantial ground existed to believe that the Appellant had committed the offence as charged. On the one hand, by rendering its Provisional Suspension, the FAS Disciplinary Committee communicated that it assessed the charges against the Appellant immediately upon receipt of the Disciplinary Report and found that a substantial ground existed to believe that the Appellant had committed the offence as charged (by entering a restricted area). On the other hand, the Appellant was disciplinary sanctioned not for entering a restricted area, but for complaining about and defying the decisions of the Referees.

- The members of the FAS Disciplinary Committee were passive during the hearing of 16 December 2021, as evident from the fact that they had not asked any question to the Appellant in order to fully and correctly clarify the facts of the matter.

- The FAS Disciplinary Committee and the FAS Appeals Committee failed to provide the Appellant with understandable reasons for its decisions. In support of this conclusion, it is enough to compare the Appellant's arguments from his appeal and the grounds of the Appealed Decision. Among many of them, the Appellant was arguing in his appeal that the FAS Disciplinary Committee, in its acting in the disciplinary proceedings against the Appellant, did not follow its previous ruling

without a valid reason for departing from it. By such acting, the principle of legal certainty was grossly violated.

- Contrary to Article 37(1) FAS Disciplinary Code, the FAS Disciplinary Committee failed to take into account all extenuating circumstances relevant to the disciplinary proceedings, especially his earlier conduct.

- Pursuant to Article 129(1) FAS Disciplinary Code, after ascertaining competence, the FAS Disciplinary Committee shall hear the person accused of a disciplinary offence so as to decide whether to engage in disciplinary proceedings and shall rule in that respect. In the sense of the above-mentioned provision, the FAS Disciplinary Committee, upon receipt of the Disciplinary Report, was supposed to ascertain its competence, then to hear the Appellant in order to decide whether to engage in the disciplinary proceedings and was supposed to rule in that respect.

- Instead of acting in accordance with that prescribed procedure, the FAS Disciplinary Committee ruled in that respect without hearing the Appellant.

Administration of evidence

- The admissibility of evidence and the way it should be assessed are primarily matters for regulation by applicable law. The same applies to the probative value of evidence and the burden of proof. However, individuals must be afforded effective judicial safeguards. The FAS Disciplinary Committee took evidence *ex officio*. The Appellant does not object to the right of this judicial body to form its opinion based on its free assessment of the evidence taken.

- The Appellant was provided with the VAR recordings and the transcript thereof on 24 December 2021. Three days later, the Appellant filed a written submission to the FAS Disciplinary Committee by means of which he objected to the authenticity of the evidence and proposed to treat it as inadmissible. The FAS failed to prove the authenticity of the evidence even though the Appellant had disputed it during the proceedings.

- With regard to the statement of the FAS Disciplinary Committee that *"[a]s for the written and oral statements of the* [Appellant]*, they cannot be accepted because they are in contradiction with the statements of the* [Referees] *and are evidently aimed at conscious avoidance of disciplinary responsibility and obvious reduction of guilt. The statements of the* [Match Delegate] *and the* [Club's Security Commissioner]*, in the opinion of this Committee, are not relevant for decision-making, primarily because according to all the presented evidence it is indisputable that they were not in the* [Referees'] *locker room at the time of the critical event"*, such an assessment does not satisfy basic requirements of a fair trial. The FAS Disciplinary Committee was supposed to assess not only every evidence individually, but also to compare each of it with the others.

Standard and burden of proof

- Swiss law considers disciplinary proceedings to be civil proceedings. As such, as a general rule, the standard of proof shall be that of beyond reasonable doubt. However, Swiss law offers several means to ease the difficulty of proving certain facts, either by imposing a duty to collaborate on the other party, against whom the facts have to be proved, or by shifting the burden of proof, or lowering the standard of proof.

- With regards to this issue, the Panel should determine the admissible evidence and, for each fact, which party had the burden of proof.

Proportionality of the sanction

- The principle of proportionality requires the Panel to assess whether a sanction is appropriate to the violation committed in the case at stake. Excessive sanctions are prohibited. When assessing whether a sanction is excessive, the Panel must review the type and scope of the proved rule violation, the individual circumstances of the case, and the overall effect of the sanction on the Appellant as an offender.

- Taking into account that the Appellant was charged for entering into a restricted area, all Referees stressed in their additional reports that they had not received any insults or threats from the Appellant, nor the Appellant exhibited any rude or uncomfortable behaviour towards them, it is clear that, even if found guilty of a disciplinary offence, the purpose of the sanction could have been reached with the most lenient sanction (a reprimand).

- In light of Article 23 FAS Disciplinary Code and the fact that the Appellant was a legal representative of FC Radnik, it is clear that the disciplinary measure imposed is extremely harsh and excessive, because not only has the Appellant been disallowed to represent the club, but he is also not allowed to access the club's offices.

- It remained unclear from the First Instance Decision and the Appealed Decision why the disciplinary bodies of the FAS were convinced that the purpose of the disciplinary measure could have been reached only by a ban, not by reprimand or by a fine. In addition, it remained unclear why this purpose could have not been reached by a shorter ban.

- These disciplinary sanctions failed to prevent third parties from criticizing referees and the FAS Referee Committee. In this regard, the Appellant refers to an incident that took place on 6 March 2022, when FC Partizan defeated FC Spartak in the 26th round of the Super League of Serbia, resulting in a public statement being issued by FC Red Star by means of which the referee's integrity was publicly attacked.

Conduct of the Appellant during the Match

- At the Match, the Appellant invited his father to be his guest. Just before the end of the first half, the Appellant proposed his father to go to the balloon hall at half time and after the Match to examine the condition thereof in terms of construction work, which his father accepted. At half time, on the way back from the balloon hall to the box, as they passed the Referees' locker room, the Appellant heard that the Referees were talking about the controversial situation from the 23rd minute, which led him to enter the locker room and join the conversation on that topic. The Appellant's father followed the Appellant.

- The conversation with the Referees was conducted within the limits of decency, so that neither the Appellant, nor his father, during the conversation had cursed their interlocutors, nor did they show them indecent gestures, objected their decisions, provoked them with movements and gestures, nor had they in any other way taken any action, which could damage the reputation of football sport.

- The Appellant did not dispute the fact that at half time of the Match, by chance, he found himself in the locker room of the Referees and that a discussion had been held on that occasion with the Referees in a polite and friendly manner. However, the Appellant disputed the commission of any act of unsportsmanlike conduct towards the Referees.

- The term "restricted area" has not been defined by the FAS's bylaws and, therefore, entering a restricted area cannot be treated like a violation of the FAS Disciplinary Code.

56. On this basis, the Appellant submits the following prayers for relief in his Appeal Brief:

"1) to uphold the Appeal and to set aside the Appealed Decision in its unity with the decision of the Disciplinary Committee of the Respondent issued on 13 January2022;

2) primarily, to dismiss all the Respondent's charges against the Appellant and to rule that no sanctions are imposed on the Appellant;

3) in the alternative, to reduce the sanction on the Appellant;

4) to rule that the Respondent shall pay a sum determined by CAS to the Appellant as a contribution of its legal fees and other expenses incurred in connection with the proceedings".

B. The Respondent

57. The FAS's submissions, in essence, may be summarised as follows:

- The Appellant does not deny that he engaged in the conduct (discussion with the Referees in the Referees' dressing room at half time of the Match) which resulted in the imposition of the sanction. He rather deems that such conduct does not represent a disciplinary offence which falls within the scope of the FAS Disciplinary Code.

Right to a fair and public hearing

- The Appellant failed to raise many of the claims set out in the Appeal Brief before the FAS Appeals Committee when he had the opportunity to do so. Consequently, the Appellant failed to exhaust all internal remedies before submitting the present appeal before CAS which should lead to a dismissal of the relevant allegations. In this regard, reference is made to CAS jurisprudence.

- In the Appellant's appeal against the First Instance Decision, there was not a single word regarding the alleged lack of safeguards, independence, impartiality or a lack of a tribunal established by law. Consequently, all these complaints should be rejected. Also, the Appellant did not seek an exemption of any member of the FAS Disciplinary Committee or the FAS Appeals Committee, nor did he challenge the jurisdiction, expertise or impartiality of the FAS bodies.

- The Appellant's allegations regarding a lack of independence and impartiality of the members of the FAS disciplinary bodies are ungrounded and based on the subjective attitude of the Appellant towards the organisational structures of the FAS. The FAS Statutes explicitly regulate the general requirements and conditions for membership of any body of the FAS, in particular the requirements for membership of judicial bodies. UEFA and FIFA take a similar approach when electing members for their disciplinary bodies.

- Furthermore, the members are appointed for a term of four years in accordance with Article 39(7) FAS Statutes, and members are bound to the Statutes, regulations, directives and decisions of the FAS, UEFA and FIFA as well as the FAS Code of Ethics, based on Article 40 FAS Statutes.

- The First Instance Decision was taken by four members in line with Article 70 FAS Statutes, which provides that the FAS Disciplinary Committee *"shall reach decisions in the presence of at least 3 (three) of its members"*.

- Insofar as the Appellant raised certain procedural complaints in his appeal against the First Instance Decision, such accusations are addressed separately.

Right to a fair trial

- Contrary to the allegations of the Appellant, there was no significant lack of due process before the FAS disciplinary bodies, but even if there was, these failings do

not influence the validity of the Appealed Decision. With reference to CAS jurisprudence it is maintained that the *de novo* character of appeals arbitration proceedings cures any procedural violations that may have been committed in the previous instances.

- The Provisional Suspension did not violate the Appellant's right to a fair trial, since it was not a verdict but a provisional measure that can be imposed during the disciplinary procedure. Concerning the submitted and rejected legal remedies against the Provisional Suspension, the Appellant did not suffer any damage by following the erroneous instruction on legal remedy.

- Regarding the lack of involvement of an Ethics and Disciplinary Inspector, the Appellant did not raise any objection before the FAS Appeals Committee, or state in his Appeal Brief what procedural defect it would be or in what way it could affect the legality of the Appealed Decision. Furthermore, based on Article 69 FAS Statutes, the scope of work of the Ethics and Disciplinary Inspector is the investigation phase or initiation of disciplinary proceedings. Therefore, his participation was not necessary in the case at hand, as the proceedings were initiated by the AFC Competition Director in accordance with Article 127 FAS Disciplinary Code.

- The Appellant was given a reasonable opportunity to present his defence before the FAS Disciplinary Committee. Given the *prima facie* gravity of the Appellant's misbehaviour, the FAS Disciplinary Committee decided to impose the Provisional Suspension on the Appellant. The Provisional Suspension was imposed not only due to what was done, but also who had done it.

- The alleged *"passive conduct"* of the members of the FAS Disciplinary Committee is irrelevant to the correctness of the Appealed Decision, because the Appellant was given a reasonable opportunity to present his case.

- The Appealed Decision, in conjunction with the First Instance Decision, is to be deemed with *"understandable reasons"* as the bodies have established in a clear and unambiguous way that the Appellant committed an act of unsporting behaviour regulated by Article 54 FAS Disciplinary Code. As the Appealed Decision confirmed the First Instance Decision in its entirety, there was no need to repeat the whole same reasoning.

- After it found itself competent to hear the case against the Appellant, the FAS Disciplinary Committee complied with its duty to invite and hear the Appellant in its decision of 2 December 2021 by requesting his written statement. No one was punished without prior hearing. The wording of Article 129 FAS Disciplinary Code is clumsy, as a requirement to invite and hear the accused party before the opening of disciplinary proceedings is contrary to the rules and regulations in general.

Interpreting Article 129 FAS Disciplinary Code literally would be wrong and would amount to excessive formalism.

- The proceedings before the FAS Disciplinary Committee were carried out in accordance with Articles 127-130 FAS Disciplinary Code. As such, it duly established its competence and complied with its duty to hear the Appellant.

Administration of evidence

- In accordance with Articles 132 and 133 FAS Disciplinary Code, the FAS Disciplinary Committee has conducted an assessment of each piece of evidence individually and of all evidence together, and on account of which evidence it deemed it consistently and credibly established that the Appellant committed the disciplinary offence foreseen by Article 54 FAS Disciplinary Code.

- As the Appellant did not challenge the contents of the additional reports of the Referees, these were presumed to be accurate. What is more, in his written statement dated 7 December 2021, the Appellant confirmed that he entered the Referees' dressing room with his father at half time of the Match and that they had a discussion with the Referees.

- The VAR recordings and the transcript thereof are valid forms of evidence in accordance with Article 132 FAS Disciplinary Code. The transcript was made in order to fully and accurately establish the facts. As to the disputed authenticity of the VAR recordings, the Appellant failed to produce an independent expert report supporting his position.

- All four Referees and the VAR referee confirmed the accuracy of the Referee Statements on the VAR recordings and the transcript thereof. Based on crucial evidence (additional referees' reports, audio and video recordings from the VAR room with partial transcript and statements of all four referees and the VAR referee), the FAS Disciplinary Committee concluded from a factual point of view that the Appellant contested, protested and defied the Referees' decisions, i.e. committed the disciplinary offence of unsportsmanlike conduct foreseen by Article 54 FAS Disciplinary Code.

- The Appellant holds that no one reported him in an official report for committing a disciplinary offence. The FAS Disciplinary Committee took into account the Match Delegate Report and Report of the Club's Security Officer *ex officio*, and requested additional statements from the aforementioned persons. However, other evidence overrode the relevance thereof as they were not present in the Referees' dressing rooms at half time of the Match and as the additional report of the Match Delegate is contradictory and lacks credibility.

Standard and burden of proof

- In the absence of any standard of proof being set out in the applicable regulations, the FAS refers to the standard of comfortable satisfaction, the general standard of proof applicable in disciplinary proceedings. The standard of proof of comfortable satisfaction has been consistently upheld in CAS jurisprudence regarding disciplinary cases and is defined as being greater than a mere balance of probabilities, but less than proof beyond a reasonable doubt, whereby the Panel should keep in mind the *"seriousness of the allegation which is made"*.

- With regard to the burden of proof, it essentially requires a determination of which party bears the risk if a certain fact cannot be proven. According to Article 134 FAS Disciplinary Code, facts contained in official reports have the presumption of accuracy. Accordingly, the Appellant bears the burden of proof in establishing the non-occurrence of the unlawful events in the Referees' dressing room described by the Referees in their additional reports. Article 36 FIFA Disciplinary Code and Article 45 UEFA Disciplinary Regulations follow the same approach. The Appellant admitted that he was in the Referees' dressing room at half time of the Match and that he and his father discussed the Referees' decisions with the Referees.

- The presumption of accuracy also applies to VAR recordings and the transcript thereof and the Referee Statements related thereto. The Appellant also took part in direct discussions with the First Assistant Referee regarding the Referees' decisions on the field. The accuracy of the additional Referees' reports, supported by audio and video recordings from the VAR room, were later confirmed by a partial transcript of the conversation.

- The Appellant's allegation that he was found guilty of an offence which was not stated in the Disciplinary Report of the AFC Competition Director is wrong and irrelevant. Pursuant to Article 132 FAS Disciplinary Code, disciplinary bodies are entitled to establish facts, make decisions and pronounce sanctions. It is not bound by the qualification of the offence contained in the Disciplinary Report.

- The disciplinary offence *"unsporting behaviour"* has been set forth by Article 54(2) FAS Disciplinary Code. Based on this definition, "only" verbal protesting and a lack of insults and/or physical attack cannot serve as a ground for exculpation of the Appellant.

- Criticism of match officials is a common basis for unsportsmanlike behaviour charges, and in this case the Appellant criticized match officials off the field of play over a period of a few minutes, questioned their integrity and implied bias. This is prohibited because it goes against sporting values, such as respect and discipline, but also because it has the potential to undermine the integrity of sport.

- The following specific circumstances are relevant in this respect. The Match was played by FC Radnik, of which the Appellant is the President. Player no. 9 that was dismissed (received a red card) during the first half of the Match was a player of FC Radnik. The Appellant and his father entered the Referees' dressing room during half time. This does not leave any room for interpretation that the Appellant consciously entered the dressing room with the intention to protest against the Referees' decision to dismiss player no. 9. With that, the Appellant seriously endangered fair play, proper behaviour of sports professionals and the integrity of the Match, i.e. the competition.

Proportionality of the sanction

- The Appellant, besides Article 54 FAS Disciplinary Code, also violated Articles 2(1)(g) and 8(1) and (3) FIFA Statutes.

- Being in sport for more than 9 years, the Appellant had to be aware of his conduct towards the Referees. With the power and influence of the Appellant's sporting function, the Appellant exercised undue pressure on the Referees and endangered their integrity, which is illegal and quite reprehensible.

- The proportionality of the sanction must be interpreted from the view of the offence committed and not from the view of jurisprudence. As to the balancing of interests in the matter at hand, the interests of the FAS prevail over those of the Appellant. The Appellant was banned from carrying out a function for 6 months. As Article 54 FAS Disciplinary Code foresees a ban from carrying out a function from 3 to 12 months, the Appellant was or had to be aware of the magnitude of the eventual sanction for unsporting behaviour.

- The sanction imposed is legal and proportionate and should have an educational and preventive effect. It shall serve to instruct that such conduct is not and will not be tolerated in football.

- Specific circumstances taken into account by the FAS Disciplinary Committee are, *inter alia*, the following: i) the continuity of the unsportsmanlike conduct lasting several minutes; ii) that there was an element of determination, persistence and ruthlessness in the actions of the Appellant; iii) that the offence produced significant repercussions on the reputation of the Match and the integrity of the entire competition; iv) the Appellant's high position in football warrants a particular responsibility not to act in an unsportsmanlike way; v) a previous sanction imposed on the Appellant for unsportsmanlike conduct.

- With regard to the jurisprudence of the FAS Disciplinary Committee relied upon by the Appellant, the functions of and the conduct of the perpetrators in such cases are not identical, but 3 of the 4 perpetrators were still sanctioned with a ban of 3-6 months. As the Appellant is a high-profile official, he has to be particularly of

irreproachable behaviour. Furthermore, the acts of unsporting behaviour by the Appellant must be deemed as a more severe form of unsporting behaviour based on the overall circumstances of this case.

- To rebut the Appellant's allegation on the imposition of lenient measures in similar cases, reference is made to a case in which a perpetrator was sanctioned with a ban on carrying out a function for 10 months for an offence under Article 54 FAS Disciplinary Code.

- As the Appellant admitted that the sanction of six months lies within the discretion of the FAS AC, there is no reason for setting aside or amending the imposed sanction.

58. On this basis, the FAS submits the following prayers for relief in its Answer:

> *"1.* ***To dismiss the Appellant's appeal*** *against the decision of the Appeals Body of the Football Association of Serbia of 18 February 2022, ref.no. 24 – 199/1* ***and to confirm the appealed decision in its entirety;***
>
> *2.* ***To order the Appellant to bear all costs of the present procedure****;*
>
> *3.* ***To order the Appellant to pay significant contribution to the legal fees and expenses of the Respondent in relation to the present procedure upon determination of CAS panel****".*

VI. JURISDICTION

59. Article R47 CAS 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".*

60. Article 92 of the FAS Statutes provides as follows:

> *"Final decisions arising out of legal proceedings or disputes resolved by the bodies of the FA of Serbia in the matters affecting Members of the FA of Serbia, Leagues, members of Leagues, Clubs, members of Clubs, Players and Officials may be appealed to the Court of Arbitration in Lausanne (CAS)".*

61. The jurisdiction of CAS is not contested by the Parties and is further confirmed by the Order of Procedure duly signed by the Parties.

62. It follows that CAS has jurisdiction to adjudicate and decide on the present dispute.

VII. ADMISSIBILITY OF THE APPEAL

63. Article R49 CAS Code provides as follows:

> *"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against".*

64. Article 92 FAS Statutes provides as follows:

> *"The time limit for appeal to the CAS shall be ten (10) days from the receipt of the final decision".*

65. Since the Appealed Decision was issued on 18 February 2022 and the Appellant filed his appeal with CAS on 28 February 2022, the appeal duly complied with the time limit to appeal provided for in the FAS Statutes. The appeal also complied with all other requirements of Article R48 CAS Code, including the payment of the CAS Court Office fee.

66. It follows that the appeal is admissible.

VIII. APPLICABLE LAW

67. Article R58 CAS Code provides as follows:

> *"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".*

68. The Appellant maintains that, according to Article R58 CAS Code, the dispute shall be decided primarily according to the various regulations of the FAS and Swiss law.

69. The FAS agrees with the Appellant's position that the Panel shall apply the FAS Statutes and the FAS Disciplinary Code (in conjunction with FIFA Statutes and/or FIFA Disciplinary Code and/or the UEFA Disciplinary Regulations), and, additionally, Swiss law.

70. The Panel notes that the positions of the Parties do not fundamentally differ and agrees that the present dispute is to be adjudicated and decided primarily on the basis of the rules and regulations of the FAS, in particular the FAS Disciplinary Code.

IX. PRELIMINARY ISSUES

71. On 8 June 2022, the CAS Court Office, on behalf of the Panel, informed the Parties as follows:

"- The decisions of the Football Association of Serbia filed by the Appellant on 27 May 2022 are admitted into the case file. The reasons of this decisions will be communicated in the final award.

- The Respondent will be allowed to comment on such decisions during the hearing".

72. The Appellant requested to admit the four decisions rendered by the FAS Disciplinary Committee based on exceptional circumstances in accordance with Article R56 CAS Code. As to these exceptional circumstances, the Appellant held that he was not a party in any of the proceedings leading to the four decisions submitted and that he only received them on 23 May 2022 by collecting them from the indicated offenders. The Appellant also held that it was important for the CAS Panel to see the four decisions because they show that more lenient sanctions were previously imposed in similar cases. Furthermore, the Appellant held that the new evidence was crucial to understand the usual practice of the FAS bodies and show that the sanction imposed on the Appellant was too high, indicating that the decision was a political one.

73. The FAS held that there are no exceptional circumstances, as the Appellant was well aware of the existence of the relevant decisions, as indicated by the reference to the decisions in the Appeal Brief. Furthermore, the FAS indicated that the Appellant already cited the reference numbers of the relevant decision in its appeal to the FAS Appeals Committee on 14 January 2022. Therefore, the Appellant's allegation that he received the decisions after filing the Appeal Brief is not plausible or credible.

74. The Panel finds that the FAS, i.e. the body that issued the relevant decisions, must have been aware of the content of the four decisions already before the Appellant submitted them to the CAS Court Office. As indicated by the FAS, the decisions were already referred to in the Appeal Brief and in the appeal before the FAS Appeals Committee, so that the FAS could have addressed them already in its Answer. While it would have been more efficient for the Appellant to submit the four decisions with its Appeal Brief, the Panel finds that, in order to be in a position to assess the relevance of the decisions known to both Parties, they are nonetheless to be admitted on file for the afore-mentioned exceptional circumstances.

75. Consequently, the Panel decided to admit the four decisions rendered by the FAS Disciplinary Committee on file in accordance with Article R56 CAS Code.

X. THE MERITS

A. The Main Issues

76. The main issues to be resolved by the Panel are the following:

i. Issues related to the Provisional Suspension

ii. Procedural issues in the proceedings before the FAS bodies

iii. Issues related to the admissibility and probative value of the VAR recordings

iv. What is the applicable standard of proof?

v. Did the Appellant violate Article 54 FAS Disciplinary Code?

vi. If so, what is the appropriate sanction to be imposed on the Appellant?

i. Issues related to the Provisional Suspension

77. The Appellant raises several issues related to the Provisional Suspension. In particular, the Appellant submits that i) he should have been heard by the FAS Disciplinary Committee before the Provisional Suspension was imposed; ii) the FAS Disciplinary Committee did not issue the Provisional Suspension timely; and iii) the Appellant should have been able to lodge an appeal against the Provisional Suspension.

78. The Panel notes that the Appellant first objected to the Provisional Suspension and then lodged an appeal against the dismissal of his objection with the FAS Disciplinary Committee. The Appellant, however, did not appeal the FAS Disciplinary Committee decision dated 23 December 2021 before the FAS Appeals Committee and/or CAS.

79. Rather, the Appellant's appeal in the present proceedings is directed against the Appealed Decision, which solely confirms the First Instance Decision and not the FAS Disciplinary Committee decision of 23 December 2021.

80. The Panel finds that the Appellant cannot implicitly challenge the Provisional Suspension and/or the FAS Disciplinary Committee decision dated 23 December 2021 in the context of these appeal arbitration proceedings, because such appeal is not filed within the deadline of 10 days set forth in Article 92 FAS Statutes.

81. The mere fact that the FAS Disciplinary Committee decision of 23 December 2021 indicates that no appeal was permitted against the FAS Disciplinary Committee decision dated 9 December 2021 does not make this any different. If the Appellant believed that he was entitled to challenge the FAS Disciplinary Committee decision dated 9 December 2021, and in turn the FAS Disciplinary Committee decision dated 23 December 2021, he should have done so within the relevant deadline of 10 days.

82. Consequently, the Panel finds that the Appellant's arguments insofar as they concern the Provisional Suspension rather than the unconditional suspension imposed by means of the First Instance Decision and as confirmed in the Appealed Decision, are to be dismissed.

ii. Procedural issues in the proceedings before the FAS bodies

83. The Appellant also raised several procedural issues with regard to the proceedings in front of the FAS Disciplinary Committee and the FAS Appeals Committee. In particular, the Appellant holds that:

i) the proceedings in front of the FAS bodies were not conducted in accordance with Article 6(1) ECHR, as supported by the passive stance of the members of the FAS Disciplinary Committee;

ii) the FAS should have been represented by a disciplinary inspector;

iii) the First Instance Decision and the Appealed Decision were not substantiated by understandable reasoning;

iv) the FAS Disciplinary Committee was irregularly constituted;

v) the FAS did not have the authority to commence proceedings against the Appellant *ex officio*;

vi) the charge against the Appellant should have been limited to the conduct reported in the Disciplinary Report; and

vii) the Appellant should have been heard before disciplinary proceedings were opened against him.

(a) Curable procedural defects

84. With regard to the alleged irregularities in front of the FAS bodies mentioned under i), ii), and iii), according to long-standing CAS jurisprudence and, pursuant to Article R57 CAS Code, CAS panels in appeals arbitration proceedings hear cases *de novo* and make an independent determination of the correctness of the parties' submissions on the facts and the merits, without limiting themselves to assessing the correctness of the procedure and decision of the first instance (see e.g., CAS 2016/A/4871, para. 119). This is not in dispute between the Parties as such. The *de novo* character of an appeals arbitration procedure before CAS in principle cures procedural violations that may have occurred in previous instances.

85. The Panel agrees with CAS jurisprudence on this topic:

> *"[I]f the hearing in a given case was insufficient in the first instance* […] *the fact is that, as long as there is a possibility of full appeal to the Court of Arbitration for Sport, the deficiency may be cured" (CAS 94/129 award of 23 May 1995, par. 59). Later the CAS has reaffirmed this principle, holding that "the virtue of an appeal system which allows for a rehearing before an appeal body is that issues relating to the fairness of the hearing before the Tribunal of First instance 'fade to the periphery'" (CAS 98/211, award of 7 June 1999, par. 8). More recently, the CAS has further relied on the Swiss Federal Tribunal*

case law, which held that "any infringement of the right to be heard can be cured when the procedurally flawed decision is followed by a new decision, rendered by an appeal body which had the same power to review the facts and the law as the tribunal of first instance and in front of which the right to be heard had been properly exercised" (CAS 2006/A/1177, award of May 2009, par. 7.3). For another recent case, see for instance, CAS 2008/A/1594 para. 109, "However, as CAS has complete power to review the facts and the law and to rule the case de novo, the procedural deficiencies which affected the procedures before FILA disciplinary bodies may be cured by virtue of the present arbitration proceedings (see e.g. CAS 2006/A/1175 paras. 61 and 62, CAS 2006/A/1153, para. 53, CAS 2003/O/486, para. 50)". This CAS jurisprudence is actually in line with European Court of Human Rights decisions, which in par. 41 of the Wickramsinghe Case concluded that "even where an adjudicatory body determining disputes over civil rights and obligations does not comply with Article 6 (1) [ECHR] in some respect, no violation of the Convention will be found if the proceedings before that body are subject to subsequent control by a judicial body that has full jurisdiction and does provide the guarantees of Article 6 (1)"" (CAS 2009/A/1920, para. 87 of the abstract published on the CAS website, emphasis added by the Panel).

86. Indeed, the Panel finds that it is not necessary to decide whether the alleged procedural irregularities under i), ii), and iii) took place, because even if any of the Appellant's rights had been infringed, the present *de novo* proceedings before this Panel cure any such infringements, or at the very least, the Appellant did not establish that any of these infringements could not be cured.

87. Unlike the situation in the decision of the ECtHR in *Ali Riza and Others*, here the Appellant had the possibility of filing an appeal with CAS, i.e. an arbitration tribunal that complies with the requirements of independence and impartiality set forth in Article 6(1) ECHR. The Appellant was also afforded full opportunity to defend himself against any allegations made and address all evidence relied upon by the FAS. Since a party only has a right to one (structurally) independent adjudicatory body according to Article 6(1) ECHR and considering that CAS fulfils these requirements, the Appellant's arguments in relation to a lack of structural independence of the previous instance must be dismissed from the outset.

88. Furthermore, the Panel finds that there is no evidence of any personal lack of impartiality or independence of the members of the FAS Disciplinary Committee or the FAS Appeals Committee. The Appellant's argument that the proceedings against him and his father would have been biased, as they were initiated by the leadership of the FAS to eliminate his father from running for the position of President of FAS, remained unsubstantiated. Also, the alleged passive stance of the members of the FAS Disciplinary Committee during the hearing of 16 December 2021 is not demonstrative of any alleged bias on the side of the members of the FAS Disciplinary Committee or otherwise invalidates the First Instance Decision. There is no minimum level of engagement for the members of a disciplinary body.

89. The Panel notes that no rule in the FAS Disciplinary Code has been brought to its attention prescribing that a disciplinary inspector shall be the representative of the FAS in disciplinary proceedings. Insofar as the FAS maintains that it was not clear against which

allegations he had to defend himself and which party carried the burden of proof, the Panel finds that the allegations made were sufficiently clear and that there can be no doubt that the FAS carried the burden of proof to establish that the Appellant committed the violations of which he is accused, as is the case in the present appeals arbitration proceedings.

90. Furthermore, the Panel finds that the reasoning of the First Instance Decision and the Appealed Decision is sufficiently clear. The decisions set forth the reasons why the Appellant was held liable and discuss the proportionality of the sanction imposed. The Appellant may not agree with the reasoning or the proportionality of the sanctions imposed, but this is not the applicable yardstick.

(b) Potential non-curable procedural defects

91. As to the alleged violation under iv), the Panel finds that this argument could potentially render the First Instance Decision invalid, i.e. if the FAS Disciplinary Committee was invalidly constituted this may be an irregularity that cannot be cured by CAS on appeal.

92. Be this as it may, the Panel finds that argument iv) of the Appellant is to be dismissed as the FAS Disciplinary Committee was not invalidly constituted.

93. As argued by the FAS, Article 70 FAS Statutes provides that the FAS Disciplinary Committee *"shall reach decisions in the presence of at least 3 (three) of its members"*. The First Instance Decision was issued by four members of the FAS Disciplinary Committee and therefore complies with the requirement set forth in Article 70 FAS Statutes. The mere fact that Article 70 FAS Statutes requires that the FAS Disciplinary Committee shall be composed of a *"minimum 5 (five) members"* does not make this any different, as the composition of the FAS Disciplinary Committee that issued the First Instance Decision complied with the requirements. For example, it cannot be the case that if one out of five members would suddenly retire, the FAS Disciplinary Committee would no longer be validly constituted. The purpose of requiring a minimum of five members is presumably to ensure that at least three members can adjudicate and decide on a given matter, despite unavailability or conflicts of individual members.

94. With regard to the alleged violation under v), the Panel notes that this potentially concerns the competence of the FAS Disciplinary Committee to commence disciplinary proceedings against the Appellant, i.e. if there was no competence for the FAS Disciplinary Committee in the first place, this appears to be a defect that cannot be cured.

95. Article 127 FAS Disciplinary Code provides as follows:

> *"Disciplinary proceedings may be initiated on the basis of:*
>
> - *Delegate's report;*
> - *Referee's report;*

- *Security officer's report;*
- […]
- *Ex officio;*
- *Reports filed by players or football officials**

Reports are filed to the competent disciplinary body which will decide on opening of the proceedings.

Disciplinary proceedings may be initiated in serious cases of unsporting behaviour (infringements) which have escaped the match referee's attention".

96. On this basis, the Panel finds that the FAS Disciplinary Committee could commence disciplinary proceedings on the basis of a disciplinary report filed by the AFC Competition Director or even *ex officio*. Therefore, the Panel deems that the FAS Disciplinary Committee was entitled to commence proceedings against the Appellant.

97. Turning to the Appellant's argument under vi), it is submitted that the charge against him should have been limited to the conduct reported in the Disciplinary Report and that the reasons underpinning the Provisional Suspension deviated from the reasons underlying the First Instance Decision and the Appealed Decision.

98. The Panel agrees with the Appellant that the FAS had the responsibility to inform the Appellant against which accusations he had to defend himself, but because the FAS Disciplinary Committee was entitled to commence proceedings *ex officio*, the Panel finds that the scope of the disciplinary proceedings was not necessarily limited to the allegations raised in a Disciplinary Report.

99. The Disciplinary Report, the Provisional Suspension, the First Instance Decision and the Appealed Decision all indicate and refer to an alleged violation of Article 54 FAS Disciplinary Code, while such provision does not refer to any "restricted area". As a result, the Panel finds that it was sufficiently clear for the Appellant against what charge he had to defend himself. The mere fact that the exact conduct based on which accusations were made in the Disciplinary Report (entering a restricted area) were somewhat different from the conduct for which the Appellant was ultimately sanctioned (complaining about and defying decisions of the referees) is not pertinent, as the overarching violation (unsportsmanlike conduct) encapsulates both and both types of conduct are closely related.

100. The Panel finds that during the hearing before the FAS Disciplinary Committee, it was sufficiently clear for the Appellant that he had to defend himself against a violation of Article 54 FAS Disciplinary Code as a result of his conduct during the Match. The Panel finds that this derives from the Provisional Suspension, by means of which the Appellant was informed that disciplinary proceedings were initiated against him and that he was provisionally suspended because of a violation of Article 54 FAS Disciplinary Code, without any explicit reference being made to entering a restricted area.

101. Finally, as to the Appellant's argument under vii), the Panel notes that Article 129 FAS Disciplinary Code, in a translation provided by the FAS, provides as follows:

> *"Upon establishment of its competence, the disciplinary body summons and examines the reported perpetrator in order to decide whether to open the disciplinary proceedings or not.*
>
> *No one can be sanctioned without first being heard.*
>
> *A person shall be deemed heard if upon summons by the competent body such person submits his/her statement provided, however, that in case a perpetrator refuses to appear at the hearing or fails to provide a written statement, such person shall be deemed heard".*

102. With respect to the aforementioned provision, the FAS maintains that the Appellant was heard before he was sanctioned, but acknowledges that the wording of Article 129 FAS Disciplinary Code is clumsy, because a defendant cannot be heard before a disciplinary procedure is opened.

103. The Panel agrees with the FAS and finds that Article 129 FAS Disciplinary Code is to be interpreted in the sense that a defendant's right to be heard must be respected after the opening of the disciplinary proceedings, but before the imposition of a sanction.

104. In this respect, it is doubtful whether the Provisional Suspension was legitimately imposed, because at such point in time the Appellant had not yet been heard. However, as indicated *supra*, the Panel finds that the legitimacy of the Provisional Suspension falls outside its mandate.

105. The First Instance Decision and the Appealed Decision are legitimate, because the Appellant's right to be heard was respected before such decisions were issued.

106. Based on the foregoing, the Panel concludes that all issues raised by the Appellant with regard to alleged procedural violations in the proceedings before the FAS disciplinary bodies are either cured by the present *de novo* proceedings, or are dismissed.

iii. Issues related to the admissibility and probative value of the VAR recordings

107. With regard to the evidence presented, the Appellant submits that the VAR recordings should not be admitted on file because the authenticity of the recordings was not proven by the FAS.

108. With regard to the establishment of facts, Article 132 FAS Disciplinary Code provides as follows:

> *"The disciplinary bodies reach their decisions and pronounce sanctions based on produced evidence (official reports, witness statements, examination of parties, on-site inspections, requested notes and documents,*

expert opinions, TV and video recordings, personal confessions, etc.) as well as the opinions obtained from FAS officials and bodies, public security and other governmental bodies from direct observation.

Evidence referred to in the above paragraph may also include statements made before other bodies".

109. Accordingly, Article 132 FAS Disciplinary Code explicitly permits video recordings as evidence. Therefore, the Panel deems that the VAR recordings are, in principle, admissible evidence.

110. The mere fact that the Appellant may not have been aware that the conversation was being recorded through the VAR headsets of the Referees does not make this any different.

111. The Appellant's underlying argument as to the authenticity of the recordings is not so much an issue of admissibility of evidence, but rather of the evidentiary value of such evidence.

112. Be this as it may, the Panel finds that the authenticity of the VAR recordings is proven. In this regard, the Panel finds it crucial that the Referees unanimously declared in their reports and at the hearing that the VAR recordings were authentic. Article 133 FAS Disciplinary Code provides that facts contained in reports by match referees are presumed to be accurate and the Panel finds that the Appellant failed to prove the contrary.

113. Consequently, the Panel finds that the FAS disciplinary bodies duly relied on the VAR recordings and finds that there are no reasons to question the authenticity of the VAR recordings.

iv. What is the applicable standard of proof?

114. The Parties agree that the FAS bears the burden of proof to establish the alleged violation committed by the Appellant, but the applicable standard of proof is disputed. While the Appellant submits that the standard of proof shall be that of "beyond reasonable doubt", the FAS maintains that the standard should be "comfortable satisfaction".

115. The Panel notes that the FAS Disciplinary Code does not contain a reference to a predetermined standard of proof. Absent any provision agreed upon by the Parties, it is for the Panel in accordance with Article 182(3) of the Swiss Private International Law Act ("PILA") to fill this lacuna. In doing so, this Panel is inspired by the legal doctrine indicating that, in case the parties have not agreed upon an applicable standard of proof in disciplinary proceedings, the default standard of proof shall be the flexible standard of comfortable satisfaction that varies according to the individual circumstances:

"As noted, cases also arise in which no applicable standard of proof has been specified in the relevant regulations. In these cases, it will fall to the Panel to determine the appropriate standard to apply to the case. Such a situation arose in two UEFA cases in 2010 and 2011 on match-fixing, for which there was no specific standard of proof specified in the UEFA regulations. In reaching its determination on the applicable standard to be imposed, the CAS Panel in both matters endorsed the approach that:

> *'[...] cases of match fixing should be dealt in line with the CAS constant jurisprudence on disciplinary doping cases. Therefore, the UEFA must establish the facts "to the comfortable satisfaction of the Court having in mind the seriousness of the allegation which is made"*. (RIGOZZI/QUINN, Evidentiary Issues Before CAS, in: BERNASCONI M. (ed.), International Sports Law and Jurisprudence of the CAS – 4th Conference CAS & SAV/FSA Lausanne 2012, Editions Weblaw 2014, p. 25).

116. The Panel agrees with this analysis and finds that the application of the standard of *"comfortable satisfaction having in mind the seriousness of the allegation which is made"* is appropriate in the matter at hand.

117. Consequently, the Panel finds that the applicable standard of proof is comfortable satisfaction having in mind the seriousness of the allegation which is made. In any event the Panel finds that the outcome of these proceedings would not have been any different in case it would have applied the standard of beyond reasonable doubt.

v. Did the Appellant violate Article 54 FAS Disciplinary Code?

118. Article 54 FAS Disciplinary Code provides as follows:

> *"Any unsporting behaviour in a football sport against a player of its own or opposing team, a referee, a football official, the management of a football organization and spectators during a match or after the match, either on or out of the field of play shall be sanctions as follows:*
>
> […]
>
> *b) Football officials:*
>
> 1. *warning*
> 2. *fine*
> 3. *ban on carrying out a function from 3 to 12 months.*
>
> *Unsporting behaviour includes: using offensive language, spitting, indecent gestures; protesting at and defying referee's decisions and orders given by the management of football organizations and officials performing a particular duty, as well as provoking one's own team-mates and players of the opposing team, officials and spectators, either verbally or using movements and gestures, as well as any other actions that may harm the reputation of the sport of football".*

119. The FAS holds that the Appellant violated Article 54 FAS Disciplinary Code because he criticized match officials off the field of play over a period of a few minutes, questioned their integrity and implied bias. The FAS considers this conduct to be a violation of Article 54 FAS Disciplinary Code because it goes against sporting values, such as respect and discipline, but also because it has the potential to undermine the integrity of sport.

120. The Panel agrees with this analysis. If the FAS is able to establish that the Appellant engaged in the conduct described above, the violation is established. Based on the wording of Article 54 FAS Disciplinary Code, the Panel finds that protesting at and defying referee's decisions, in whatever manner and context, is prohibited. While the manner and context in which a person protests at a referee's decision may be taken into account in deciding on the proportionality of a sanction, it is in principle not relevant to establish whether Article 54 FAS Disciplinary Code has been violated.

121. The FAS relies primarily on the VAR recordings and the reports of the Referees, as well as the fact that the Appellant acknowledged several of the factual allegations made.

122. The Appellant does not dispute the fact that at half time of the Match he found himself in the locker room of the Referees and, together with his father, engaged in a discussion with the Referees about decisions made by the Referees during the first half of the Match, questioning the Referee's decision to hand out a red card to one of FC Radnik's players:

> [Appellant's father]: *"Look, what have I done wrong to you…".*
>
> [Appellant]: *"What on earth are you waving for?".*
>
> Referee: *"Well, it was a foul".*
>
> [Appellant's father]: *"So what if it was a foul, what, so it was a foul, forgive him a yellow… first four, yellow".*
>
> *"I have an Assembly meeting on Monday, take it easy… just to show them why my player* [sic] *was removed".*
>
> *"First there was a foul on the centre-forward…".*
>
> *"If he even touched him on the leg, I'm gonna bark, but first of all, there was no foul…".*
>
> *"They have thirty points and I'm fighting for survival".*
>
> [Appellant]: *"Look, the arm, for whom, and is there a foul on the centre-forward?".*
>
> […]
>
> [Referee]: *"Novica, do you really think we have something against you?".*
>
> [Appellant's father]: *"I do think so, I do think so".*
>
> [Appellant]: *"You've done such a nice job as a referee on this match".*
>
> Referee: *"How many times have we come here so far?".*

[Appellant's father]: *"So, why did you set me up this time?"*.

Referee: *"So, do you think something was done on purpose?"*.

[Appellant's father]: *"Someone did this deliberately, he told him to give him a yellow card"*.

123. The Panel finds that these elements of the conversation, which lasted approximately four minutes and the animated tone in which it took place, demonstrate that the Appellant and his father jointly protested against decisions taken by the Referees. This is sufficient evidence to establish a violation of Article 54 FAS Disciplinary Code.

124. Whether the Appellant forced himself into the Referees' dressing room or whether they joined an ongoing conversation in such room that took place with the doors open is immaterial, because the fact remains that the Appellant protested against the Referees' decisions in a room where he should not have been at that point in time.

125. Other arguments raised by the Appellant, such as that the discussion took place in a polite and friendly manner are elements that may impact on the severity of the violation and the proportionality of the sanction to be imposed, but do not negate that a violation of Article 54 FAS Disciplinary Code took place.

126. It is true that not each and every verbal expression of disagreement with a referee should be sanctioned, e.g. some gestures of players and/or members of staff in the heat of the game are probably to be condoned, but the Panel finds that there can be no doubt that it is inappropriate for officials such as the Appellant to directly engage in a discussion with the Referees in a private space such as the Referees locker room, challenging their decisions, be it politely or not.

127. As the various declarations of the Referees, corroborated by the VAR recordings and the transcript thereof, support that the Appellant was in the Referees' dressing room, verbally challenging decisions taken by the Referees during the first half of the Match, the Panel is comfortably satisfied that the Appellant was indeed *"protesting at and defying referee's decisions"*, which conduct is culpable under Article 54 FAS Disciplinary Code.

128. How a "restricted area" is to be defined and whether the Referees' dressing room is a "restricted area" is not considered essential by the Panel to find the Appellant guilty of violating Article 54 FAS Disciplinary Code, as the term "restricted area" cannot be found in Article 54 FAS Disciplinary Code. However, the Panel finds that it should have been clear to the Appellant that their presence in the Referees' dressing room during half time was inappropriate and a contributing factor to establishing their unsportsmanlike behaviour.

129. What is more, the Panel finds that the conduct of the Appellant did not remain limited to the conduct described in the previous paragraphs, but extended to conduct *"that may harm*

the reputation of the sport of football", which is also culpable conduct under Article 54 FAS Disciplinary Code.

130. The Panel comes to this conclusion by combining several facts that remained undisputed.

131. The Appellant is the President of FC Radnik and it was clear that the Appellant and his father were protesting against decisions that they considered unfairly prejudiced FC Radnik. This discussion took place in a private space and the general public and representatives of FC Radnik's opponent were not privy to such "private" conversation.

132. Furthermore, the timing of the incident is relevant. If the Appellant had entered the Referees' dressing room after the end of the Match, the conduct may still have been problematic, but it would probably not be perceived as an attempt to influence the decision-making of the Referees. Entering the Referees' dressing room at half time, criticising the decisions taken during the first half of the Match, but still being friendly with the Referees and, *inter alia*, inviting them for dinner after the Match, as reported by the Match Delegate, is problematic from many angles and is to be seen as an attempt to influence their decision-making during the second half of the Match.

133. Indeed, the Referees testified that they believed that the Appellant and his father entered the Referees' dressing room with the intention to influence them.

134. The final element considered relevant by the Panel in this respect is the insinuation raised by the Appellant and his father, although particularly by the Appellant's father, that the Referee's decision was based on a certain prejudice against him, thereby questioning the Referees' integrity.

135. In the Panel's view, the combination of the above-mentioned elements is likely to be perceived by the general public as an attempt to corrupt the Referees, by trying to influence the outcome of the second half of the Match in favour of FC Radnik, thereby harming *"the reputation of the sport of football"*.

136. Consequently, the Panel finds that the Appellant violated Article 54 FAS Disciplinary Code.

vi. If so, what is the appropriate sanction to be imposed on the Appellant?

137. The FAS Disciplinary Committee considered it appropriate to impose a 6-month ban on participating in any sports-related activity on the Appellant, which decision was confirmed by means of the Appealed Decision issued by the FAS Appeals Committee.

138. The Appellant argues that such ban is disproportionate and should be reduced, whereas the FAS maintains that the sanction imposed is justified and proportionate.

139. The Panel firstly notes that Article 54 FAS Disciplinary Code provides for a minimum and maximum threshold as to the severity of the sanctions that can possibly be imposed. It is in principle not possible for the Panel to impose sanctions above or below such threshold.

140. The discretion afforded insofar as imposing a ban for a violation of Article 54 FAS Disciplinary Code lies between a mere warning, and a ban of 12 months. Given this broad margin of discretion, the nature and severity of the sanction imposed is heavily dependent on the circumstances surrounding the breach of Article 54 FAS Disciplinary Code.

141. The FAS relies on CAS jurisprudence stating as follows:

> *"[T]he measure of the sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rules can be reviewed only when the sanction is evidently and grossly disproportionate to the offence (see TAS 2004/A/547, […], §§ 66, 124; CAS 2004/A/690, […], § 86; CAS 2005/A/830, […], § 10.26; CAS 2005/C/976 & 986, […], § 143; 2006/A/1175, […], § 90; CAS 2007/A/1217, […], § 12.4)"* (CAS 2009/A/1870 (para. 125 of the abstract published on the CAS website).

142. The Panel considers that such jurisprudence cannot be interpreted to mean that a CAS panel in appeals arbitration proceedings would lack the competence or mandate to reduce the sanctions imposed if it would find that a sanction is only somewhat disproportionate, but does not reach the conclusion that the sanction imposed is *"evidently and grossly disproportionate to the offence"*. This interpretation would be incorrect, as CAS panels decide *de novo* and therefore have full competence to review the facts and the law, including the proportionality of the sanction, without restriction. If it would be otherwise, procedural flaws at the previous instance could not be healed in a proceeding before the CAS.

143. However, the Panel accepts the jurisprudence cited above can only be interpreted to mean that, as a matter of courtesy or respect for internal judicial bodies, which are usually in a good position to take into account all relevant factors to decide on an appropriate and proportionate sanction, that a CAS panel should not *"easily 'tinker' with a well-reasoned sanction, i.e. to substitute a sanction of 17 or 19 months' suspension for one of 18"* (CAS 2011/A/2518, para. 15 of the abstract published on the CAS website, with reference to CAS 2010/A/2283, para. 14.36).

144. In the exercise of the *de novo* power granted to it by Article R57 CAS Code, and within the scope of sanctions provided in Article 54 FAS Disciplinary Code, the Panel reviews the proportionality of the sanction imposed in the Appealed Decision. In this respect, all aggravating and extenuating circumstances, be it objective or subjective, are to be taken into account, in particular the arguments advanced by the Parties in this respect.

145. The most important element in this respect has already been discussed *supra* in the context of establishing the Appellant's violation of Article 54 FAS Disciplinary Code, namely that the Panel finds that this is not a "simple" case of "unsporting behaviour", but one that *"may harm the reputation of the sport of football"*. The Panel considers this to be a significant aggravating factor.

146. Another aggravating factor is the status of the Appellant. Different from a random supporter, player or coach, the Appellant is the highest official in the organisation of FC Radnik. This brings with it a higher standard of responsibility.

147. Furthermore, the Panel considers it to be an aggravating factor that at no time during the proceedings the Appellant showed any remorse for his actions.

148. A final aggravating factor considered relevant by the Panel is that the Appellant entered the Referees' dressing room to protest. Even without an explicit regulatory prohibition to enter the Referees' dressing room or its qualification as a restricted area, the Panel finds that it must have been obvious for the Appellant that it was inappropriate for him to enter the Referees' dressing room, in particular to criticise the Referees' decisions.

149. Any person with experience in football knows or should know that the dressing room of referees is a restricted area, particularly considering that in this case there was a guard in front of the Referees' dressing room. The mere fact that one of the two doors separating the dressing room from the public corridor may have been open does not change this. Unless the Referees would have invited the Appellant to enter, which does not follow from the evidence, the Appellant should not have entered the dressing room. Entering a private space such as the Referees' dressing room can be intimidating and therefore adds to the severity of the violation committed.

150. It is true that the Referees confirmed that they did not feel threatened by the Appellant and that the Appellant left in a good atmosphere, ultimately stating that he agreed with the Referees' decisions. It also does not appear from the VAR recordings or the Referees' reports that the Appellant engaged in any particularly intimidating conduct, i.e. there is no evidence that the Appellant had physical contact with the Referees. The Panel finds that these factors are to be taken into account as mitigating factors.

151. The argument of the Appellant related to the four decisions of the FAS Disciplinary Committee, in which, allegedly, more lenient sanctions were imposed by the FAS in similar situations is to be dismissed.

152. First of all, the FAS provided a decision where bans of six and ten months respectively were imposed on the President of a club for a violation of Article 54 FAS Disciplinary Code, i.e. sanctions identical and higher compared to the one imposed on the Appellant.

153. As to the decisions invoked by the Appellant, the Panel notes that:

i) a ban of three months was imposed on a representative of a club for a violation of Articles 54 and 23 FAS Disciplinary Code;

ii) a fine of RSD 50,000 was imposed on an *"analyst"* of a club for a violation of Article 54 FAS Disciplinary Code;

iii) a ban of six months was imposed on a doctor of a club for a violation of Article 54 FAS Disciplinary Code;

iv) a ban of three months was imposed on the President of a club for a violation of Article 54 FAS Disciplinary Code.

154. The Panel finds that the first three decisions can be distinguished from the matter at hand based on the status of the Appellant. A person in a high position such as the President of a football club carries a particular responsibility to behave in an appropriate manner and observe high standards of integrity, which element was duly considered by the FAS Disciplinary Committee and the FAS Appeals Committee in the reasoning of the First Instance Decision and the Appealed Decision.

155. With respect to the fourth decision relied upon by the Appellant, the Panel notes that this case concerned abusive language expressed after the end of a match, where the offence in question in the matter at hand took place during half time. As set forth *supra*, the Panel finds that this jeopardises the integrity and *"the reputation of the sport of football"*, warranting a higher sanction.

156. In any event, the Panel finds that in a situation where violations of Article 54 FAS Disciplinary Code have been sanctioned with a six month ban twice before, this does not suggest that the sanction imposed on the Appellant is disproportionate.

157. In view of the fact that different sanctions were imposed on the Appellant and his father, the Panel considers it important that this difference is justified.

158. The Panel considers that the Appellant's father, as a Minister in the Serbian Government and a member of the FAS Executive Committee with the ambition to run for the position of FAS President, held a higher political status than the Appellant, which warranted a higher level of integrity requiring independence and impartiality.

159. Overall, the Panel finds that a *"ban on performance of duties for a period of 6 (six) months"* as imposed on the Appellant by means of the First Instance Decision, and as confirmed by means of the Appealed Decision, is fair and proportionate.

B. Conclusion

160. Based on the foregoing, the Panel finds that:

i. All issues raised by the Appellant with regard to alleged procedural violations in the proceedings before the FAS disciplinary bodies are either cured by the present *de novo* proceedings, or are dismissed.

ii. The FAS disciplinary bodies duly relied on the VAR recordings and finds that there are no reasons to question the authenticity of the VAR recordings.

iii. The applicable standard of proof is comfortable satisfaction.

iv. The Appellant violated Article 54 FAS Disciplinary Code.

v. The *"ban on performance of duties for a period of 6 (six) months"* as imposed on the Appellant by means of the First Instance Decision, and as confirmed by means of the Appealed Decision, is proportionate.

161. All other and further motions or prayers for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 28 February 2022 by Mr Stanislav Toncev against the decision dated 18 February 2022, rendered by the Appeals Committee of the Football Association of Serbia, is dismissed.

2. The decision dated 18 February 2022, rendered by the Appeals Committee of the Football Association of Serbia, is confirmed.

3. (…).

4. (…).

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