

Disciplinary Committee

FIFA[®]

Date: 07 January 2022

Sent to:
Football Federation of Kosovo
ffk-kosova@hotmail.com; info@ffk-kosova.com

C.C:
UEFA

Notification of the grounds of the Decision

Ref FDD-9304

Dear Sirs,

Please find attached the grounds of the decision passed in the aforementioned case by a member of the FIFA Disciplinary Committee on 21 October 2021.

We would appreciate your taking due note of this decision and ensuring its implementation.

Yours faithfully,

FIFA



Carlos Schneider
Director of the FIFA Judicial Bodies

Fédération Internationale de Football Association

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Decision of the FIFA Disciplinary Committee

passed on 21 October 2021

DECISION BY:

Mr. Lord Veehala, Tonga (Member)

ON THE CASE OF:

Football Federation of Kosovo

(Decision FDD-9304)

REGARDING:

Art. 16 - FDC - Order and security at matches

I. FACTS

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 member of the FIFA Disciplinary Committee (**the Single Judge**) has thoroughly considered 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 his position and in the ensuing discussion on the merits.
2. On 12 October 2021, a match was played between the representative teams of Kosovo and Georgia in Pristina (Kosovo – Attendance 3,550 spectators – Final score 1-2) in the context of the Preliminary Competition of the FIFA World Cup Qatar 2022™, European Zone (**the Match**).
3. In this context, the Match Commissioner of the Match mentioned the following in their report (**the MC Report**):

Crown behaviour (home team):

Numerous whistles from the public during the national anthem of Georgia, which has not been respected. All the game actions of the players from Georgia were whistled by the local public.

A controversial banner has been exposed in the middle of the tribune (opposite to the official tribune), with the inscription: "We are supporters not politicians" during all half-time and one minute at the beginning of the second half. Home match manager indicates me that the significance of this banner, was because of the presence of the ministry of culture of Kosovo in the stadium, to contest and protest against the fact that only 30 % of the full capacity of the stadium was opened for spectators, due to sanitary situation and regulations.

4. On 14 October 2021, in view of the foregoing, disciplinary proceedings were opened against the Football Federation of Kosovo (**the Respondent**) with respect to the potential breach of art. 16 of the FIFA Disciplinary Code (**FDC**). In particular, the latter was provided with the aforementioned report and was granted a three (3) day deadline to provide the Secretariat to the FIFA Disciplinary Committee (**the Secretariat**) with its position.

II. RESPONDENT'S POSITION

5. On 17 October 2021, the Respondent provided its position, which can be summarised as follows:
 - In reference to art. 16 FDC, the Respondent informs that whilst it appears that lit. g) of this article may have been breached, the actual situation does not in fact correspond with the breach of any of the articles of the FDC, particularly art. 16.
 - This is exemplified when it is understood that the alleged wrongdoing of the fans in the stadium was directed towards: - the newly adopted measures in connection with protection from Covid-19; to the Government of the Republic of Kosovo representatives present at the

stadium, and; in protest towards the Kosovar players and team in general for their performance "*in the last matches*".

- The adopted decision of the Government concerning protection from Covid-19 foresaw a measure which limited significantly the number of participants in stadiums. In addition, as the Respondent's team lost its last three consecutive matches, the supporters at the Match - in a sign of protest - whistled during certain segments of the Match and presented a banner which contained a message directed towards the politicians.
- It seems clear from the situation presented that literals g) and e) of art. 16 FDC may have been breached, however, the Respondent stipulates that it is important to note that:
 - The whistling was not in any way directed towards the national anthem of Georgia. Since the national anthems are played before the Match, the whistling against the measures implemented by the Government of the Republic of Kosovo coincided with the very beginning of the national anthem, which therefore created the impression that the whistling was performed in protest towards Georgian players.
 - This cannot be accepted as being a truthful statement, having in mind that there was no reason whatsoever for such a behaviour by the people present at the stadium, especially considering the sporting spirit which has been shown during the football matches followed by Kosovars, and that never before have Kosovo supporters whistled during any other anthem.
 - Unfortunately the whistling coincided with two important moments: the need to protest the decision of the Government, and to protest Kosovo's representative team's state of play. In this respect, the Respondent points out that following the Match the Kosovar Coach was dismissed due to the poor results in the last matches.
 - The Respondent stipulates that the other moment which points to the fact that the people present were protesting towards the Government, was the presentation of the banner which "*wanted to show that the fans were not politicians and somehow, the decision of the Government on protection from Covid-19 was unfair*".
- Whilst the Respondent agrees that the protests against the Government, protests against the Kosovo representative team, or any similar political statements or presentations do not belong at sports events, the Respondent submits that neither of the actions presented were directed to anyone other than the Government of Kosovo and the Kosovo team, and did not have the intention of offending, or in any other way affecting, the team of Georgia.
- "*While it is understandable that the fans are there to cheer for a certain team, they understand that cheering is not equal to offending, distracting, or in any other way hurting, the opposing team.*"
- The Respondent states that it is of crucial importance for the Respondent to make sure that no other similar actions, no matter how naive, occur again in any of the matches organized

in Kosovo, having in mind their potential impact, and the disciplinary means which may be imposed out of an apparent guilt and misreading of the situation.

6. The Single Judge once again reiterated that he has considered all the facts, allegations, legal arguments and evidence provided by the Respondent, and in the present decision had only referred to those observations and evidence regarded as necessary to explain his reasoning.

III. CONSIDERATIONS OF THE DISCIPLINARY COMMITTEE

7. In view of the circumstances of the present case, the Single Judge decided to first address the procedural aspects of the case, *i.e.* his jurisdiction and the applicable regulatory framework, before proceeding to the merits of the case and determining the possible infringements as well as the possible resulting sanctions.

A. Jurisdiction of the FIFA Disciplinary Committee

8. First of all, the Single Judge noted that at no point during the present proceedings did the Respondent challenge his jurisdiction or the applicability of the FDC.
9. Notwithstanding the above and for the sake of good order, the Single Judge found it worthwhile to emphasise that, on the basis of art. 2 (1) FDC read together with art. 53 FDC, he was competent to evaluate the present case and to impose sanctions in case of corresponding violations.

B. Applicable law

10. In order to duly assess the matter, the Single Judge firstly began by recalling the content and the scope of the relevant provisions of the 2019 edition of the FDC, which was, in his view, the edition applicable to the present issue. In particular, the Single Judge considered that both the merits and the procedural aspects of the present case should be covered by the 2019 edition of the FDC.
11. With respect to the applicable regulations, the Single Judge referred to art. 16 FDC which reads as follows:

Art. 16 of the FDC – Order and security at matches

(...)

2. *All associations and clubs are liable for inappropriate behaviour on the part of one or more of their supporters as stated below and may be subject to disciplinary measures and directives even if they can prove the absence of any negligence in relation to the organisation of the match:*

- a) the invasion or attempted invasion of the field of play;*
- b) the throwing of objects;*
- c) the lighting of fireworks or any other objects;*

- d) the use of laser pointers or similar electronic devices;*
- e) the use of gestures, words, objects or any other means to transmit a message that is not appropriate for a sports event, particularly messages that are of a political, ideological, religious or offensive nature;*
- f) acts of damage;*
- g) causing a disturbance during national anthems;*
- h) any other lack of order or discipline observed in or around the stadium.*

12. It is clear from the wording of this provision that its main purpose is to ensure that matches are properly organised so that no incident can occur and disrupt any football match.
13. In particular, art. 16 (2) FDC contains a strict liability rule according to which an association, whether home or visiting, is responsible for the behaviour of its own spectators. In this regard, the Committee recalled that according to CAS jurisprudence, the term “supporter” is an open concept, which must be assessed from the perspective of a reasonable and objective observer¹. This means that the behaviour of the person may lead a reasonable and objective observer to conclude that the latter is a supporter of that particular club/association. Moreover, CAS specified that the behaviour of individuals and their location in and around the stadium are important criteria in determining the team they support².
14. In light of the above, the Single Judge concluded that whilst an association/club may be held responsible for the behaviour of its supporters as per art. 16 (2) FDC, it is incumbent on the adjudicating body to consider whether the Respondent should be subject to the imposition of a sanction.

C. Standard of proof

15. Firstly, the Single Judge recalled that the burden of proof lies with FIFA, which is required to prove the infringement under art. 36 (1) FDC.
16. Secondly, the Single Judge pointed out that, according to art. 35 (3) FDC, the standard of "*comfortable satisfaction*" is applicable in disciplinary proceedings. According to this standard of proof, the onus is on the sanctioning authority to establish the disciplinary violation to the comfortable satisfaction of the judging body, taking into account the seriousness of the allegation.
17. Finally, the Single Judge referred to art. 40 FDC, according to which the facts contained in the match officials' reports, as well as in the supplementary reports or correspondence submitted by the match officials, are presumed to be accurate, bearing in mind that proof of their inaccuracy may be provided.
18. Having clarified the foregoing, the Single Judge proceeded to consider the merits of the case.

¹ CAS 2015/A/3874.

² CAS 2007/A/1217.

D. Merits of the case

1. Issue of review

19. The relevant provisions having been recalled, and the above having been established, the Single Judge proceeded to analyse the evidence at his disposal, in particular the documentation and information provided in the scope of the present disciplinary proceedings, in order to determine the potential violations of the FDC.
20. As a preliminary remark, and as outlined above, the Single Judge wished to recall that in accordance with art. 40 FDC, the facts stated in the reports or records of the match officials are presumed to be correct, although it is possible to prove the contrary.
21. In this context, the Single Judge acknowledged the following elements from the MC Report:
 - i. Whilst the national anthem of Georgia was played at the beginning of the Match, the home team supporters (Kosovo) disturbed the anthem by performing numerous whistles (**Incident 1**).
 - ii. During the entirety of half-time and for one minute at the beginning of the second half of the Match, a banner was displayed by the Kosovar supporters in the middle of the tribune reading '*We are supporters not politicians*' (**Incident 2**).
22. In this context, the Single Judge first acknowledged that the Respondent, within its position, did not contest the occurrence of such incidents, but rather emphasised, in particular, that (i) the actions of the Kosovar supporters with respect to Incidents 1 and 2 were directed towards the newly adopted measures in connection with Covid-19 by the Government of the Republic of Kosovo, and/or, as a form of protest towards the Kosovar representative team for its performance in its last matches, (ii) the whistling was not in any way directed towards the national anthem of Georgia, and (iii) the actions presented by the Kosovar supporters with respect to Incidents 1 and 2 were not directed to anyone other than the Government of Kosovo and/or the Kosovar representative team, and did not have the intention of offending, or in any other way affecting, the team of Georgia.
23. As a result, the Single Judge was comfortably satisfied that both Incident 1 and Incident 2 occurred in the context of the Match.
24. Furthermore, the Single Judge remarked that it was not contested by the Respondent within its submissions that either Incident 1 or Incident 2 were committed by Kosovar supporters, as stipulated within the MC Report.
25. As such, on the basis of the case file and the assumed veracity of match officials' reports (cf. art. 40 FDC), the Single Judge was comfortably satisfied that incidents 1 and 2 were committed by Kosovar supporters, such element in any case not being contested by the Respondent.

26. Having clarified the above, the Single Judge decided to analyse the abovementioned incidents in light of the FDC, in order to assess whether any provisions of the FDC had been breached.

2. Infringements committed by the supporters of the Football Federation of Kosovo

27. To begin with, the Single Judge had no doubt that Incident 1 and Incident 2, involving Kosovar supporters, had occurred during the Match.
28. As previously mentioned, such incidents were reported within the MC Report and were not contested by the Respondent.
29. In this respect, the Single Judge pointed out that art. 16 (2) FDC, as outlined *supra*, establishes a strict liability on associations in so far that they are liable for the inappropriate behaviour on the part of one or more of their supporters and may be subject to disciplinary measures, even if they can prove the absence of any negligence in relation to the organisation of the match.
30. With the foregoing in mind, and despite the arguments of the Respondent that the whistling in connection with Incident 1 was directed exclusively towards the Government of the Republic of Kosovo and/or the Kosovar representative team, was not directed not towards the national anthem of Georgia, and did not carry the intention of offending, or in any other way affecting, the representative team of Georgia, the Single Judge underlined that pursuant to art. 16 (2)(g) FDC, the supporters of a representative team, within the scope of a given match, are prohibited from causing a disturbance during national anthems – the former being the case whether or not the disturbance caused was specifically intended to disturb the anthem or otherwise.
31. Next, the Single Judge turned to acknowledge the submissions of the Respondent in relation to the banner displayed (Incident 2), which likewise stipulated that such incident was directed exclusively towards the Government of the Republic of Kosovo and/or the Kosovar representative team as a form of protest - said banner containing a “*message directed towards the politician[s]*” which carried the intention of demonstrating that “*the fans were not politicians and somehow, the decision of the Government on protection from Covid-19 was unfair*” - and was not intended to offend, or in any other way affect, the representative team of Georgia.
32. In consideration of the foregoing, the Single Judge recounted that art. 16 (2) (e) FDC establishes that the supporters of a representative team are prohibited from the use of gestures, words, objects or any means to transmit a message which is not appropriate for a sports event. In this respect, the Single Judge wished to emphasise that the “*We are supporters not politicians*” banner is clearly inappropriate for a sports event, and does not belong within the environment of a football match, the former therefore being prohibited from display in a stadium – an element which is acknowledged by the Respondent itself within its submissions. As a result, the Single Judge deemed that the banner displayed by the Kosovar supporters during the Match constituted prohibited conduct within the scope of art. 16 (2)(e) FDC.
33. Therefore, taking into account all of the above, the Single Judge had no other option but to conclude that the Respondent was responsible for the inappropriate behaviour of its supporters in accordance with art. 16 (2) FDC. Indeed, this provision clearly provides that associations are liable for the

inappropriate behaviour of its supporters, especially with regard to *the use of gestures, words, objects or any other means to transmit a message that is not appropriate for a sports event* (lit. e) – Incident 2; and *causing a disturbance during national anthems* (lit. g) – Incident 1. In particular, the Single Judge had no doubt that the two incidents in question fell within the scope of the aforementioned sub-paragraphs.

34. As a result, the Single Judge held that the Respondent should be held liable for the breach of art. 16 (2) FDC, and had to be sanctioned accordingly.

3. The determination of the sanction

35. With regard to the applicable sanctions, the Single Judge observed in the first place that the Respondent was a legal person, and as such was subject to the sanctions described under art. 6 (1) and (3) FDC.
36. For the sake of good order, the Single Judge underlined that it is responsible to determine the type and extent of the disciplinary measures to be imposed in accordance with the objective and subjective elements of the offence, taking into account both aggravating and mitigating circumstances (art. 24 (1) FDC).
37. As established above, the Respondent was found liable for the inappropriate behaviour of its supporters (art. 16 (2) FDC).
38. In this respect, the Single Judge pointed out that (i) numerous whistles were performed by Kosovo supporters in the context of Incident 1, and (ii) that the banner exhibited in the context of Incident 2 was displayed multiple times and remained in place for a significant period (being shown for the full half-time period of the Match and for one minute at the beginning of the second half), thus gaining significant exposure.
39. This being said, the Single Judge held that he also needed to consider that (i) the Respondent had not been sanctioned for any similar incidents during the present Preliminary Competition, and (ii) that the Respondent had expressed its commitment to ensuring that no similar actions will occur in any of the future matches organised in Kosovo.
40. With such considerations in mind, the Single Judge underlined that the aggravating factors of the case undoubtedly outweigh the existing mitigating factors, such elements having to be taken into account when deciding on the sanction.
41. Given the above, the Single Judge deemed that amongst the range of sanctions available under art. 6 FDC, a fine was an appropriate measure to sanction the Respondent for the incidents which had occurred in the match at stake.
42. As such, the Single Judge recalled that with regards to the fine to be imposed, in accordance with art. 6 (4) FDC, it may not be lower than CHF 100 and greater than CHF 1,000,000.

43. As a result, taking into account the applicable circumstances of the present case, the Single Judge held that a fine amounting to CHF 10,000 is to be considered appropriate and proportionate given the incidents which occurred during the Match. In particular, the Single Judge was satisfied that such amount would serve the necessary deterrent effect, whilst encouraging the Respondent to implement the necessary measures to prevent such incidents from happening again.

IV. DECISION OF THE DISCIPLINARY COMMITTEE

- 1. The Football Federation of Kosovo is ordered to pay a fine to the amount of CHF 10,000 for the inappropriate behaviour of its supporters (use of objects – *banner* – to transmit a message that is not appropriate for a sports events and disturbance during national anthems) in connection with the match *Kosovo vs. Georgia* played on 12 October 2021 in the scope of the Preliminary Competition for the FIFA World Cup Qatar 2022™, European Zone.**
- 2. The fine is to be paid within 30 days of notification of the present decision.**

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Mr. Lord Veehala

Member of the FIFA Disciplinary Committee

NOTE RELATING TO THE TERMS OF THE DECISION:

According to art. 64 par. 5 of the FDC and art. 58 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (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.

NOTE RELATING TO THE PAYMENT OF THE FINE:

Payment can be made either in Swiss francs (CHF) to account no. 0230-325519.70J, UBS AG, Bahnhofstrasse 45, 8098 Zurich, SWIFT: UBSWCHZH80A, IBAN: CH85 0023 0230 3255 1970 J or in US dollars (USD) to account no. 0230-325519.71U, UBS AG, Bahnhofstrasse 45, 8098 Zurich, SWIFT: UBSWCHZH80A, IBAN: CH95 0023 0230 3255 1971 U, with reference to case number above mentioned.