



Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2018/A/6007 Jibril Rajoub v. Fédération Internationale de Football Association (FIFA)

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition

President: Mr Hendrik Willem **Kesler**, Attorney-at-Law, Enschede, the Netherlands
Arbitrators: Mr Gonzalo **Bossart**, Attorney-at-Law, Santiago, Chile
Mr Ulrich **Haas**, Professor of Law, Zurich, Switzerland
Ad hoc Clerk: Mr Dennis **Koolaard**, Attorney-at-Law in Arnhem, the Netherlands

in the arbitration between

Mr Jibril Rajoub, Palestine

Represented by Mr Gonzalo Boye Tuset, Attorney-at-Law, Boye-Elbal & Asociados Abogados, Madrid, Spain

as Appellant

and

Fédération Internationale de Football Association (FIFA), Zurich, Switzerland

Represented by Mr Jaime Cambreleng Contreras, Head of Litigation, Mr Jacques Blondin, Group Leader / Legal Counsel Disciplinary Department, Mr Cédrick Aghey, Legal Counsel, FIFA, Zurich, Switzerland

as Respondent

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I. PARTIES

1. Mr Jibril Rajoub (the “Appellant” or “Mr Rajoub”) is a Palestinian citizen who is, *inter alia*, the President of the Palestine Football Association (the “PFA”).
2. The *Fédération Internationale de Football Association* (the “Respondent” or “FIFA”) is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the governing body of international football at a worldwide level. It exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and football players worldwide.

II. FACTUAL BACKGROUND

3. Below is a summary of the main relevant facts, as established on the basis of the parties’ written submissions and the evidence examined in the course of the present appeal arbitration proceedings and during the hearing. This background is set out for the sole purpose of providing a synopsis of the matter in dispute.

A. Background Facts

4. On 29 May 2018, FIFA approved an application filed by the Israel Football Association (the “IFA”) to play an international friendly match between the “A” representative teams of Israel and Argentina (the “Match”). The Match was scheduled to take place on 9 June 2018 in Jerusalem.
5. On 3 June 2018, as broadcasted on that day by Al-Jazeera Network, Mr Rajoub stated, *inter alia*, the following to the press in Arabic, in a translation that was not disputed by Mr Rajoub:

“You have all heard about the upcoming soccer match between the national teams of Argentina and Israel. It has clearly turned from a sports match into a political tool. The Israeli government is trying to portray this sports event in a political light, by insisting on holding the match in Jerusalem. [...] For our part, given what we have heard, and since we cannot, under any circumstances, agree to this match, we will launch, as of today, a campaign targeting the Argentinian (Football) Federation, and in particular targeting (Lionel) Messi, who has tens of millions of fans in Arab and Islamic countries, in Asia, Africa, and in countries that are friends of the Palestinian people. (For these fans) he used to be a symbol and a big deal. We are going to target Messi, and we are going to ask everybody to burn their Messi T-shirts and pictures, and to wash their hands of him. But we are still hoping that Messi will not show upon on Thursday, and will not serve to whitewash the crimes of the occupation. [...] This is not a match for peace. Rather, it is a political match, which is meant to whitewash Israeli racism and fascism. I don’t think that there is any difference between what is happening today and what happened in Europe in the 1930s.”

And subsequently in English:

“First of all, the whole of Jerusalem, East and West, according to the Partition Resolution, should be under the responsibility of an international mechanism. Second, following the annexation of East Jerusalem in '67, and this crazy unilateral resolution by Trump to recognize Jerusalem as the capital of the Jewish people – which does not even exist in history, this term... We think that the game is a political event.”

6. On 6 June 2018, the IFA filed a complaint with FIFA, requesting sanctions to be imposed on Mr Rajoub.
7. On 7 June 2018, the Argentinean Football Association (the “AFA”) informed FIFA that it had decided not to play the Match due to causes of *force majeure* that were publicly known.

B. Proceedings before the FIFA Disciplinary Committee

8. On 8 June 2018, FIFA opened disciplinary proceedings against Mr Rajoub for a possible violation of Article 53 of the FIFA Disciplinary Code (the “FDC”).
9. On 10 and 14 June 2018 respectively, the Human Rights organisation “Btsalmo” and “Palestinian Media Watch” also filed complaints with FIFA against Mr Rajoub.
10. On 2 July 2018, Mr Rajoub provided the FIFA Disciplinary Committee with his position, requesting the disciplinary charges filed against him to be dismissed.
11. On 13 July 2018, the FIFA Disciplinary Committee rendered its decision (the “FIFA Disciplinary Committee Decision”), with the following operative part:

- “1. The official Jibril Rajoub is regarded as having breached art. 53 of the FIFA Disciplinary Code (FDC) for inciting hatred and violence during his statements of 3 June 2018 concerning the international friendly match initially scheduled to be played between the representative teams of Israel and Argentina on 9 June 2018.*
- 2. In application of art. 53 par. 1 and art. 19 of the FDC, the official Jibril Rajoub is suspended for twelve (12) months, until 23 August 2019, from all matches at any level.*
- 3. The official Jibril Rajoub is ordered to pay a fine to the amount of CHF 20,000 in application of art. 53 par. 2 and art. 15 of the FDC. The fine is to be paid within 30 days of notification of the decision. Payment can be made either in Swiss francs (CHF) to the account no. [...] or in US dollars (USD) to the account no. [...].*
- 4. In application of art. 10 c) and art. 14 of the FDC, a reprimand is issued against the official Jibril Rajoub.*
- 5. The costs of these proceedings amounting to CHF 2,000 are to be borne by the official Jibril Rajoub and shall be paid according to the modalities stipulated under point 3. above.”*

12. On 24 August 2018, the FIFA Disciplinary Committee Decision was notified to Mr Rajoub.

C. Proceedings before the FIFA Appeal Committee

13. On 27 August 2018, Mr Rajoub informed the FIFA Appeal Committee of his intention to lodge an appeal against the FIFA Disciplinary Committee Decision.
14. On 3 September 2018, Mr Rajoub submitted the reasons for his appeal.
15. On 24 September 2018, the FIFA Appeal Committee rendered its decision (the “Appealed Decision”), with the following operative part:

- “1. *The appeal lodged by the official Jibril Rajoub is rejected and the [FIFA Disciplinary Committee Decision] is confirmed in its entirety.*
2. *The file is to be referred to the Investigatory Chamber of the FIFA Ethics Committee for any action that may be deemed necessary under the scope of the FIFA Code of Ethics.*
3. *The costs and expenses of these proceedings in the amount of CHF 3,000 are to be borne by the official Jibril Rajoub. This amount is set off against the appeal fee of CHF 3,000 already paid by the official Jibril Rajoub.*”

16. On 19 October 2018, the Appealed Decision was notified to Mr Rajoub.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

17. On 8 November 2018, Mr Rajoub lodged a Statement of Appeal with the Court of Arbitration for Sport (the “CAS”) in accordance with Article R48 of the 2017 edition of the CAS Code of Sports-related Arbitration (the “CAS Code”). In this submission, Mr Rajoub requested for a stay of execution of the Appealed Decision and nominated Mr Gonzalo Bossart, Attorney-at-Law in Santiago, Chile, as arbitrator. Mr Rajoub also requested the following evidentiary measures:

“The statement of D. Lionel Messi.

The statement of Mr. Sampaoli, coach of the Argentinian football team.

The statement of Mr. Jibril Rajoub.

To request the security Council of United Nations to deliver a copy of the Resolutions 242 (1967), 338 (1973), 446 (1979), 452 (1979), 465 (1980), 476 (1980), 478 (1980), 1397 (2002), 1515 (2003), 1850 (2008) and 2334 (December 2016).

The statement of Mr. Wilfried Lemke, Special Adviser to the United Nations Secretary General on Sport for Development and Peace to inform about the situation regarding the practice of football on Palestinian Occupied Territories and about the systematic politization of football made by IFA.

Together with this appeal brief are attached press releases showing the importance of the evidence requested. Besides, attached is a copy of the Security Council of United Nations Resolutions specified above even if this party insists on the request to the Security Council in order to guaranty [sic] the authenticity of the documents.”

18. On 16 November 2018, Mr Rajoub filed his Appeal Brief, in accordance with Article R51 CAS Code.
19. On 3 December 2018, FIFA filed its Reply to Mr Rajoub’s request for a stay of execution of the Appealed Decision, requesting such petition to be dismissed. FIFA also nominated Mr Ulrich Haas, Professor of Law in Zurich, Switzerland, as arbitrator.
20. On 17 December 2018, FIFA filed its Answer, in accordance with Article R55 CAS Code.
21. On 19 December 2018, the President of the CAS Appeals Arbitration Division issued an Order on Request for a Stay with the following operative part:
 - “1. *The application for a stay of execution of the decision rendered on 24 September 2018 by the FIFA Appeal Committee in the matter CAS 2018/A/6007 vs Fédération Internationale de Football Association 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.”*
22. On 20 December 2018, in accordance with Article R54 CAS Code, and on behalf of the President of the CAS Appeal Arbitration Division, the CAS Court Office informed the parties that the Panel appointed to decide the present matter was constituted as follows:
 - Mr Hendrik Willem Kesler, Attorney-at-Law in Enschede, the Netherlands, as President;
 - Mr Gonzalo Bossart, Attorney-at-Law in Santiago, Chile; and
 - Mr Ulrich Haas, Professor of Law in Zurich, Switzerland, as arbitrators
23. On 23 January 2019, with reference to Mr Rajoub’s request for production of evidence and his letter dated 22 January 2019, the CAS Court Office informed the parties that the Panel had decided to reject Mr Rajoub’s request since it is for the parties (and not for the Panel) to produce the evidence upon which they intend to rely. As to the resolutions requested by Mr Rajoub, the parties were informed that the Panel considered that the authenticity was not disputed by FIFA and that therefore no action was required from the Panel. The parties were reminded that, pursuant to Article R57 in connection with Article R44.2 of the CAS Code, each party is responsible for the availability and costs of the witnesses and experts it has called.
24. On 7 and 11 February 2019 respectively, Mr Rajoub and FIFA returned duly signed copies of the Order of Procedure to the CAS Court Office.

25. On 27 February 2019, the CAS Court Office informed the parties on behalf of the Panel that the hearing scheduled for 4 March 2019 was cancelled, following a request of Mr Rajoub in this regard related to his health.
26. On 7 May 2019, Mr Rajoub requested the hearing scheduled for 16 May 2019 to be postponed due to health issues that prevented him from travelling abroad.
27. On 8 May 2019, the CAS Court Office informed the parties that Mr Rajoub's request for a further postponement of the hearing was rejected. Mr Rajoub was informed that he could attend the hearing by video-conference.
28. On 16 May 2019, a hearing was held in Lausanne, Switzerland. At the outset of the hearing, both parties confirmed that they had no objection to the constitution and composition of the Panel.
29. In addition to the Panel, Mr Antonio De Quesada, CAS Head of Arbitration, and Mr Dennis Koolgaard, *Ad hoc* Clerk, the following persons attended the hearing:

For the Appellant:

- 1) Mr Gonzalo Boye Tuset, Counsel

For the Respondent:

- 1) Mr Jaime Cambreleng Contreras, FIFA Head of Litigation;
 - 2) Mr Jacques Blondin, Group Leader / Legal Counsel FIFA Disciplinary Department;
 - 3) Mr Cédric Aghey, Legal Counsel FIFA
30. Although Mr Rajoub had initially called as witnesses Mr Lionel Messi, Argentinian football player and subject of Mr Rajoub's litigious statements, Mr Wilfried Lemke, Special Adviser to the United Nations Secretary General on Sport for Development and Peace, and Mr Jorge Sampaoli, Coach of the Argentinian national team, these persons were ultimately not made available for examination at the hearing by Mr Rajoub. Also Mr Rajoub himself was initially supposed to attend the hearing, but even though he was informed that he could attend the hearing by video-conference, he did not attend.
 31. The parties were granted full opportunity to present their case, submit their arguments in opening statements and closing arguments, as well as to answer the questions posed by the Panel.
 32. Before the hearing was concluded, both parties expressly stated that they did not have any objection with the procedure adopted by the Panel and that their right to be heard and to be treated equally had been respected.
 33. The Panel confirms that it carefully heard and took into account in its decision all of the submissions, evidence and arguments presented by the parties, even if they have not been specifically summarised or referred to in the present arbitral award.

IV. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

A. The Appellant

34. The submissions of Mr Rajoub, in essence, can be summarised as follows:

- The FIFA Disciplinary Committee was not impartial as none of the evidences proposed by Mr Rajoub were admitted and because the assessment of the rest was biased. The criterion of admissibility used by the FIFA Disciplinary Committee was not correct, as it applied the criterion used to evaluate the evidence, which is different from the standard to admit evidence. The FIFA Disciplinary Committee clearly made a mistake *“to decide, in consciousness, whether to admit or not any evidence as that part of the process needs to be based in attention to the right of defense as stated by the article 6 of the [European Convention of Human Rights – the “ECHR”] which is binding for the purpose of the Swiss Law”*.
- Second, regarding the witness statements requested by Mr Rajoub, the FIFA Disciplinary Committee confused the rules and applied Article 111.1 FDC as a general rule. It seems that the FIFA Disciplinary Committee does not understand that this precept is located in subsection 2 of the FDC, dedicated to “oral statements, deliberations, decisions”, while evidence is regulated in another section.
- The lack of impartiality also appears when the FIFA Disciplinary Committee states that *“the Committee underlines that as a general rule, there are no oral statements and the Committee passes its decisions on the basis of the file”* is compared with Article 96.3 FDC that states the following: *“The following are, in particular, admissible: reports from referees, assistant referees, match commissioners and referee inspectors, declarations from the parties and witnesses, material evidence, expert opinions and audio or video recordings”*.
- The FIFA Appeal Committee states that, according to Article 97 FDC, the FIFA Disciplinary Committee has absolute discretion regarding proof, but the appeal was based on the Spanish version of Article 96.3 FDC, *“which states that the evidences included must be admitted instead of admissible”*. However, Article 97 FDC is about the evaluation of proof and not about admissibility. Even if the English version of Article 96 FDC states that the proof is admissible and not that it must be admitted, it is clear that the refusal of every single piece of evidence requested by this party shows a lack of impartiality and the will of the FIFA Disciplinary Committee to sanction Mr Rajoub.
- The lack of impartiality of the FIFA Disciplinary Committee also derives from the fact that it concludes that *“[...] the video provided to Mr Rajoub on which the Committee is basing its decision, undoubtedly refers to his statements made in June 2018 regarding the match that had been scheduled to be played on 9 June 2018”*. The IFA itself however submitted that the interview was given to *“Lebanon’s Al Mayadeen TV on April 30, 2013”*. Mr Rajoub does not understand how the FIFA Disciplinary Committee could have missed this, unless he was

before a predisposed committee. The FIFA Appeal Committee did not address this, which is also a violation of Mr Rajoub's right to a fair judgment.

- The FIFA Disciplinary Committee's lack of impartiality also becomes apparent when it refers to statements that are "*publicly available and have been widely circulated by the press*". The FIFA Disciplinary Committee therefore admits that it passed a decision based on elements that were not in the file, which is a violation of Article 111.1 FDC. While the FIFA Appeal Committee claims that such videos were provided, Mr Rajoub only received "*an 8 pages document that did not include the said videos on which basis the sanction to Mr. Jibril was imposed*". The FIFA Disciplinary Committee assumes that Mr Rajoub accepts the video provided by the IFA, but it cannot impose a sanction on the basis of a video from 2013 that it did not watch nor understood as it is in Arabic and there was no Arabic speaker in the FIFA Disciplinary Committee and there was no translation of it.
- Regardless of whether the videos were not on file, or were on file but not sent to Mr Rajoub, this constitutes a violation of Mr Rajoub's rights and needs to be taken into account by CAS.
- The FIFA Disciplinary Committee's lack of impartiality is so clear that it actually did not take into account the documents sent by Mr Rajoub on 2 July 2018.
- The FIFA Disciplinary Committee and the FIFA Appeal Committee considered Mr Rajoub's arguments in respect of the political relationship between Israel and Palestine to be irrelevant, but in accordance with Article 39.4 FDC, "[t]he body shall take account of all relevant factors in the case and the degree of the offender's guilt when imposing the sanction". In the case against Mr Rajoub "*the context is the case as it is clear an orchestrated attack from IFA and groups related to IFA who have instigated the whole process and this was not taken into consideration neither by the Disciplinary Committee nor by the Appeal Committee in what is a clear violation of the rules governing the sanctioning process as established in the above mentioned article 39.4 of FDC*".
- Without an impartial sanctioning body, it is impossible to understand that a procedure respects the right to a fair trial in the terms of Swiss law as well as stated by the European Court of Human Rights (the "ECtHR"). The case law of the ECtHR states that the right to an impartial judge should be seen from two perspectives: i) whether the judge held any personal prejudice or bias in a given case; and ii) whether the tribunal itself and, among other aspects, its composition, offered sufficient guarantees to exclude any legitimate doubt of its impartiality. For these reasons, this party denounces the lack of impartiality of the FIFA Disciplinary Committee (including the FIFA Appeal Committee), violating Article 6 ECHR, considering that the lack of impartiality comes from the actions and the composition of the FIFA Disciplinary Committee.
- With regard to the resolutions from the United Nations Security Council referred to by Mr Rajoub, the FIFA Disciplinary Committee stated that he could have submitted those as the resolutions are publicly available, so that there was no

need for the FIFA Disciplinary Committee to request a copy of the resolutions. This interpretation is, once again, opposed to Swiss law and the ECHR. The reason why Mr Rajoub requested this proof was no other than guaranteeing the authenticity of the documents, which is absolutely necessary considering the sort of “presumption of veracity” given to the accusation. Mr Rajoub considers that his right to defence was violated due to the non-admission of the evidence requested, which left him at a disadvantage and violated Article 6 ECHR.

- The facts “*outlined by the Disciplinary Committee (that we do not know how they were proved) cannot be considered as the Committee does. It is quite surprising that the Committee was able to evaluate the feelings of Mr. Rajoub when he was not even listen as his oral declaration was rejected as well as the declaration of all witnesses proposed by this party*”.
- It is also remarkable that the FIFA Disciplinary Committee imposed a sanction for inciting hatred when the case law of the ECtHR considers that burning a t-shirt, a photograph or even a flag is nothing but an expression of free speech. Mr Rajoub submits that “*we are not even admitting that Mr. Rajoub may have proposed to burn a t-shirt what we are saying is something very simple: even burning a t-shirt is part of the right to the freedom of speech and it seems that for FIFA such a right, recognised both in Swiss law and the ECHR seems to disturb FIFA [sic]. FIFA can’t live and act as if the Swiss law and the ECHR doesn’t affect them.*” With reference to the decisions of the ECtHR, the FIFA Appeal Committee argued that the case law is not applicable, but Mr Rajoub submits that it is.
- Finally, Mr Rajoub considers it important to underline that he did not know about the existence of a headquarters in Moscow where the meeting of the FIFA Disciplinary Committee took place on 13 July 2018 and that he does not “*know how the composition of the Committee was established excluding all Arab members of the Committee unless there was a lack of impartiality as stated above*”. It would have been of great help for the FIFA Disciplinary Committee to have an Arab speaking person in its composition as the alleged existing video should have been in Arab.

35. On this basis, Mr Rajoub submitted the following prayers for relief:

“In consequence, this party request this Court to admit all requested evidences and the practice of the above proposed proofs and after that the celebration of a hearing in accordance with R.44.1 and based on all that to declare that the decision taken by the FIFA Disciplinary Committee on the 13th of July 2018 and FIFA Appeal Committee from the 24th September 2018 was wrongly taken because its violated the rights of Mr. Rajoub as described in this appeal and declared it null and void. [sic]”

B. The Respondent

36. The submissions of FIFA, in essence, can be summarised as follows:

- Mr Rajoub focuses on three main arguments: i) the alleged lack of impartiality of the FIFA Disciplinary Committee and the FIFA Appeal Committee; ii) an alleged violation of his right of defence; and iii) an alleged wrong establishment of the facts.
- FIFA considers it important to set the correct focus on the matter under appeal; Mr Rajoub's breach of Article 53 FDC. Mr Rajoub is vehemently trying to distort the reality of the present case, depicting himself as the victim of a phantom conspiracy and directing the discussion to other issues in order to pursue a political campaign. FIFA considers it important that a due distance be maintained from any political conflict and that the procedure shall focus on Mr Rajoub's wrongful action and the subsequent violation of Article 53 FDC only.
- As to the lack of impartiality, Mr Rajoub failed to substantiate his allegations with any evidence or valid argumentation. His submissions can only be considered as mere speculations, lacking any legal value. With reference to CAS jurisprudence, it is submitted that it is not sufficient to raise general accusations or partiality and lack of independence. Instead, specific concerns must be brought forward. As to the FIFA Disciplinary Committee's refusal to admit evidence requested by Mr Rajoub, the FIFA Appeal Committee provided a detailed explanation regarding the type of proof that is admissible in disciplinary proceedings before FIFA. Indeed, even though the burden of proof regarding disciplinary infringements rests on FIFA – which it discharged appropriately –, the accused party that wishes to rely on an alleged fact – for example to prove the inexistence of a disciplinary infringement – bears the burden of substantiating his counterarguments with adequate evidence. Mr Rajoub failed to do so. For example, Mr Rajoub was not forbidden to submit a copy of the resolutions from the United Nations Security Council, which are publicly available and could be provided with no need for FIFA to request a copy of them to the United Nations Security Council itself. This is corroborated by the fact that Mr Rajoub has now presented these resolutions himself in the proceedings before CAS. As to the statements from the witnesses and experts called, these could (and should) have been submitted to the disciplinary committees by Mr Rajoub indistinctively of the request for a hearing to be arranged. Furthermore, the FIFA Disciplinary Committee was entitled to decide that no hearing was necessary. In any event, Mr Rajoub abandoned his request for a hearing before the FIFA Appeal Committee, thereby proving that he was satisfied with the content of his written submissions. The video of Mr Rajoub's statements was provided to him, via the PFA, on 8 June 2018. Mr Rajoub can therefore not claim that the video was not provided to him. The letters received from the IFA, Btsalmo and Palestinian Media Watch dated 6, 10 and 14 June 2018 respectively, were not taken into account by the FIFA Disciplinary Committee. In any event, the videos sent to Mr Rajoub were downloaded on 19 June 2018. Although the IFA submitted a complaint based on a video of 30 April 2013, the FIFA Disciplinary Committee did not pass its decision based on a video from 30 April 2013, which was duly explained in the FIFA Disciplinary Committee Decision. FIFA therefore considers to have demonstrated that the FIFA Disciplinary Committee and the FIFA Appeal Committee passed impartial decisions.

- As to the alleged violation of Mr Rajoub's right to be heard, it is noted that he repeats several arguments that have already been addressed in respect of the alleged impartiality of FIFA's disciplinary committees. As to Mr Rajoub's argument that the interpretation with respect to the resolutions of the United Nations Security Council was contrary to Swiss law and the ECHR, it is submitted that Mr Rajoub only requested these documents to guarantee the authenticity. According to the relevant regulations of FIFA, no presumption of veracity is given to any accusation. The letter sent on 8 June 2018 solely contains a *prima facie* identification of a breach and not a charge or indictment as may be the case in other legal systems. FIFA has to prove the allegation and the presumption of innocence prevails until a decision is passed by the FIFA Disciplinary Committee. Regardless of the fact that, according to CAS jurisprudence the ECHR is not applicable to an association's disciplinary bodies, Mr Rajoub's rights of defence were never at stake, since he had the opportunity to state his case and defend himself before the FIFA Disciplinary Committee and the FIFA Appeal Committee.
- As to the alleged wrong establishment of the facts, it is essential to recall that on 8 June 2018 Mr Rajoub was provided with two videos, one of which being the video of his declarations. The content of Mr Rajoub's statements is clear and unequivocal. He wanted to launch a campaign aimed at targeting the AFA and, in particular, Mr Lionel Messi. Insofar Mr Rajoub argues that according to the ECtHR, burning a t-shirt is nothing but an expression of freedom of speech, the facts at stake are far from being comparable to the facts in the decisions of the ECtHR referred to by Mr Rajoub. Mr Rajoub's actions were not limited at inciting the people to burn Mr Messi's jerseys or pictures. In fact, Mr Rajoub went further than that, proclaiming a global action that would target the whole AFA and Mr Messi, which eventually escalated and caused the AFA's withdrawal from the Match. Mr Rajoub did not show any self-restraint and could have expressed his dissent towards a friendly match being played in Jerusalem in many other ways. Mr Rajoub decided to publicly target the AFA and Mr Messi – whose jerseys were to be burnt – and to incite other people to do so, knowing the tension and instability that such statements would have caused. Mr Rajoub's right to express his dissent for the decision to organise the Match in Jerusalem was not unlimited. With reference to CAS jurisprudence, Mr Rajoub is not to be exempted from the consequences of his declarations and cannot hide behind the wrongly invoked unlimited right to express himself.
- The FIFA Disciplinary Committee and the FIFA Appeal Committee correctly established that inciting Mr Messi's fans to burn his jerseys and pictures and declaring that a campaign will be launched to target him and the AFA corresponds to an incitement to the public to perform acts of hatred and violence. Article 53(1) FDC was therefore violated and a match suspension of at least 12 months was to be imposed. Given that it concerned a serious infringement in the sense of Article 53(2) FDC because Mr Rajoub used mass media, the additional imposition of a fine of CHF 20,000 was also legitimate. In fact, the imposition of these sanctions corresponds to the statutory minimum and is proportionate to the infringement committed. It must also be pointed out that Mr Rajoub never questioned the proportionality of the sanctions.

37. On this basis, FIFA submitted the following prayers for relief:

- “1. To reject the Appellant’s appeal in its entirety.*
- 2. To confirm the decision 180363 APC PLE ZH rendered by the FIFA Appeal Committee on 24 September 2018 hereby appealed against.*
- 3. To order the Appellant to bear all the costs and expenses related to the present procedure.”*

V. JURISDICTION

38. The jurisdiction of CAS, which is not disputed, derives from Article R47 of the CAS Code (2017 edition) and Article 58(1) of the FIFA Statutes (2018 edition).

39. Article 58(1) FIFA Statutes determines as follows:

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

40. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the parties.

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

VI. ADMISSIBILITY

42. The appeal was filed within the time limit of 21 days set by Article 58(1) FIFA Statutes. The appeal complied with all other requirements of Article R48 CAS Code, including the payment of the CAS Court Office fee.

43. It follows that the appeal is admissible.

VII. APPLICABLE LAW

44. Mr Rajoub argued the following in his Statement of Appeal:

“The provisions of the FIFA Statutes applicable to this Appeal are:

Articles 2, 3, 4, 5, 8, 9, 52, 56, 57 and 59.

The provisions of the FIFA Disciplinary Code applicable to this Appeal are:

Articles 39, 53, 71, 76, 81, 82, 85, 94, 96, 97, 99, 111 and 138.

The provisions of the European Convention of Human Rights applicable to this Appeal are:

Articles 6 and 10.”

45. FIFA submits that the applicable law shall be the various regulations of FIFA and, additionally, Swiss law.

46. Article R58 of the CAS Code provides the following:

“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.”

47. Article 57(2) FIFA Statutes determines as follows:

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

48. It is common ground that the dispute before CAS is primarily governed by FIFA regulations, more specifically the FDC (2017 edition).

49. The Panel finds that, in view of Article 57(2) FIFA Statutes, Swiss law is subsidiarily applicable.

50. As to Mr Rajoub’s references to the ECHR, the Panel will address the applicability and relevance thereof below in the sections of the award where Mr Rajoub specifically invokes the ECHR.

VIII. MERITS

A. The Main Issues

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

- i. Is the Appealed Decision to be declared null and void due to procedural violations committed in the proceedings before the FIFA Disciplinary Committee and the FIFA Appeal Committee?
- ii. Is Mr Rajoub guilty of violating Article 53 FDC?
- iii. If so, is the sanction imposed on Mr Rajoub disproportionate?

i. Is the Appealed Decision to be declared null and void due to procedural violations committed in the proceedings before the FIFA Disciplinary Committee and the FIFA Appeal Committee?

52. Mr Rajoub invokes several flaws in the proceedings before the FIFA Disciplinary Committee and the FIFA Appeal Committee, which will be addressed separately below to the extent possible, because some of the issue raised are closely intertwined.

53. However, before addressing the specific arguments raised in this respect, the Panel notes that Mr Rajoub occasionally refers to an alleged lack of impartiality of the FIFA Disciplinary Committee, despite the fact that decision challenged in the present proceedings is the Appealed Decision that was issued by the FIFA Appeal Committee. The Panel understands that Mr Rajoub intends to argue that both the FIFA Disciplinary Committee as well as the FIFA Appeal Committee lacked independence, and that the alleged procedural deficiencies in the proceedings before the FIFA Disciplinary Committee were not cured by the FIFA Appeal Committee. Accordingly, the Panel will therefore consider arguments related to the impartiality of both committees.

a. The alleged lack of impartiality of the FIFA Disciplinary Committee and the FIFA Appeal Committee

54. Mr Rajoub submits that the lack of impartiality of the FIFA Disciplinary Committee becomes apparent from various circumstances.
55. Mr Rajoub submits that no evidence presented by him was admitted to the case file, because the FIFA Disciplinary Committee used a wrong provision of the FDC to decide on the admissibility. The FIFA Disciplinary Committee decided on the basis of Article 111.1 FDC, which is incorporated in the sub-section dealing with “oral statements, deliberations, decision”, whereas “evidence” is regulated in another provision (Article 96 FDC). Mr Rajoub submits that the FIFA Disciplinary Committee did so consciously.
56. The Panel infers from the file that the evidence submitted by Mr Rajoub in the proceedings before the FIFA Disciplinary Committee that was allegedly not taken into account, was Mr Rajoub’s request to the FIFA Disciplinary Committee to request additional evidence from Mr Rajoub himself, Mr Lionel Messi, Mr Jorge Sampaoli and Dr Wilfred Lemke.
57. The Panel notes that it is determined in the FIFA Disciplinary Committee Decision that *“with regard to the oral statements, the Committee underlines that as a general rule, there are no oral statements and the Committee passes its decisions on the basis of the file (cf. art. 111 par. 1 of the FDC). In the present case, the Committee considers to have sufficient elements in the file to decide on the case and therefore does not deem necessary to arrange for oral statements to be heard in the present proceedings nor to request the written statements of additional persons”*.
58. Article 111(1) FDC provides as follows:
- “1. As a general rule, there are no oral statements and the Disciplinary Committee decides on the basis of the file.*
 - 2. At the request of one of the parties, the body may arrange for oral statements to be heard, to which all the parties shall be summoned.*
 - 3. Oral statements are always heard behind closed doors.”*
59. The Panel finds that Mr Rajoub is correct insofar he argues that Article 111(1) FDC does not address the admissibility of evidence, but that this is addressed in Article 96 FDC:

- “1. Any type of proof may be produced.*
 - 2. Proof that violates human dignity or obviously does not serve to establish relevant facts shall be rejected.*
 - 3. The following are, in particular, admissible: reports from referees, assistant referees, match commissioners and referee inspectors, declarations from the parties and witnesses, material evidence, expert opinions and audio or video recordings.”*
60. It transpires from Article 96 FDC that witness declarations are, in principle, admissible types of evidence. The Panel however notes that Mr Rajoub did not call any witnesses himself or submitted witness statements in the proceedings before the FIFA Disciplinary Committee or the FIFA Appeal Committee, but merely requested from these bodies that they would request additional evidence from such persons. This is something fundamentally different. The Panel finds that the committees rightly decided to dismiss such request, as it was for Mr Rajoub to call such persons as witnesses. As opposed to state courts, the FIFA Disciplinary Committee and the FIFA Appeal Committee have no judicial power to require persons to testify.
61. The Panel finds that Article 111(1) FDC was however relevant for the decision of the FIFA Disciplinary Committee not to hold a hearing. This was well within its right and, particularly in the absence of witnesses being brought by Mr Rajoub, the Panel does not see why the FIFA Disciplinary Committee would have been compelled to make an exception to the general rule that no hearings are held. Insofar Mr Rajoub was prevented from testifying during the hearing before the FIFA Disciplinary Committee, the Panel finds that Mr Rajoub's right to be heard was safeguarded by the fact that he was offered such opportunity in the proceedings before the FIFA Appeal Committee.
62. Mr Rajoub also requested from the FIFA Disciplinary Committee that it should request the United Nations Security Council to provide copies of certain resolutions. This request was dismissed by the FIFA Disciplinary Committee on the ground that such resolutions were publicly available and that it was for Mr Rajoub to submit such resolutions together with his written submissions.
63. The Panel finds that the FIFA Disciplinary Committee did not act unreasonable in this regard. Mr Rajoub's argument that he wanted to be sure that the resolutions relied upon were genuine is to be dismissed. Mr Rajoub's request could have been reasonable in case the veracity of the resolutions would have been disputed, but it does not exempt him from bringing this publicly available information to the attention of the FIFA Disciplinary Committee himself if he wished to rely thereon. Also in this respect, it is in principle for a party to bring the evidence on which it intends to rely. No compelling arguments have been submitted by Mr Rajoub as to why this should be different in the matter at hand.
64. As to Mr Rajoub's argument that the IFA lodged a complaint against him with FIFA and referred to a video of 30 April 2013, but that the FIFA Disciplinary Committee lacks impartiality because it claimed that such video was not in the file, the Panel does not really see Mr Rajoub's point here. Insofar as the IFA relied on a video from 30 April 2013, this video was clearly not relevant for the matter at hand, because the FIFA

Disciplinary Committee Decision and the Appealed Decision are clear in stating that Article 53 FDC was violated by Mr Rajoub solely because of his statements of 3 June 2018. A video from 30 April 2013 does not appear to have any bearing on the present proceedings.

65. Insofar as Mr Rajoub submits that the FIFA Disciplinary Committee could only open proceedings against him on the basis of a complaint, that the complaint of the IFA referred to a video of 30 April 2013 and that such video must therefore be incorporated in the file, such submission is misconceived. Article 108 FDC determines that disciplinary infringements may be prosecuted *ex officio*, while also recognising that “any person or body may report conduct that he or it considers incompatible [...]”. Although the IFA as well as any other person or body were entitled to lodge a complaint against Mr Rajoub, the FIFA Disciplinary Committee could nonetheless prosecute Mr Rajoub *ex officio*. If the FIFA Disciplinary Committee decided to restrict the conduct to be prosecuted to a single event despite multiple allegations being raised in a complaint, it was in its right to do so.
66. As to Mr Rajoub’s statement that he had not been provided by the FIFA Disciplinary Committee with the video of his statements of 3 June 2018, the Panel finds that also this allegation must be dismissed.
67. FIFA provided evidence that it had submitted a link through which the relevant video could be downloaded to the PFA and that such video was indeed downloaded in the Palestinian Territory. Although this does not necessarily prove that Mr Rajoub or his legal representative downloaded the video, the Panel considers it essential that in the documentation provided to Mr Rajoub on 8 June 2018, whereby FIFA informed Mr Rajoub that it had opened disciplinary proceedings against him, reference was made to such video, a link was provided to download the video, and the following citation was incorporated in FIFA’s letter:

“For our part, given what we have heard, and since we cannot, under any circumstances, agree to this match, we will launch, as of today, a campaign targeting the Argentinian (football) federation, and in particular targeting (Lionel) Messi, who has tens of millions of fans in Arab and Islamic countries, in Asia, Africa, and in countries that are friends of the Palestinian people. (For these fans) he used to be a symbol and a big deal. We are going to target Messi, and we are going to ask everybody to burn their Messi T-shirts and pictures, and to wash their hands of him. But we are still hoping that Messi will not show upon on Thursday, and will not serve to whitewash the crimes of the occupation.”

68. Since Mr Rajoub’s legal representative responded to this letter on 12 June 2018, the Panel finds that there can be no doubt that Mr Rajoub was at least confronted with the statements made and that he did not deny having made such statements. In such letter, Mr Rajoub did not ask to be provided with the video and the Panel finds that there was no reason for FIFA to believe that the link provided in its letter dated 8 June 2018 was deficient. The Panel therefore finds that it can be concluded that Mr Rajoub duly received the video of his statements of 3 June 2018. The Panel in any event does not see

why an alleged failure to provide Mr Rajoub with the video would lead to the conclusion that the FIFA Disciplinary Committee lacked impartiality.

69. As to Mr Rajoub's argument that the FIFA Disciplinary Committee lacked impartiality because it did not take into account his statements related to the political relationship between Israel and Palestine, the Panel finds that the mere fact that the FIFA Disciplinary Committee and the FIFA Appeal Committee decided to dismiss an argument does not result in a lack of impartiality. The substance of Mr Rajoub's argument will be addressed in more detail below, but the Panel finds that this in any event cannot prove that either of the FIFA judicial bodies lacked impartiality.
70. As to Mr Rajoub's reference to the jurisprudence of the ECtHR, stating that a tribunal must offer sufficient guarantees to exclude any legitimate doubt in respect of its impartiality and that this has not been complied with in the matter at hand due to the actions and the composition of the FIFA Disciplinary Committee, the Panel finds that Mr Rajoub failed to establish any legitimate doubt in respect of the impartiality of the FIFA Disciplinary Committee or the FIFA Appeal Committee.
71. In the context of his arguments on a wrong establishment of the facts, Mr Rajoub raises another argument related to the impartiality of the FIFA Disciplinary Committee. He submits that "[w]e also do not know how the composition of the Committee was established excluding all Arab members of the Committee unless there was a lack of impartiality as stated above". The Panel does not see how the absence of an Arab speaking member would make the composition of the FIFA Disciplinary Committee that adjudicated and decided on the FIFA Disciplinary Committee Decision not impartial.

b. The alleged violation of Mr Rajoub's right of defence

72. Also under this heading, Mr Rajoub submits that the FIFA Disciplinary Committee unlawfully refused to take into account the evidence presented by him.
73. For the reasons set out above, the Panel finds that the FIFA Disciplinary Committee acted within its right not to entertain Mr Rajoub's request to request additional evidence from Mr Rajoub himself, Mr Lionel Messi, Mr Jorge Sampaoli, Dr Wilfred Lemke and the United Nations Security Council. Furthermore, as concluded above, the Panel finds that Mr Rajoub was given the opportunity to provide such evidence himself, as well as to download the video of his statements of 3 June 2018 and could in any event defend himself against the statements as quoted in FIFA's letter dated 8 June 2018.
74. The Panel finds that the FIFA Disciplinary Committee, nor the FIFA Appeal Committee, prejudiced Mr Rajoub's right of defence.

c. The alleged wrong establishment of the facts

75. Also in the context of an alleged wrong establishment of the facts, Mr Rajoub suggests that he had not received a complete copy of the case file from the FIFA Disciplinary Committee. For the reasons established above, this argument is dismissed. Any possible complaints filed by third parties against the conduct of Mr Rajoub are irrelevant for the FIFA Disciplinary Committee exercising its discretion to prosecute Mr Rajoub. The

crucial pieces of evidence are the video of Mr Rajoub's statements of 3 June 2018 and the transcript thereof and these pieces of evidence are on file, as has been determined above. As to Mr Rajoub's argument that the facts were wrongly established because the FIFA Disciplinary Committee refused to hear the witnesses proposed by Mr Rajoub, again, the Panel finds that it was for Mr Rajoub to bring such persons, not for the FIFA Disciplinary Committee.

76. As to Mr Rajoub's statement that his alleged statements were made in Arabic, while none of the members of the FIFA Disciplinary Committee spoke Arabic, the Panel finds that this argument must be dismissed because the video of Mr Rajoub's statements of 3 June 2018 contained English subtitles and the translation as such remained undisputed.
77. As to Mr Rajoub's argument that "*he was not aware of a FIFA headquarter in Moscow, Russia where the FIFA Disciplinary Committee Decision was issued*", the Panel does not see the relevance of this argument for an alleged wrong establishment of the facts. The FIFA Disciplinary Committee may well have convened in Moscow, Russia, given that such decision was issued during the 2018 FIFA World Cup. Even if this were not the case, the Panel does not see how this should affect the validity of the FIFA Disciplinary Committee Decision or the Appealed Decision.

d. Conclusion

78. In view of the above, the Panel finds that Mr Rajoub failed to establish that the FIFA Disciplinary Committee and the FIFA Appeal Committee that adjudicated and decided on the matter at hand lacked impartiality, Mr Rajoub's right of defence was not violated by the FIFA Disciplinary Committee and/or the FIFA Appeal Committee and there is no indication that the FIFA Disciplinary Committee and/or the FIFA Appeal Committee wrongly established any facts.
79. In any event, crucially, even if Mr Rajoub's right to defend himself would have been violated or the FIFA Disciplinary Committee and/or the FIFA Appeal Committee were wrong in establishing facts, this would still not lead to the Appealed Decision being declared null and void.
80. Article R57 CAS Code provides as follows :

"The Panel has full power to review the facts and the law."
81. It is widely recognised that the *de novo* power of review that is granted to CAS Panels by Article R57 CAS Code allows, in principle, violations of procedural rights in first instance to be "cured" by CAS in appeal proceedings.
82. The Panel observes that the *de novo* power of CAS panels and the curing effect thereof has been interpreted consistently in CAS jurisprudence:

"The issue of the powers of the appeal panel has also been considered time and time again by CAS appeal arbitration tribunals when considering allegations of a denial of natural justice in the making of the original decision. An equally well accepted view has been taken that as it is a completely fresh hearing of the dispute between the parties, any allegation of

denial of natural justice or any defect or procedural error (“even in violation of the principle of due process”) which may have occurred at first instance, whether within the sporting body or by the Ordinary Division CAS panel, will be “cured” by the arbitration proceedings before the appeal panel and the appeal panel is therefore not required to consider any such allegations (see for example CAS 98/211, at para. [8]). [...]” (CAS 2008/A/1575, para. 32 of the abstract published on the CAS website)

83. The Panel fully subscribes to this frequently cited interpretation (e.g. CAS 2016/A/4387, para. 147 of the abstract published on the CAS website; CAS 2015/A/4187, para. 101 of the abstract published on the CAS website).
84. Mr Rajoub could bring before this Panel all elements he wanted to bring – and no prejudicial effect deriving from the proceedings before the FIFA Disciplinary Committee or the FIFA Appeal Committee appears to have remained uncured. The Panel therefore finds that, should there have been any procedural flaws in the proceedings before the FIFA Disciplinary Committee and/or the FIFA Appeal Committee leading to the Appealed Decision, which it does not believe to be the case, such potential flaws are repaired in the present proceedings because the Panel finds, and Mr Rajoub confirmed at the end of the hearing, that his right to be heard had been fully respected in the present appeal arbitration proceedings.
85. Mr Rajoub also did not raise any objection against the procedure adopted by the Panel at the outset of the hearing, despite the fact that the Panel had already dismissed Mr Rajoub’s request for production of evidence (asking the Panel to call Mr Messi, Mr Lemke and Mr Sampaoli as witnesses) and his letter dated 22 January 2019, that the Panel had decided to reject Mr Rajoub’s request for production of documents since it is for the parties (and not for the Panel) to produce the evidence upon which they intend to rely. As to the United Nations Security Council resolutions requested by Mr Rajoub, the parties were informed that the authenticity was not disputed by FIFA and that therefore no action was required from the Panel, as Mr Rajoub had already presented the resolutions he wished to rely on. Finally, the parties were reminded that, pursuant to Article R57 in conjunction with Article R44.2 CAS Code, each party is responsible for the availability and costs of the witnesses and experts it has called. Despite being informed of the consequences in advance, Mr Rajoub ultimately did not bring any witnesses to the hearing.
86. Consequently, in view of all the above, the Panel finds that the Appealed Decision is not to be declared null and void, because Mr Rajoub failed to establish that any procedural violations were committed in the proceedings before the FIFA Disciplinary Committee and/or the FIFA Appeal Committee. Any such alleged procedural flaws are in any event cured in the present appeal arbitration proceedings before CAS.

ii. Is Mr Rajoub guilty of violating Article 53 FDC?

87. Article 53 FDC provides as follows:

“1. A player or official who publicly incites others to hatred or violence will be sanctioned with match suspension for no less than twelve months and with a minimum fine of CHF 5,000.

2. *In serious cases, in particular when the infringement is committed using the mass media (such as the press, radio or television) or if it takes place on a match day in or around a stadium, the minimum fine will be CHF 20,000.”*

88. The Panel observes that FIFA mainly takes issue with the following statement of Mr Rajoub, as broadcasted on 3 June 2018 by Al-Jazeera Network, in a translation that was not disputed by Mr Rajoub:

“[...] [W]e will launch, as of today, a campaign targeting the Argentinian (Football) Federation, and in particular targeting (Lionel) Messi, who has tens of millions of fans in Arab and Islamic countries, in Asia, Africa, and in countries that are friends of the Palestinian people. (For these fans) he used to be a symbol and a big deal. We are going to target Messi, and we are going to ask everybody to burn their Messi T-shirts and pictures, and to wash their hands of him. But we are still hoping that Messi will not show upon on Thursday, and will not serve to whitewash the crimes of the occupation. [...]”

89. Mr Rajoub does not acknowledge having made this statement and subsidiarily submits that, insofar such statements would have been made, they form part of his freedom of speech, a right that is recognised both in Swiss law as well as by the ECHR and cites jurisprudence of the ECtHR in this regard.
90. The Panel has no doubt that it was Mr Rajoub making the statements that were broadcasted on 3 June 2018. Although Mr Rajoub did not appear before the Panel, he is a well-known person in the world of football and the Panel finds that the demeanour of the person appearing in the video resembles the characteristics of Rajoub and leaves no doubt about the identity of the person concerned.
91. The remaining question to be addressed by the Panel is whether the above-mentioned statements violate the prohibition of inciting hatred and/or whether such statements are covered by Mr Rajoub’s freedom of expression.
92. In this respect, the Panel finds that the statements can indeed be qualified as inciting hatred, as he calls upon “*everyone*”, and the Arabic and Islamic world in particular, to undertake a violent act (burning t-shirts and pictures), specifically targeting one well-known individual (Mr Messi). It is however true that FIFA’s interest in sanctioning such conduct should be balanced against Mr Rajoub’s interest to exercise his freedom of speech.
93. The balancing of interests in the matter at hand is however different from the balancing made by the ECtHR in the jurisprudence cited by Mr Rajoub. The ECtHR balanced criminal law (state/public) interests against an individual’s freedom of speech. However, in the matter at hand, no criminal law interests are at stake. Rather, the private interests of FIFA, as the international governing body of football, are at stake. By assuming the role of President of the PFA, Mr Rajoub voluntarily committed himself to abide by the Statutes and regulations of FIFA, an association under Swiss law, to which he is accordingly bound. Concretely, the balancing to be made by the Panel is therefore between FIFA’s interest to suppress actions inciting hatred, to which Mr Rajoub has voluntarily submitted against Mr Rajoub’s interest to exercise his freedom of speech.

94. The consequences of this are important, because the Panel finds that an association – based on the special contractual legal relationship – may impose stricter duties on its members than the duties imposed on citizens by criminal law. Associations in general have a large freedom to manage their own affairs and Mr Rajoub can freely opt-out of his obligations as a FIFA official by resigning from any role that subjects him to FIFA's rules and regulations.
95. Engaging in the balancing of interest mentioned above, the Panel finds that the balance sways in favour of FIFA. The purpose of Article 53 FDC is legitimate. The same is not true for Mr Rajoub. The latter exceeded the legitimate boundaries of the freedom of speech by targeting persons that have no direct involvement whatsoever in the political issues between Israel and Palestine. Therefore, the Panel finds that the impact of the application of the above provision on Mr Rajoub's freedom of speech is limited in the matter at hand.
96. Mr Rajoub's statement was also not proportionate. He cannot rely on the jurisprudence of the ECtHR according to which the burning of t-shirts falls under the freedom of speech. Independently of whether or not the ECHR is directly applicable to international sports federations, such jurisprudence, even if interpreted correctly, does not apply to Mr Rajoub, because he did not burn any t-shirt himself. What Mr Rajoub did was more severe, since he requested "*everybody*" to burn their Messi shirts, thereby specifically calling upon Messi's fans in Arabic and Islamic countries, using mass media to convey his message. Considering also the high political positions of Mr Rajoub, the Panel finds that Mr Rajoub's statements had a much higher impact than an "anonymous" individual forming part of a larger demonstration actually burning a t-shirt.
97. Mr Rajoub's statements indeed had an impact, as AFA cancelled the Match to be played against Israel in Jerusalem, Israel, invoking *force majeure*. Although it has not been publicly stated by AFA that Mr Rajoub's statements were the reasons underlying the cancellation, the Panel finds that there cannot be any reasonable doubt about this. The Panel finds that the cancellation of the Match by AFA is indicative for the serious security concerns arising from Mr Rajoub's statements.
98. The Panel therefore concludes that Mr Rajoub indeed incited hatred against Mr Messi with his statements and that these statements cannot be protected by the freedom of speech. The Panel further agrees with FIFA that Mr Rajoub's conduct indeed amounts to a "serious case" of inciting hatred for the purposes of Article 53(2) FDC, in particular because this provision specifically refers to the situation when the infringement is committed by using mass media, an element that is undisputedly complied with in the matter at hand.
99. Consequently, the Panel finds that Mr Rajoub is guilty of violating Article 53(1) and (2) FDC.
 - iii. *If so, is the sanction imposed on Mr Rajoub disproportionate?*
100. The Panel observes that Article 53(1) and (2) FDC provide for minimum sanctions being imposed in case of violation: a match suspension for no less than twelve months and a minimum fine of CHF 20,000.

101. The Panel observes that the FIFA Disciplinary Committee and the FIFA Appeal Committee sanctioned Mr Rajoub in accordance with these provisions and did not impose any sanction above the statutory minimum. Accordingly, no proportionality issue arises on the basis of the FDC. This is all the more true, considering that Mr Rajoub has not argued any issues of proportionality.
102. In any event, and for the avoidance of doubt, the Panel does not find a one year match suspension until 23 August 2019 and a fine of CHF 20,000 disproportionate given the severity of the violation committed by Mr Rajoub.

B. Conclusion

103. Based on the foregoing, and after taking due consideration of all the evidence produced and all arguments made, the Panel finds that:
- i. The Appealed Decision is not to be declared null and void, because Mr Rajoub failed to establish that any procedural violations were committed in the proceedings before the FIFA Disciplinary Committee and/or the FIFA Appeal Committee. Any such alleged procedural flaws are in any event cured in the present appeal arbitration proceedings before CAS.
 - ii. Mr Rajoub is guilty of violating Article 53(1) and (2) FDC.
 - iii. The 12-month match suspension until 23 August 2019 and the fine of CHF 20,000 imposed on Mr Rajoub are not disproportionate.
104. All other and further motions or prayers for relief are dismissed.

IX. COSTS

105. The Panel observes that Article R65 CAS Code provides the following:

“R65.1 This Article R65 applies to appeals against decisions which are exclusively of a disciplinary nature and which are rendered by an international federation or sports-body. [...]

R65.2 Subject to Articles R65.2, para. 2 and R65.4, the proceedings shall be free. The fees and costs of the arbitrators, calculated in accordance with the CAS fee scale, together with the costs of the CAS are borne by CAS.

Upon submission of the statement of appeal, the Appellant shall pay a non-refundable Court Office fee of Swiss francs 1,000.– without which CAS shall not proceed and the appeal shall be deemed withdrawn. [...]

R65.3 Each party shall pay for the costs of its own witnesses, experts and interpreters. In the arbitral award and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel

shall take into account the complexity and the outcome of the proceedings, as well as the conduct and financial resources of the parties.

R65.4 If the circumstances so warrant, including the predominant economic nature of a disciplinary case or whether the federation which has rendered the challenged decision is not a signatory to the Agreement constituting ICAS, the President of the Appeals Arbitration Division may apply Article R64 to an appeals arbitration, either ex officio or upon request of the President of the Panel.”

106. Since the present appeal is lodged against a decision of an exclusively disciplinary nature rendered by an international federation, no costs are payable to CAS by the parties beyond the Court Office fee of CHF 1,000 paid by Mr Rajoub with the filing of his Statement of Appeal, which is in any event retained by CAS.
107. Furthermore, pursuant to Article R65.3 CAS Code, and in consideration of the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the Parties, in particular that FIFA was not represented by external counsel, that FIFA presumably has more financial resources than Mr Rajoub, and despite the President of the CAS Appeals Arbitration Division’s decision to deny Mr Rajoub’s application for a stay of the Appealed Decision, the Panel rules that each party shall bear his/its own legal fees and other expenses incurred in connection with the present arbitration proceedings.

* * * * *

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 8 November 2018 by Mr Jibril Rajoub against the decision rendered by the Appeal Committee of the Fédération Internationale de Football Association on 24 September 2018 is dismissed.
2. The decision rendered by the Appeal Committee of the Fédération Internationale de Football Association on 24 September 2018 is confirmed.
3. This award is pronounced without costs, except for the Court Office fee of CHF 1,000 (one thousand Swiss Francs) paid by Mr Jibril Rajoub, which is retained by the Court of Arbitration for Sport.
4. Each party shall bear his/its own legal fees and other expenses incurred in connection with the present arbitration proceedings.
5. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 18 July 2019

THE COURT OF ARBITRATION FOR SPORT

Hendrik Willem **Kesler**
President of the Panel