

Decision of the FIFA Appeal Committee

passed on 1 June 2023

DECISION BY:

Mr. Neil EGGLESTON (USA), Chairperson

Mr. Salman AL ANSARI (Qatar), Member

Mr. Andres PATON (Argentina), Member

ON THE APPEAL LODGED BY:

Mexican Football Association

(Decision FDD-14075)

AGAINST:

**Decision of the FIFA Disciplinary Committee notified on 13 January 2023
(ref. FDD-12619 & FDD-12687)**

I. FACTS OF THE CASE

1. The following summary of the facts does not purport to include every single contention put forth by the actors at these proceedings. However, the FIFA Appeal Committee (**the Committee**) has thoroughly considered in its discussion and deliberations any and all evidence and arguments submitted, even if no specific or detailed reference has been made to those arguments in the following outline of its position and in the ensuing discussion on the merits.

A. Facts of the case

2. The present appeal lodged by the Mexican Football Association (**the Appellant**) relates to two matches played by the representative team of Mexico in the context of the FIFA World Cup Qatar 2022™ (**the Matches**), during which discriminatory incidents were reported.

a. Match 1

3. On 22 November 2022, a match was played between the representative teams of Mexico and Poland in Doha (Qatar – Attendance 39,369 spectators – Final score 0-0) in the context of the FIFA World Cup Qatar 2022™ (**Match 1**).
4. Following Match 1, FIFA's Anti-Discrimination Monitoring System provided the Secretariat to the Disciplinary Committee with a report, mentioning *inter alia* the following (**the ADMOS Report 1**):

Pre-Match activities:

Did you notice any actions or signs/ flags/ banners/ clothing or other items of a possible discriminatory nature before the kick-off in the area around the stadium? *Yes*

Before entry to the stadium we witnessed a small group of about 5-10 Mexican fans chanting a homophobic song "Poropopo poropo el que no salte es un polaco maricon"

(ENG "poropopo poropopo who doesn't jump is a polish faggot)

The term "Maricón" is a discriminatory reference to gay men.

The incident took place just before the spectator entrance.

(...)

Incident 1:

Where did the incident take place? *Block 116 and block 412*

Was the incident caused by fans of Team A (Mexico) or Team B (Poland)? *Team A*

When: *Minute 17:55*

In minute 18.55 approximately 200 Mexico fans chanted a homophobic chant "Poropopo poropo el que no salte es un polaco maricon"

(ENG "poropopo poropopo who doesn't jump is a polish faggot)

The chant lasted for around 10 seconds by approximately 150 Mexico fans located in block 116 and a group of approximately 50 Mexico fans located in block 412.

(...)

The chant is homophobic because "Maricón" is a discriminatory reference to gay men. Mexico fans are calling Poland fans faggots to insult them indicating that being gay is a negative identity. How did the players or match officials (including referees) /or other fans react to the incident/s? No reaction

(...)

Incident 2:

Where did the incident take place? A homophobic chant was sung by the majority of the Mexico fans throughout the stadium. Mexico fans located in blocks, 124 to 145, 316, 355 to 358 and 411 to 448 sang the chant.

Was the incident caused by fans of Team A (Mexico) or Team B (Poland)? Team A

When: Minute 85.40

In minute 85 Mexico fans throughout the stadium chanted a homophobic song. Mexico fans throughout the stadium chanted. "Poropopo poropo el que no salte es un polaco maricon" (ENG "poropopo poropopo who doesn't jump is a polish faggot) The chant lasted for approximately 10 seconds.

(...)

The chant is homophobic because "Maricón" is a discriminatory reference to gay men. Mexico fans are calling Poland fans faggots to insult them indicating that being gay is a negative identity. How did the players or match officials (including referees) /or other fans react to the incident/s? In the 90th minute a stadium announcement was made over the audio/ tannoy system reminding fans to stop all discriminatory chants and gestures and to uphold the principles of fair play and to take part in football in the spirit of respect and equality. The announcement was made in English and Arabic, but not in Spanish.

(...)

5. The ADMOS Report 1 was further supported by video footage recorded by an observer present at Match 1.

b. Match 2

6. On 30 November 2022, a match was played between the representative teams of Saudi Arabia and Mexico in Lusail (Qatar – Attendance 84,985 spectators – Final score 1-2) in the context of the FIFA World Cup Qatar 2022™ (**Match 2**).
7. Following Match 2, FIFA's Anti-Discrimination Monitoring System provided the Secretariat to the FIFA Disciplinary Committee with a report, mentioning *inter alia* the following (**the ADMOS Report 2**):

Incident 1:

Where did the incident take place?

The incident happened in the sectors where the most active Mexico fans were located, blocks 118, 119, 405, 406, 407, 212, 211, 205, 206, 510 and 511.

Was the incident caused by fans of Team A (Saudi Arabia) or Team B (Mexico)? *Team B (Mexico)*

When: *The incident happened close to the end of the game in minute 94. The incident was repeated in minute 96.*

In the 94 and 96 minute Mexico fans chanted "Eeeeh puto!" directed at the Saudi Arabia goalkeeper when kicking the ball.

"Eeeeh puto!" is a homophobic chant which is usually directed at the opposition goalkeeper when taking a goal kick. The word "Puto" refers to a male sex worker. The word is used as a homophobic slur equivalent to the English "faggot" and is discriminatory for LGBTQI+ people regardless of the sexual orientation of those it is directed at.

How did the players or match officials (including referees) /or other fans react to the incident/s? *There was no reaction.*

(...)

8. The ADMOS Report 2 was further supported by video footage recorded by an observer present at Match 2.

B. Proceedings before the FIFA Disciplinary Committee

9. On 23 November 2022, disciplinary proceedings (in relation to Match 1 – under ref. FDD-12619) were opened against the Appellant with respect to the potential breach of art. 13 of the FIFA Disciplinary Code, 2019 edition (**2019 FDC**).
10. On 01 December 2022, disciplinary proceedings (in relation to Match 2 – under ref. FDD-12687) were opened against the Appellant with respect to the potential breach of art. 13 of the 2019 FDC, the latter therein being additionally informed that the proceedings would be merged with those previously opened on 23 November 2022 under ref. FDD-12619 (see *supra*.) in accordance with art. 50 (6) of the 2019 FDC.
11. On 13 January 2023, the FIFA Disciplinary Committee notified its decision rendered against the Appellant in relation to the Matches (**the Appealed Decision**), whereby it decided as follows:
 1. *The Mexican Football Association is ordered to pay a fine to the amount of CHF 100,000 for the discriminatory behaviour of its supporters in connection with the matches Mexico vs. Poland and Saudi Arabia vs. Mexico, played on 22 and 30 November 2022 respectively, in the scope of the FIFA World Cup Qatar 2022™.*
 2. *The Mexican Football Association is ordered to play its next (A level) FIFA competition match without spectators, such sanction being suspended for a probationary period of two (2) years.*
 3. *The fine is to be paid within 30 days of notification of the present decision.*

12. On 7 February 2023, the grounds of the Appealed Decision were notified to the Appellant.

C. Proceedings before the FIFA Appeal Committee

13. On 8 February 2023, the Appellant (i) notified FIFA about its intention to appeal the decision of the Disciplinary Committee and (ii) requested an extension of the deadline to submit its appeal brief.

14. On the same day (8 February 2023), the Secretariat to the Appeal Committee (**the Secretariat**) *inter alia* informed the Appellant that its *"request for an extension of the deadline to provide [its] appeal brief (until 21 February 2023) has been granted"*.

15. On 20 February 2023, the Appellant submitted its appeal brief and provided a copy of the proof of payment of the appeal fee (payment executed on 14 February 2023).

16. On 7 March 2023, the Appellant requested *"the opportunity to hold an in-person hearing with the intention of explaining the particularities of the present case and thus, provide the decision-making body with all the necessary elements so that they can be duly assessed in the corresponding decision"* (free translation from Spanish).

17. On the same day (7 March 2023), the Secretariat informed the Appellant that *"further information regarding this appeal procedure [would] be provided (...) in due course"*.

II. APPELLANT'S POSITION

18. The position of the Appellant can be summarised as follows (free translation from Spanish):

A. Preliminary remarks on the ADMOS Reports

19. The proceedings at hand were opened on the sole basis of the ADMOS Reports.

20. Although the incidents were not reported by any of the match officials in their respective reports, it is striking that the FARE observers were "coincidentally" located in the ideal places to hear the shouting of 200 and 1,000 people in stadiums with capacities of more than 44,000 and 88,000 people, respectively.

B. On the "severity" of the incidents

21. The first instance only considered two elements to determine, incorrectly, that the incidents should be deemed serious, namely: (i) the fact that the incidents took place during the FIFA World Cup™, that is, the most important sporting event, and (ii) the alleged recurrence of this type of infringement by the Appellant.

a. On the fact that the incidents occurred during the FIFA World Cup™

22. The first instance failed to take into account that the competition at hand was solely and exclusively organised and operated by FIFA, as a result of which the Appellant had no influence or power to intervene in matters *inter alia* related to its security, organisation and logistics.

i. On the measures undertaken by the Appellant

23. This is of utmost importance considering that the Appellant has invested, for almost ten years now, considerable economic and human resources in the implementation of campaigns, measures and actions aimed at preventing and raising awareness among fans regarding the importance of not engaging in discriminatory behaviour and the possible sanctions if they do.

24. The Appellant is fully committed to prevent and eradicate discriminatory behaviour in football but can only do so when it is the organiser of the matches involving its national team. In this regard, taking into account that it would have no way to intervene directly in the matches that the Mexican team would play in the World Cup, the Appellant carried out various preventive measures aimed at raising awareness and educating the fans at the World Cup, such as:

- A letter dated 25 August 2022 addressed to FIFA's General Secretary with a copy to other FIFA officials, through which it reiterated that it had no authority in terms of security matters. The Appellant however placed itself at the complete disposal of FIFA to support and work together in order to raise awareness among fans regarding the importance of behaving respectfully and avoiding any discriminatory behaviour during the World Cup;
- Although it did not receive a response from FIFA, in a sign of its continued efforts to ensure that the World Cup could be held without any discriminatory incident, on 13 October 2022, the Appellant sent another letter to FIFA in which it stated that: (i) it once again placed itself at FIFA's disposal to take the necessary actions to ensure that the World Cup and, in particular, the matches in which the Mexican team would participate, could take place without any incidents, and (ii) it informed FIFA about the prevention measures undertaken to raise awareness among Mexican fans attending the World Cup;
- FIFA, in response to correspondence submitted by the FMF, welcomed these actions and informed that it was working closely with the host country on a number of projects to make this World Cup a highly inclusive experience. This, without requesting the Appellant to take any further action.

25. It is therefore incomprehensible that FIFA, on the one hand, praises the measures implemented by the Appellant and, on the other hand, severely sanctions it.

ii. On FIFA's responsibility

26. Keeping in mind that FIFA was responsible for the organisation of the event, and was therefore in a position to activate the necessary anti-discrimination protocols and security measures, the Appellant is certain that if FIFA had reacted in a timely manner to the behaviour that took place during Match 1 – *for example, by activating the three-step procedure and making a stadium*

announcement to warn the fans that if they behaved in a discriminatory manner they would be removed from the stadium, or by removing the 200 fans who engaged in such behaviour – that would clearly have served as a deterrent, which would likely have resulted in no discriminatory shouting at all in Match 2.

27. In fact, had the Appellant been in charge of organising the matches, these fans would have been immediately removed from the stadium, identified, issued with a record, and sanctioned with a stadium ban for other matches organised by the FMF. This, in accordance with the Appellant's measures for the prevention and eradication of discriminatory behaviour.
28. In addition, the Appellant points out that FIFA could identify those attending the stadium through the "Hayya card" and therefore had the necessary tools to identify the 200 fans who behaved in a discriminatory manner and to sanction them appropriately to prevent this from happening again.
29. In sum, the Appeal Committee shall take into account the following elements:
 - the Appellant is fully committed to preventing and eradicating any discriminatory behaviour in football;
 - in the matches organised by the Appellant, various campaigns, actions and measures have been implemented to prevent such behaviour, including the removal of fans from the stadium, a measure that FIFA evidently did not take;
 - the Appellant was not in charge of organising the matches;
 - the Appellant contacted FIFA to put itself at its disposal and, although there was no response from FIFA, the Appellant did everything within its power to raise awareness among the fans attending the World Cup;
 - the Court of Arbitration for Sport (**CAS**) already pointed out that a possible sanction against an association for being held liable for the behaviour of its fans shall take into consideration the actions and measures implemented by that association. This, regardless of their effectiveness.

iii. On the qualification of the Appellant as a reoffender

30. The assessment made by the first instance is incorrect since the matches to which it refers to consider the Appellant a reoffender were resolved by means of a settlement agreement entered into by the FMF and FIFA, part of which was subsequently formalised in the award issued by the CAS on 4 November 2022.
31. Given that the Appellant and FIFA entered into said agreement, it is clear that the condition set out in art. 25 of the 2019 FDC (i.e. that behaviour of the same nature and severity continued after notification of a previous decision) is not met to consider the FMF as a reoffender, since there was no final and binding decision concerning those matches.

b. On the possible application of art. 15 FDC, 2023 edition

32. FIFA recently published the 2023 edition of the FDC (**2023 FDC**). One of the amendments is the inclusion of a new paragraph to the article related to discrimination and which establishes that *"the competent judicial body may deviate from the above minimum sanctions if the association and/or club concerned commits to developing, in conjunction with FIFA, a comprehensive plan to ensure action against discrimination and to prevent repeated incidents"*.
33. In relation to the matter at hand, it should be noted that the Appellant has been working together with FIFA for several years to try to prevent discriminatory behaviour by Mexican fans and, as such, already complies with the three focus listed in art. 15 of the 2023 FDC. The provisions of said article are therefore perfectly adapted to the circumstances of the proceedings at hand, and should be applied accordingly.
34. Although the incidents occurred prior to the entry into force of the 2023 FDC, said edition should still apply to the case at stake according to the general principle of *lex mitior*.
35. In the alternative and unlikely event the Appeal Committee decides otherwise, it should take into consideration that art. 13 par. 2 b) of the 2019 FDC establishes the possibility of not imposing a sanction.

c. On the proportionality of the sanction

36. Keeping in mind that, as previously developed, the Appellant may not qualify as a reoffender, it is clear that the sanction imposed is clearly disproportionate, especially when considering that (i) it did not adequately assess all the measures implemented by the Appellant and (ii) it was FIFA's responsibility to organise the event and that FIFA failed to activate the anti-discrimination protocols, make a stadium announcement, implement security measures, such as the removal of the fans who committed such actions, and, thus, prevent the recurrence of this behaviour. Such circumstance was in fact taken into account by the Appeal Committee as a mitigating factor in a previous case.
37. Notwithstanding the above, the Appeal Committee should acknowledge that these were isolated incidents since the chants were carried out on two isolated occasions, which lasted only a few seconds and were committed by a very small number of people – such circumstance having also been taken into consideration by the first instance in two decisions -.
38. Finally, the imposition of greater economic and/or sporting sanctions does not contribute to – nor does it allow the Appellant to – achieve its intended objective. Imposing ever greater fines will only result in the Appellant having fewer resources to continue implementing all the measures aimed at preventing and eradicating discrimination which, as can be seen from the records held by FIFA's disciplinary bodies, are proving to be successful and, in many cases, mean that discriminatory chanting has completely stopped or, in some cases, are only being chanted by a tiny number of fans in complete isolation.

d. Conclusion and prayer for request

39. In sum, the Appeal Committee shall take into account the following elements:

- The Appellant was not responsible for the organisation of the World Cup and, therefore, had no control in matters of security, stadium announcement and possible implementation of protocols, amongst others;
- Given that FIFA would be responsible for the event, the Appellant approached FIFA to make itself fully available to work together and raise awareness among the fans to prevent them from engaging in discriminatory behaviour;
- Despite the fact that FIFA did not respond in the first instance, the Appellant took various actions on its own account in order to achieve this goal, which were communicated to FIFA and, once again, the Appellant placed itself at FIFA's disposal to take whatever action FIFA deemed necessary;
- FIFA responded by praising the Appellant's actions, mentioning that it was working hand in hand with the host country to make this event highly inclusive, thus implying that it had everything under control;
- The Appellant cannot be considered a reoffender in both matches;
- The Appeal Committee has the power to impose or not impose a sanction on the Appellant, based on an assessment of the circumstances of the case;
- The Appellant did everything in its power to prevent such incidents;
- For its part, FIFA failed to apply the anti-discrimination protocols, make the stadium announcement and implement security measures to remove the fans who engaged in such behaviour in order to serve as a deterrent so that it would not recur in subsequent matches;
- The incidents should be considered as isolated events, as they were committed by 0.5% and 1.1% of the total number of people attending the matches in question, and that they did not put the match at risk at any time and only lasted for a few seconds;
- The Appellant has invested significant economic and human resources to implement campaigns, actions and measures to raise awareness among fans, and it is one of the associations that has invested the most in this area;
- The Appellant currently complies with the plan described in art. 15 par. 3 of the 2023 FDC.

40. Based on the above, the Appellant requests the sanctions imposed on it to be annulled.

III. CONSIDERATIONS OF THE APPEAL COMMITTEE

41. In view of the circumstances of the present matter, the Committee first decided to address some key procedural aspect, including its competence to hear the present appeal and the admissibility of the said appeal, before entering into the substance of the case at stake.

A. Competence of the FIFA Appeal Committee

42. First, the Committee recalled that the procedural aspects of the matter at stake were governed by the 2023 FDC, in particular considering that (i) the 2023 FDC entered into force on 1 February 2023 and (ii) the present appeal was lodged by the Appellant on 8 February 2023.

43. In this context, the Committee pointed out that the first instance found the Appellant liable for the discriminatory behaviour of its supporters (art. 13 par. 2 of the 2019 FDC). As a result, the Appellant was ordered to play one match without spectators – such sanction being suspended for a probationary period of two years – and to pay a fine to the amount of CHF 100,000.

44. In light of the above, the Committee considered that, in accordance with art. 60 in conjunction with art. 61 of the 2023 FDC, it was competent to hear the appeal lodged by the Appellant against the decision rendered by the Disciplinary Committee.

45. This having been established, the Committee acknowledged that:

- the grounds of the Appealed Decision were notified on 7 February 2023;
- the Appellant communicated its intention to appeal on 8 February 2023;
- after a deadline extension had been granted to it, the Appellant submitted its appeal brief and the proof of payment for the appeal fee on 20 February 2023; and
- FIFA received the appeal fee.

46. In view of this, the Committee held that the requirements of art. 60 pars. 3, 4 and 6 of the 2023 FDC were met, and therefore declared the present appeal admissible.

B. Applicable law

47. The above being determined, the Committee next considered that the merits of the present appeal should be analysed in light of the provisions of the 2019 edition of the FDC, the former being the edition which was in force at the time of the pertinent events – *i.e.* when the Matches were played. As a matter of fact, the 2023 FDC entered into force on 1 February 2023, *i.e.* after the incidents subject to the present appeal took place.

48. In this respect, the Committee gave particular attention to art. 13 of the 2019 FDC, this without prejudice that other rules may also be at stake.

49. Indeed, said article constitutes the relevant provision to assess the present issue as it deals with the liability of associations (or clubs) for possible discriminatory behaviour of their own supporters, while defining such behaviour. This provision reads as follows:

1.

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

2.

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

- a) *For a first offence, playing a match with a limited number of spectators and a fine of at least CHF 20,000 shall be imposed on the association or club concerned;*
- b) *For reoffenders or if the circumstances of the case require it, disciplinary measures such as the implementation of a prevention plan, a fine, a points deduction, playing one or more matches without spectators, a ban on playing in a particular stadium, the forfeiting of a match, expulsion from a competition or relegation to a lower division may be imposed on the association or club concerned.*

50. Against such background, the Committee wished to point out that said provision contains a strict liability rule according to which the association (or club) is responsible for the misconduct of its supporters even if the association (or club) concerned is not at fault (para. 2 of said article). Consequently, the FIFA Judicial Bodies are entitled to sanction the association (or club) to which the supporter(s) belong(s), in order to prevent misconduct by supporters from occurring and going unpunished.

51. Notwithstanding the above, and for the sake of completeness, the Committee observed that the principle of art. 13 of the 2019 FDC – which is of particular relevance in assessing the current matter – was transposed in almost identical terms under art. 15 of the 2023 FDC¹.

52. In particular, the Committee emphasised that:

- while the 2019 FDC referred to the same concept using two different words: “*Recidivism*” (cf. art. 13 of the 2019 FDC) and “*Reoffence*” (cf. art. 25 of the 2019 FDC), the 2023 FDC – for

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

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

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

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

the sake of consistency - solely refers to the notion of "recidivism". As such, the term "recidivists" replaced the term "reoffender" under art. 15 par. 2 of the 2023 FDC (formerly art. 13 par. 2 of the 2019 FDC)²;

- a new paragraph was included within art. 15 of the 2023 FDC, which reads as follows:

3.

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

- a) Educational activities (including a communication campaign aimed at supporters and the general public). The effectiveness of the campaign will be reviewed regularly.*
- b) Stadium security and dialogue measures (including a policy on how offenders will be identified and dealt with through football sanctions, a policy on escalation to state (criminal) legal authorities, and a dialogue with supporters and influencers on how to create change).*
- c) Partnerships (including working with supporters, NGOs, experts and stakeholders to advise on and support the action plan and ensure effective and ongoing implementation).*

53. In other words, art. 15 par. 3 of the 2023 FDC now provides more discretion for FIFA's Judicial Bodies in specific situations related to discriminatory incidents, specifically, where the association (or club) concerned commits to developing a comprehensive action plan against discrimination (focused on three key areas). In such cases, the FIFA Judicial Bodies may decide to impose sanctions below the minimum ones foreseen under art. 15 par. 2 of the 2023 FDC.

54. As a result, and in application of the *lex mitior* principle enshrined in art. 4 par. 2 of the 2023 FDC, the Appeal Committee decided to apply the latest edition of the code, namely the 2023 edition, to the procedural aspects and merits of the present case.

55. This being established, the Committee subsequently turned its attention to the merits of the present case.

C. Merits of the case

56. On reading the Appealed Decision as well as the Appellant's appeal brief, the Committee observed that the present case relates to the discriminatory behaviour of Mexican supporters during two matches of the FIFA World Cup Qatar 2022™.

57. In this context, the Committee took note that the Disciplinary Committee was comfortably satisfied that discriminatory incidents (namely discriminatory chants) occurred during the Matches and were committed "by supporters of the Mexican team".

² Cf. also [FIFA Disciplinary Code – Overview of the changes](#) (page 5)

58. With regard to the meaning of the chant, the first instance *“decided to endorse the observations as stipulated by the ADMOS Reports 1 and 2, in which it was deemed that i) the word “Maricón” - which can be translated into English as “faggot” – is a “discriminatory reference to gay men” (...), and; ii) the word “Puto” refers to a male sex worker and is used as a “homophobic slur equivalent to the English “faggot” and is discriminatory for LGBTQI+ people”, regardless of the actual sexual orientation of the person(s) to whom it is directed”*.
59. In view of the above, the Disciplinary Committee considered that *“Mexican supporters had performed discriminatory chant(s) in both Match 1 and Match 2 in violation of art. 13 (1) FDC, thus incurring the liability of the Respondent under the aforementioned principle of strict liability contained in art. 13 (2) FDC”*.
60. When determining the sanction(s) to be imposed, the first instance stressed various mitigating³ and aggravating⁴ circumstances before considering that it was entitled to apply the measures foreseen under art. 13 par. 2 b) of the 2019 FDC⁵.
61. For those reasons, the first instance *“considered that a fine and one match to be played without spectators appeared the most appropriate measures to be imposed upon the Respondent in response to the discriminatory behaviours of its spectators”*⁶. It however found it *“appropriate and justified that the abovementioned match without spectators would be suspended for a probationary period in accordance with art. 26 FDC”*⁷. This, *“in view of the particulars and circumstances of the case at hand, specifically the fact that despite the relevant behaviours being repeated and involving numerous spectators, the Respondent could be observed to have undertaken significant efforts and have engaged with FIFA proactively ahead of the tournament (FIFA World Cup Qatar 2022™) with the aim of preventing its supporters from engaging in discriminatory conduct(s)”*⁸.
62. As to the fine, the first instance considered that it should amount to CHF 100,000. In fact, it *“reasoned that the fine had to be significant both in view of the level of publicity of the incidents at stake – given that they took place within the context of the FIFA World Cup Qatar 2022™ - and the fact that the ‘other sanction’ to be imposed upon the Respondent i.e. the match to be played without spectators, was to be suspended for a probationary period - the high fine therefore mitigating and balancing the reduced impact of the suspended sanction upon the Respondent”*⁹.
63. Having acknowledged the main elements contained in the Appealed Decision, the Committee subsequently acknowledged that the Appellant does not dispute (i) the occurrence of the

³ Namely *“the efforts of the Respondent by way of the various preventative measures and initiatives it had undertaken towards fighting discrimination”* (cf. para. 83 of the Appealed Decision).

⁴ Including *“the seriousness of the incidents at hand, particularly considering that they occurred during the FIFA World Cup™- the former being, as already mentioned, FIFA’s most prominent and watched sporting event”* (cf. para. 83 of the Appealed Decision) or the fact that *the discriminatory behaviour(s) exhibited by the supporters of the Mexican representative team were repeated during the two matches at stake”* (cf. para. 83 of the Appealed Decision).

⁵ Specifically in view of the fact that *“that the circumstances of the case were intrinsically of a gravity of character serious enough”* (cf. para. 84 of the Appealed Decision); and, more importantly the fact that the Appellant qualified as a reoffender in so far that *“similar discriminatory behaviour(s) from Mexican supporters had previously occurred during others matches within the scope of the Preliminary Competition of the FIFA World Cup Qatar 2022™ played on 07 October 2021 and 10 October 2021”* (cf. para. 85 of the Appealed Decision).

⁶ Cf. para. 86 of the Appealed Decision.

⁷ Cf. para. 87 of the Appealed Decision.

⁸ Cf. para. 87 of the Appealed Decision.

⁹ Cf. para. 91 of the Appealed Decision.

reported incidents, (ii) their discriminatory nature, nor (iii) the fact that they were perpetrated by Mexican supporters. Indeed, the Appellant essentially considers that:

- it shall not be sanctioned given that (i) it was not responsible for the organisation of the World Cup and, therefore, had no control in matters of security, stadium announcement and possible implementation of protocols, amongst others, and (ii) it undertook various actions against discrimination;
- the sanctions imposed by the first instance are disproportionate given that (i) it erroneously qualified the Appellant as a reoffender, (ii) it failed to adequately assess all the measures implemented by the Appellant, (iii) it was FIFA's responsibility to organise the event and (iv) the chants were isolated events;
- in any case, the aforementioned actions undertaken by the Appellant to fight discrimination fall within the scope of art. 15 par. 3 of the 2023 FDC, and, as such, should justify the imposition of lighter sanctions on the Appellant (if any).

64. In view of the above, the Committee considered that the following questions were key in deciding the present appeal:

- a) *Could the Appellant be exonerated from its responsibility in relation to the incidents at stake?*
- b) *Are the sanctions imposed by the first instance proportionate?*¹⁰

a. Could the Appellant be exonerated from its responsibility in relation to the incidents at stake?

65. As a preliminary remark, the Committee recalled that the principle behind art. 13 par. 2 of the 2019 FDC and art. 15 par. 2 of the 2023 FDC is that of strict liability, which is a fundamental element of the current football regulatory framework¹¹, but also one of the few legal tools available to deter fans from engaging in improper conduct and to ensure that such conduct does not go unpunished¹².

66. In this context, the Committee wished to emphasise that the wording of said article is clear and leaves no room for interpretation: "[i]f one or more of an association's or club's supporters engage in the behaviour described in paragraph 1, the association or club responsible **will be subject** to the following disciplinary measures" (emphasis added)¹³.

67. The liability contemplated under said provision "*is direct (since it is incurred by the association as a legal person regardless of whether it, or its bodies, directly performed the acts in question), and strict (since the liability applies despite any care or diligence shown by the person in question)*"¹⁴.

¹⁰ In particular, the Committee deemed that, while analysing this question, it would also have to answer the following one: *Could the Appellant benefit from art. 15 par. 3 of the 2023 FDC?*

¹¹ CAS 2009/A/1944 Football Federation of Bosnia and Herzegovina (FFBH) v. FIFA; CAS 2002/A/423 PSV Eindhoven v. UEFA.

¹² CAS 2015/A/3874 Football Association of Albania v. FIFA & Football Association of Serbia.

¹³ In CAS 2022/A/8751 FENAFUTH v. FIFA, the Panel made it clear that the rule contained in art. 13 par. 2 of the 2019 FDC "*is conclusive and leaves no room for doubt: both associations and clubs are directly and strictly liable for the improper behaviour of their fans*" (free translation from Spanish).

¹⁴ CAS 2022/A/8751 *op. cit.* – free translation from Spanish

68. As emphasised by CAS, *"this system of liability has been uniformly praised in the case law, since it is based on this principle that FIFA is able to deal with cases of improper behaviour by spectators and impose indirect sanctions on them through their association (ex multis: CAS/2009/A/1944, par. 78). The intention behind this provision is not simply to sanction the association as such, but above all to ensure that the association assumes liability for the offences committed by its fans. Accordingly, the provision is of a highly preventative and dissuasive nature. It has been asserted that the punitive aspect of the sanction is therefore of secondary importance to the preventative and dissuasive role that sanctions must perform in the interest of internal order in football (see, for example, CAS/2002/A/423, expressly cited and followed in CAS 2013/A/3094)"*¹⁵.
69. Art. 15 of the 2023 FDC (formerly art. 13 of the 2019 FDC) therefore foresees two cumulative conditions for an association to be *"subject to (...) disciplinary measures"*:
- on the one hand, a discriminatory behaviour under the terms of art. 15 par. 1 of the 2023 FDC (formerly art. 13 par. 1 of the 2019 FDC), namely a behaviour that is offending *"the dignity or integrity of a country, a person or group of people through contemptuous, discriminatory or derogatory words or actions on account of race, skin colour, ethnicity, nationality, social origin, gender, disability, sexual orientation, language, religion, political or any other opinion, wealth, birth or any other status or any other reason"*¹⁶; and
 - on the other hand, a link between the perpetrators of such behavior and the association concerned.
70. In the case at stake, it is clear and uncontested (both before the first instance and during the present appeal proceedings) that:
- the chants performed during the Matches are discriminatory; and
 - they were performed by Mexican supporters, *i.e.* supporters of the representative team of the Appellant.
71. In other words, both cumulative requirements under which the Appellant may be subject to disciplinary measures under art. 15 par. 2 of the 2023 FDC (or previously of art. 13 par. 2 of the 2019 FDC) were met. As such, the Appeal Committee found that the first instance rightly applied the principle of strict liability towards the Appellant.
72. With respect to the arguments put forward by the Appellant (namely that (i) it did everything in its power to prevent the incidents in so far that it had invested significant economic and human resources to implement campaigns, actions and measures to raise awareness among fans, and (ii) FIFA was in charge of the organisation of the Matches and should therefore be the one responsible for the incidents), the Committee considered them as irrelevant in view of the principle of strict liability contained in the aforementioned provision.

¹⁵ CAS 2022/A/8751 *op. cit.* – free translation from Spanish.

¹⁶ As a note, the wording of said provision has been slightly amended under the 2023 FDC, and previously read as follows under the 2019 FDC: *"the dignity or integrity of a country, a person or group of people through contemptuous, discriminatory or derogatory words or actions (by any means whatsoever) on account of race, skin colour, ethnic, national or social origin, gender, disability, sexual orientation, language, religion, political opinion, wealth, birth or any other status or any other reason"*.

73. As a matter of fact, the principle of strict liability is independent from the own behaviour of the Appellant itself and/or from any external organisational aspect. In other words, the Appeal Committee found that :

- the Appellant is, regardless of its own action(s), to be held liable for the behaviour of its supporters from the moment they engage in a discriminatory incident as it was the case during the Matches 1 and 2. In this respect, the Appeal Committee noted that CAS had already clarified that:
 - i. *"whilst the Appellant may not have intended to commit any offence and that it acted admirably and responsibly in providing guidelines to its travelling supporters, these matters are not relevant to nor are they exculpatory of liability"*¹⁷;
 - ii. *"[a]ny awareness campaign, with respect to any objective, is measured in results, not in actions, and clearly the Appellant's strategies are not achieving the desired end. In this sense, the Appellant cannot argue unfairness or disproportionality of the sanction, **let alone exonerate itself from its responsibility** by saying that it "has taken measures and actions" as the punishable act is not the implementation of strategies, but the regrettable acts of discrimination that have failed to cease"* (emphasis added)¹⁸;
- the fact that the Matches were not organised by the Appellant (as a result of which it had no control in matters of security, stadium announcement and possible implementation of protocols, amongst others) is irrelevant when applying the principle of strict liability.

74. In sum, the Committee was of the opinion that, at best, those elements could constitute potential mitigating circumstances to be analysed when determining the disciplinary measures to be imposed on the Appellant. However, they could by no means constitute factors that would exonerate the Appellant from any responsibility towards the discriminatory behaviour of its supporters.

b. Are the sanctions imposed by the first instance proportionate?

75. As a preliminary remark, the Committee observed that the argumentation put forward by the Appellant in this regard revolves around three elements:

- the first instance erroneously qualified the Appellant as a reoffender;
- the first instance failed to take into account various mitigating circumstances, particularly (i) the various measures implemented by the Appellant, (ii) the fact that the tournament was organised by FIFA, the latter having failed to correctly implement the various anti-discrimination protocols and (iii) the incidents were isolated events; and
- the Appellant complies with the requirements of art. 15.3 of the 2023 FDC and, as such, shall benefit from lighter sanctions.

76. As such, the Committee went on to analyse those arguments separately.

¹⁷ CAS 2017/A/5306 Guangzhou Evergrande Taobao FC v. AFC.

¹⁸ CAS 2022/A/9049 FENAFUTH v. FIFA (free translation from Spanish).

i. Does the Appellant qualify as a reoffender/recidivist?

77. As a starting point, the Committee recalled that the Appealed Decision was rendered while the 2019 edition of the FDC was in force. As such, the answer to the above question would, in principle, have to be made on the basis of the applicable provisions of the 2019 FDC.
78. However, for the sake of consistency and as explained below, the Committee decided to refer to the 2023 FDC in the following developments. Indeed, the Committee recalled that (i) art. 26 of the 2023 FDC – defining the notion of “*recidivism*” – was intrinsically identical to art. 25 of the 2019 FDC (cf. para. 52 *supra*), and (ii) the terms “*recidivist*” (used under art. 15 par. 2 b) of the 2023 FDC) and “*reoffender*” (used under art. 13 par. 2 b) of the 2019 FDC) both refer to the same notion.
79. This being established, the Committee acknowledged that, according to the Appellant, the first instance incorrectly considered that it was a recidivist given that the disciplinary proceedings related to the matches referred to for such qualification have been resolved by means of a settlement agreement concluded with FIFA (**the Settlement Agreement**), part of which was subsequently formalised in the award issued by the CAS on 4 November 2022 (**the Consent Award**). As such, the Appellant submitted that since there is no “*final and binding*” decision, the conditions set out under art. 26 of the 2023 FDC (formerly art. 25 of the 2019 FDC) shall not apply.
80. Against such background, the Committee wished to recall that art. 26 of the 2023 FDC reads as follows: “*Recidivism occurs if another offence of a similar nature and gravity is committed **after notification of the previous decision** within (...) three years of the previous offence in all other cases*”. As such, for the notion of recidivism to apply, three cumulative conditions have to be met:
- The new disciplinary offence must be of a similar nature and gravity than the previous offence¹⁹;
 - Said offence must be committed after notification of the decision sanctioning the previous offence; and
 - Not more than three years have elapsed between the new disciplinary offence and the previous one.
81. *In casu*, the Appellant is not contesting the first and the last of the abovementioned conditions (namely the similar nature and gravity of the offences or the time elapsed between them), but solely considers that there can be no “*final and binding*” decision on the previous offense given that the relevant decisions passed by the FIFA Disciplinary Committee and the FIFA Appeal Committee were subsequently resolved by a settlement agreement in the course of the appeal proceedings before CAS.
82. In those circumstances, the Committee wished to clarify that, contrary to the Appellant’s allegations, the aforementioned provision does not refer to a “*final and binding*” decision, but rather to a “*previous decision*”.

¹⁹ See also CAS 2012/A/2729 Walter Mazzarri v. UEFA.

83. By way of consequence, the Committee deemed that it had to analyse as to whether the Settlement Agreement (ratified by CAS) could be seen as voiding the effects of the decisions rendered by the FIFA Disciplinary and Appeal Committees when applying the concept of recidivism.

84. In reply thereto, the Committee was eager to underline the following elements:

- First of all, accepting such an argument would simply negate the effects of the Settlement Agreement, and, as such, would be in complete contradiction with the preventive objective of said agreement;
- The Settlement Agreement was concluded between FIFA and the Appellant on 27 May 2023 (*i.e.* several months before the Matches were played);
- The Settlement Agreement still contained disciplinary measures to be imposed on the Appellant, namely:
 - One match to be played behind closed doors;
 - Two matches to be played with a limited number of spectators;
 - A fine of CHF 40,000;
 - A warning;
 - The obligation to implement a coordinated prevention plan;
- Both FIFA and the Appellant agreed that those measures *"shall replace any sanctions imposed by the FIFA disciplinary bodies in the previous instance proceedings"* (free translation from Spanish).

85. More importantly, the Committee stressed that the Settlement Agreement was ratified by CAS through the Consent Award, such award undoubtedly constituting a decision in the sense of art. 26 of the 2023 FDC (as well as under that of art. 25 of the 2019 FDC). In this respect, and regardless of the date on which the decisions having led to the signature of the Settlement Agreement had been notified, the Consent Award (ratifying the Settlement Agreement) had been notified to the Appellant on 4 November 2022, *i.e.* approximately 3 weeks before the Matches had been played.

86. On that basis, the Committee was comfortably satisfied that the three cumulative conditions foreseen under art. 26 of the 2023 FDC (cf. para. 80 *supra*) had been met – with particular consideration being given to the fact that the new offence(s) had been committed *"after notification of the previous decision"*, namely after notification of the Consent Award ratifying the Settlement Agreement concluded between the Appellant and FIFA –.

87. As a result, the Committee concurred with the first instance in that the Appellant should undoubtedly be regarded as a recidivist under art. 26 of the 2023 FDC (or alternatively as a reoffender under art. 25 of the 2019 FDC), thus justifying the application of harsher sanctions as foreseen under art. 15 par. 2 b) of the 2023 FDC (as well as under art. 13 par. 2 b) of the 2019 FDC.

ii. Is the sanction proportionate in view of the various circumstances brought forward by the Appellant?

a. The Appealed Decision and the Appellant's arguments

88. To begin with, the Committee noticed that, upon determining the sanction to be imposed on the Appellant, the first instance deemed that it could apply art. 13 par. 2 b) of the 2019 FDC to deviate from the minimum sanction(s) foreseen under art. 13 par. 2 a) of the 2019 FDC.
89. In order to reach such conclusion, the first instance considered (i) that *"the circumstances of the case were intrinsically of a gravity of character serious enough that it was entitled to impose harsher sanctions pursuant to art. 13 (2) (b) FDC"*²⁰, and (ii) that – as previously developed – the Appellant qualified as a "reoffender"²¹. Amongst the circumstances taken into account, the first instance *"held that it could not ignore the seriousness of the incidents at hand, particularly considering that they occurred during the FIFA World Cup™- the former being, as already mentioned, FIFA's most prominent and watched sporting event"*²², while regretting that *"the discriminatory behaviour(s) exhibited by the supporters of the Mexican representative team were repeated during the two matches at stake"*²³. Notwithstanding this, the first instance also considered as mitigating factor (and praised) *"the efforts of the Respondent by way of the various preventative measures and initiatives it had undertaken towards fighting discrimination"*²⁴.
90. On those grounds, the first instance decided that *"a fine together with one match to be played without spectators (under probation (...)), were appropriate measures with which to sanction the [Appellant] for the discriminatory behaviour of its supporters"*²⁵. In particular, it *"determined that a fine amounting to CHF 100,000 was to be deemed as appropriate and proportionate to the circumstances of the case"*, considering that *"fine had to be significant both in view of the level of publicity of the incidents at stake – given that they took place within the context of the FIFA World Cup Qatar 2022™ - and the fact that the 'other sanction' to be imposed upon the [Appellant] i.e. the match to be played without spectators, was to be suspended for a probationary period - the high fine therefore mitigating and balancing the reduced impact of the suspended sanction upon the [Appellant]"*²⁶.
91. With those elements in mind, the Committee subsequently acknowledged that the Appellant however considers that such sanction is disproportionate given that (i) it may not qualify as a recidivist – *such argument having however already been rebutted in the previous section* –, (ii) it was FIFA's responsibility to organise the event and to prevent any discriminatory incident from happening, and (iii) the incidents were isolated since the chants were carried out on two occasions only. Lastly, the Appellant also points out that the first instance did not adequately assess all the measures implemented by the Appellant, particularly considering that it had invested significant economic and human resources to implement campaigns, actions and measures to raise awareness among fans against discrimination. In other words, the Appellant

²⁰ Cf. para. 84 of the Appealed Decision.

²¹ Cf. para. 85 of the Appealed Decision.

²² Cf. para. 83 of the Appealed Decision.

²³ Cf. para. 83 of the Appealed Decision.

²⁴ Cf. para. 83 of the Appealed Decision.

²⁵ Cf. para. 89 of the Appealed Decision.

²⁶ Cf. para. 91 of the Appealed Decision.

is convinced that it already complies with the plan described in art. 15 par. 3 of the 2023 FDC and shall therefore benefit from it.

b. Analysis of the sanction imposed by the first instance

92. First of all, the Committee recalled that according to CAS, a decision-making body fixing the level of pecuniary sanctions should, amongst others, take into consideration the following elements: (a) the nature of the offence; (b) the seriousness of the loss or damage caused; (c) the level of culpability; (d) the offender's previous and subsequent conduct in terms of rectifying and/or preventing similar situations; (f) the applicable case law and (g) other relevant circumstances.
93. As such, reference shall be made to *"CAS jurisprudence (CAS 2014/A/3665, 3666 & 3667) [which] has already explicitly acknowledged that the mere exercise of discretion by a body entrusted with similar powers does not, in and of itself, run afoul predictability. What matters is whether the decision-making body has properly used (and, in this case, the principle of predictability has been observed), or abused (and, in this case, the principle of predictability has been violated) its discretion"*²⁷.
94. In addition, disciplinary measures serve different purposes: *"On the one hand, a sanction shall help to undo harm that has been inflicted by the offender. On the other hand and more importantly, a disciplinary sanction shall prevent re-offending by the offender. Consequently, harsher sanctions are warranted in case of serious infringements, structural non-compliance with the various obligations and in case of recidivism"*²⁸.
95. Therefore, as far as the proportionality of the sanction is concerned, it is the responsibility of the FIFA Disciplinary Committee – and then that of the Appeal Committee – to determine the type and extent of the disciplinary measures to be imposed (i) in accordance with the objective and subjective elements of the offence, taking into account both aggravating and mitigating circumstances and (ii) taking into account the circumstances and the degree of the offender's guilt and any other relevant circumstances.
96. In this context, while focusing first on the measures implemented by the Appellant, the Committee wished to recall that CAS already pointed out that *"Any awareness campaign, with respect to any objective, is measured in results, not in actions, and clearly the Appellant's strategies are not achieving the desired end. In this sense, the Appellant cannot argue unfairness or disproportionality of the sanction, let alone exonerate itself from its responsibility by saying that it "has taken measures and actions" as the punishable act is not the implementation of strategies, but the regrettable acts of discrimination that have failed to cease"*²⁹.
97. Notwithstanding the above, the Committee stressed that the various measures implemented by the Appellant were – contrary to the latter's allegations – taken into account by the first instance³⁰. The fact that the Appealed Decision may not contain a detailed reference to every

²⁷ CAS 2019/A/6345 Raja Casablanca v. FIFA.

²⁸ CAS 2017/A/5299 Olympique Lyonnais v. UEFA.

²⁹ CAS 2022/A/9049 op. cit

³⁰ See for instance para. 83 of the Appealed Decision: *"(...) whilst acknowledging and praising, as previously mentioned, the efforts of the Respondent by way of the various preventative measures and initiatives it had undertaken towards fighting discrimination, the Committee held that (...)"*

single measure undertaken by the Appellant was, in the Committee's view, irrelevant, particularly considering that explicit reference was made to their impact on the sanction imposed³¹.

98. As such, it appeared to be clear that the disciplinary measure initially envisaged for the incidents at stake (namely one match to be played without spectators) had been mitigated, among others, by the various measures implemented by the Appellant so that said measure had been suspended for a probationary period of two (2) years. In other words, the first instance already departed from the "standard" sanction(s) usually imposed on recidivists of discriminatory offences in so far that it found it appropriate to refrain from ordering the Appellant to play a match without spectators, the "default" sanction for recidivists.
99. In view of the foregoing, and although the Matches were not under the (organisational) control of the Appellant (as rightly advanced by the latter), the Committee considered that the sanctions imposed on the latter – *namely a fine to the amount of CHF 100,000 and playing its next (A level) FIFA competition match without spectators* – are, as matter of principle, entirely appropriate and proportionate to the offence committed for the following reasons:
- The fact that the chants only involved a limited number of spectators and shall be considered as isolated events is of limited relevance as, in view of FIFA's zero tolerance policy towards discrimination, any discriminatory behaviour shall be strongly condemned and sanctioned;
 - This is even more the case when such incidents take place during FIFA's flagship event, *i.e.* FIFA World Cup™. Indeed, and as emphasised by the first instance, the incidents at stake "*occurred during the FIFA World Cup™- the former being (...) FIFA's most prominent and watched sporting event*"³²;
 - The Appellant is, as previously demonstrated, a recidivist with respect to discriminatory offences, as a result of which the sanctions listed under art. 13 par. 2 b) of the 2019 FDC/ art. 15 par. 2 b) of the 2023 FDC may be applied;
 - The Appellant's efforts to combat discrimination were duly acknowledged and taken into account by the first instance, so that a "milder" sanction, *i.e.* a match behind closed doors under probation, was ordered, whereas in similar cases stricter sporting sanctions are imposed by FIFA's Judicial Bodies³³;

³¹ Cf. para. 87 of the Appealed Decision: "*With such considerations in mind and after having reviewed the entirety of the case file before it, the Committee was settled in its opinion that, whilst it was entitled to apply art. 13 (2) (b) FDC, it was also appropriate and justified that the abovementioned match without spectators would be suspended for a probationary period in accordance with art. 26 FDC. **Such conclusion was reached in view of the particulars and circumstances of the case at hand, specifically the fact that despite the relevant behaviours being repeated and involving numerous spectators, the Respondent could be observed to have undertaken significant efforts and have engaged with FIFA proactively ahead of the tournament (FIFA World Cup Qatar 2022™) with the aim of preventing its supporters from engaging in discriminatory conduct(s)***" (emphasis added)

³² Cf. para. 83 of the Appealed Decision.

³³ See for instance:

- Decision of the Disciplinary Committee dated 11 February 2022 (ref. FDD-10167): the Honduran Football Association was sanctioned with a fine of CHF 70,000 and one match to be played without spectators. Said decision was subsequently confirmed by both the FIFA Appeal Committee (ref. FDD-10525) and the Court of Arbitration for Sport.
- Decision of the Appeal Committee dated 21 February 2022 (ref. FDD-10068): the Chilean Football Association was sanctioned with a fine of CHF 60,000 along with one match to be played with a limited number of spectators (partial closure of the stands by 25%) and a match without spectators (suspended for on a probationary period of two (2) years)

- The fact that the sporting sanction was mitigated by a suspension for a probationary period justified the imposition of a significant fine.

100. Based on the above, the Committee saw, at first sight, no reason to deviate from the approach of the first instance by further lowering (or annulling) the sporting sanction imposed on the Appellant, so that the deterrent effect would eventually disappear. In fact, the Committee was satisfied that, as previously emphasised, various (mitigating) circumstances were taken into account to already impose a sanction lower than those typically imposed on recidivists in relation to discriminatory incidents.

101. In addition, the Committee deemed that there would, in principle, also be no element or ground that could lead to a reduction of the fine imposed in the Appealed Decision. In particular, the Committee recalled that the minimum fine to be imposed for any discriminatory incident amounts to CHF 20,000 in case of a first offence (cf. art. 13 par. 2 a) of the 2019 FDC / art. 15 par. 2 a) of the 2023 FDC). In this respect, the Committee submitted that the Appellant's disciplinary record (the latter qualifying as recidivist), combined with (i) *"the level of publicity of the incidents at stake – given that they took place within the context of the FIFA World Cup Qatar 2022™"*³⁴ and (ii) the fact that the sporting sanction (i.e. the match to be played without spectators) was "lowered" (by being suspended for a probationary period – cf. above developments), justified the imposition of a high fine which would, as rightly emphasised by the first instance, *"mitigat[e] and balance[e] the reduced impact of the suspended [sporting] sanction upon the Respondent"*.

102. With those considerations in mind, the Committee found that the sanctions imposed by the first instance did not appear to be disproportionate in view of the overall circumstances of the case at hand.

c. On the potential application of art. 15 par. 3 of the 2023 FDC

103. As previously noted, the Appellant pointed out that it had invested significant economic and human resources to implement campaigns, actions and measures to raise awareness among fans against discrimination and, as such, shall benefit from the new provision contained in art. 15 par. 3 of the 2023 FDC.

104. For the sake of completeness, the Committee acknowledged that, in accordance with said provision (which, as previously emphasised, was included in the 2023 edition of the FDC and may be applied to the case at hand in line with the principle of *lex mitior*), the *"competent judicial body may deviate from the above minimum sanctions if the association and/or club concerned commits to developing, in conjunction with FIFA, a comprehensive plan to ensure action against discrimination and to prevent repeated incidents"*, such plan having to be approved by FIFA shall include at least three focus – *namely (i) educational activities, (ii) stadium security and dialogue measures and (iii) partnerships* –.

105. Against such background, after a thorough examination of the arguments and explanation brought forward by the Appellant during the Hearing and following on a careful analysis of the

³⁴ Cf. para. 91 of the Appealed Decision.

overall circumstances of the case at hand, the Committee deemed that it could not ignore the various measures already implemented (and still being implemented) by the Appellant. As a matter of fact, and as already pointed out in previous decisions rendered against the latter, the Committee *"recognised that the Appellant engaged in a proper way to try to prevent such incidents from happening and emphasised its appreciation towards these efforts"*³⁵.

106. Such efforts were also acknowledged by FIFA in the context of the Settlement Agreement, the Appellant being recognised as one of the member associations that has invested the most economic, human and material resources in the implementation of different measures and actions against discrimination, including (i) to eradicate the infamous discriminatory chants during matches and (ii) to raise awareness and sensitise Mexican fans with the aim of combating discriminatory conduct. In particular, the Committee observed that such measures and actions were seen by FIFA as having led to a progressive improvement in the behaviour of the Mexican fans. As such, the Committee reiterated its observations (made in a previous decision against the Appellant) that such efforts *"shall be praised and encouraged"*³⁶.
107. In addition to the above, the Committee was mindful that, through the Settlement Agreement, the Appellant already commended to continue (i) working towards the eradication of discriminatory chants and (ii) implementing awareness-raising measures and actions to combat such behaviour by fans and/or any other person linked to it. More specifically, the Committee carefully considered that in this specific context, the Appellant committed to implement – together with FIFA – a coordinated prevention plan aiming at preventing and combating discriminatory behaviour by Mexican fans and/or any person linked to the Appellant – the key focus areas of such coordinated plan undoubtedly being within the scope of art. 15 par. 3 of the 2023 FDC, *i.e.* educational activities, stadium security and dialogue measures as well as partnerships –.
108. In the light of this, the Committee was comfortably satisfied that, consistently with art. 15 par. 3 of the 2023 FDC, it was entitled to *"deviate from the (...) minimum sanctions"* listed under art. 15 par. 2 of the 2023 FDC (previously art. 13 par. 2 of the 2019 FDC)³⁷.
109. On that basis, the Committee decided to review the sporting sanction imposed on the Appellant, namely a match to be played without spectators, and to replace it by a match to be played with a limited number of spectators, such measure still being suspended for a probationary period of two (2) years.
110. Furthermore, and in order to take full account of all the circumstances of the present matter while keeping in mind that the present decision should, in the best extent possible, take into consideration the Appellant's commitment through the Settlement Agreement and, as such, continue building on this basis, the Committee deemed that part of the fine to be imposed shall be invested by the Appellant within the plan being developed in conjunction with FIFA as per the Settlement Agreement. In so doing, the Committee considered that the measure imposed

³⁵ Decision of the Appeal Committee passed on 11 November 2021 (ref. FDD-9144).

³⁶ Decision of the Appeal Committee passed on 11 December 2021 (ref. FDD-9538).

³⁷ For the sake of good order, the Committee recalled that, consistently with art. 15 par. 2 b) of the 2023 FDC, recidivists (of discriminatory incidents) shall be subject of *"disciplinary measures such as the implementation of a prevention plan, a fine, a points deduction, playing one or more matches without spectators, a ban on playing in a particular stadium, the forfeiting of a match, expulsion from a competition or relegation to a lower division may be imposed on the association or club concerned"*.

would ultimately serve at combatting the behaviour it is sanctioning, while limiting the (direct) financial impact on the Appellant.

111. As a result of the above, the Committee decided to partially amend the fine imposed by the first instance in that the Appellant shall be ordered to pay:

- A fine to the amount of CHF 50,000; and
- A further fine to the amount of CHF 50,000, such amount having to be invested – within six months of the notification of the present decision – towards the implementation and/or further development of a comprehensive plan to ensure action against discrimination and to prevent repeated incidents.

112. Finally and for the sake of good order, the Committee wanted to address once more its appreciation towards the Appellant's commitment and actions in fighting any type of discrimination. These efforts are strongly encouraged by the Committee and, as stated in present section, have been duly taken into account when deciding on the above measures.

D. Conclusion

113. Summarising the above developments, the Appellant is found responsible for the discriminatory behaviour of its supporters during the Match.

114. Nonetheless, the appeal lodged by the Appellant is partially upheld in so far that the following disciplinary measures are to be imposed on the Appellant:

- The Mexican Football Association is ordered to pay a fine to the amount of CHF 50,000.
- The Mexican Football Association is ordered to pay a further fine of CHF 50,000, such fine being suspended for a period of 6 (six) months.
- The Mexican Football Association is ordered to play either its next (A level) FIFA competition match or its next (A level) Tier 1 International Match (international friendly match), whichever may occur first, with a limited number of spectators, such sanction being suspended for a probationary period of two (2) years.

E. Costs

115. The Committee decided, based on art. 49 par. 1 of the 2023 FDC, that the costs and expenses of the present proceedings amounting to CHF 1,000 shall be borne by the Appellant.

116. In this sense, since the Appellant had already paid the appeal fee of CHF 1,000, the Committee determined that the costs and expenses of the present appeal proceedings were to be set-off against such amount.

IV. DECISION

1. The appeal lodged by the Mexican Football Association against the decision of the FIFA Disciplinary Committee notified on 13 January 2023 is partially upheld. Said decision is amended as follows:

- I. *The Mexican Football Association is found responsible for the discriminatory behaviour of its supporters in connection with the matches Mexico vs. Poland and Saudi Arabia vs. Mexico, played on 22 and 30 November 2022 respectively, in the scope of the FIFA World Cup Qatar 2022™.*
- II. *The following disciplinary measures are imposed on the Mexican Football Association, subject to point III. below:*
 - a. *The Mexican Football Association is ordered to pay a fine to the amount of CHF 50,000.*
 - b. *The Mexican Football Association is ordered to pay a further fine of CHF 50,000, such fine being suspended for a period of 6 (six) months.*
 - c. *The Mexican Football Association is ordered to play either its next (A level) FIFA competition match or its next (A level) Tier 1 International Match (international friendly match), whichever may occur first, with a limited number of spectators, such sanction being suspended for a probationary period of two (2) years. During the match subject to the above sanction, the Mexican Football Association is ordered to close at least 20% (twenty percent) of the available seats, such closure being required to be implemented primarily within the stands behind the goals. In addition, the Mexican Football Association shall submit to FIFA the proposed seating plan at the latest 10 days prior to said match.*
- III. *In accordance with art. 7 par. 2 of the FIFA Disciplinary Code, the following directives shall apply to the above sanctions:*
 - a. *The Mexican Football Association shall, within six months of the notification of the present decision, invest the fine due as per point II.a. above towards the implementation and/or further development of a comprehensive plan to ensure action against discrimination and to prevent repeated incidents, in compliance with art. 15 par. 3 of the FIFA Disciplinary Code. The plan shall be approved by FIFA.*
 - b. *In case of failure by the Mexican Football Association to comply with point III.a. within the stipulated deadline granted, the suspension foreseen under point II.b. shall be revoked and both the non-suspended fine (point II.a.) and the suspended fine (point II.b) shall be fully paid to FIFA within 30 days.*

- 2. The Mexican Football Association is ordered to pay the costs of the proceedings in the amount of CHF 1,000. This amount is offset against the appeal fee of CHF 1,000 paid by the Mexican Football Association.**

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Neil EGGLESTON

Chairperson of the FIFA Appeal Committee

NOTE RELATING TO THE LEGAL ACTION:

According to art. 58 par. 1 of the FIFA Statutes as read together with art. 52 of the FDC, this decision may be appealed against before the CAS. The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision. Within another 10 days following the expiry of the time limit for filing the statement of appeal, the appellant shall file a brief stating the facts and legal arguments giving rise to the appeal with the CAS.