

Decision

of the

FIFA Appeal Committee

Mr Thomas BODSTROM [SWE], Chairman
Mr Neil EGGLESTON [USA], Deputy Chairman
Mr Andres PATON [ARG], Member

on 27 March 2020,

to discuss the case of:

Football Association of Malaysia
(Decision 191532 APC)

regarding:

Appeal lodged by the Football Association of Malaysia against the decision passed by the
FIFA Disciplinary Committee on 19 December 2019 (Decision 191532)

I. Inferred from the file

1. On 19 November 2019, in the context of the preliminary competition of the FIFA World Cup Qatar 2022™, Asian Zone, a match was played in Kuala Lumpur, Malaysia, between the representative teams of Malaysia and Indonesia.
2. In this context, according to the Match Commissioner's report, the following incidents occurred:

"Spectators misconduct: on the 32 minute the Indonesian supporters in the designated space (right side of grand stand) reacted negatively towards the celebrations of Malaysian supporters, as such yellow smoke noticed as a result of smoking flare that were thrown in the empty buffer by Indonesian supporters. Malaysian supporters also reacted negatively to this by igniting and throwing red smoke flare towards the Indonesian supporters whom ignited another red smoke flare and throw it again. In addition, during this incident both the supporters were seen throwing water bottles, which fell in the buffer zone, as well as damaging seats and throwing it towards the buffer zone by Indonesian supporters.

The flare incident repeated again by Indonesian supporters after the final whistle, as well as damaging some seats and throwing it in the empty buffer.

Injuries: (as reported by LOC): minor injuries (bruises) as results of flares for some spectators from both the supporters and all received treatment by LOC medical team, without any serious issues. This matter is also confirmed with LOC medical
Damaged facilities: according to the LOC the number of broken and damaged seats is about 20, and LOC confirmed that no complaints against Indonesia in this regard.

In this regard, the security existing in the buffer, as well as those on the track and in the sector designated for Indonesian supporters immediately reacted and controlled the situation."

In this sense, some pictures and videos showing the incidents reported by the Match Commissioner were provided along with the report.

3. On 26 November 2019, disciplinary proceedings were opened against the Football Association of Malaysia (hereinafter also referred to as "*the Appellant*") for a possible violation of art. 16 of the FIFA Disciplinary Code (hereinafter, "*FDC*").
4. On 19 December 2019, the Disciplinary Committee passed a decision (hereinafter, "*the Appealed Decision*") against the Appellant. In particular, the Disciplinary Committee decided as follows:

1. *The FIFA Disciplinary Committee found the Football Association of Malaysia responsible for the infringement of the relevant provision of the FIFA Disciplinary Code related to order and security at matches (art. 16).*
2. *The FIFA Disciplinary Committee orders the Football Association of Malaysia to pay a fine to the amount of CHF 50,000.*
3. *In application of art. 6 par. 1 lit. a) of the FIFA Disciplinary Code, the Football Association of Malaysia is warned on its future conduct.*
4. *The above fine is to be paid within thirty (30) days of notification of the present decision.*
5. The terms of the Appealed Decision were notified to the Appellant on 23 December 2019. Upon request of the Appellant, the grounds of the Appealed Decision were notified on 30 January 2020.
6. On 31 January 2020, the Appellant informed the Secretariat to the FIFA Appeal Committee (hereinafter, "*the Secretariat*") about its intention to appeal the aforementioned decision.
7. On 7 February 2020, the Appellant submitted its reasons for the appeal and provided a copy of the proof of payment of the appeal fee.
8. On the same date, the Secretariat acknowledged receipt of the two abovementioned correspondences and confirmed that the payment of the appeal fee had been duly received by FIFA.
9. The position of the Appellant is summarized hereinafter. However and for the sake of clarity, this summary does not purport to include every single contention put forth by the Appellant. Nevertheless, the FIFA Appeal Committee (hereinafter, "*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 these arguments in the following outline of their positions and in their ensuing discussion on the merits:
 - i. The Appellant admits the charges, however, requests the Appeal Committee to review the amount of the fine as it had done its utmost best to ensure safety and security for the match;
 - ii. The Appellant took into account the possible clash between the supporters of Malaysia and Indonesia and conducted meetings prior to the match to discuss the issue of security and safety. Such meetings were conducted trice with the Football Association of Indonesia and the Malaysian security agencies;
 - iii. The Appellant was provided with the following personnel:
 - (i) Malaysia Royal Police: 1,500 personnel;

- (ii) Private security: 33 personnel;
 - (iii) Stewards: 208 personnel;
- iv. The Appellant implemented a three tier system of security checks by stewards and the Malaysian Royal Police:
 - (i) Check by the stewards before the fans entered the stadium;
 - (ii) A cursory check by the ticket-checkers;
 - (iii) A random inspection of individuals by the police;
- v. The match was not stopped by the referee, unlike the last away match. No supporters had to be taken to the hospital for further treatment;
- vi. The security agencies were prepared for eventualities and ensured no escalation of the incidents;
- vii. The Appellant has done everything possible to ensure a safe and secure match. In all fairness it is unfavorable to impose such a high fine as it had done everything it could and has explained all the measures taken before and after the match.

II. and considered

1. In view of the circumstances of the present matter, the FIFA Appeal Committee first decided to address some key procedural aspects (A), before entering into the substance of the case at stake (B).

A. PROCEDURAL ASPECTS

i) COMPETENCE OF THE FIFA APPEAL COMMITTEE AND ADMISSIBILITY OF THE APPEAL

2. First of all, the Committee will establish whether the appeal is admissible and whether it is competent to assess the matter as well as which law is applicable. Then it will proceed to analyse the merits of the case.
3. In this context, the Committee underlines that the sanction imposed by the Disciplinary Committee through the Appealed Decision is CHF 50,000. As such, the Committee pointed out that, in accordance with art. 56 in conjunction with art. 57 of the FDC, it is competent to hear the appeal presented by the Appellant against the decision rendered by the Disciplinary Committee on 19 December 2019.
4. This having been established, the Committee acknowledges that:
 - i. the grounds of the decision were notified on 30 January 2020;

- ii. the Appellant communicated its intention to appeal on 31 January 2020;
 - iii. the Appellant submitted its reasons for the appeal on 7 February 2020;
 - iv. the appeal fee of CHF 1,000 was paid on 7 February 2020.
5. In view of this, the Committee holds, on the one hand, that the time limits established under art. 56 pars. 3 and 4 of the FDC in order for an appeal to be admissible have been met in the case at hand, and, on the other hand that the appeal fee was duly paid in accordance with art. 56 par. 6 of the FDC.
6. Against such background, the Committee declares the Appeal admissible.

ii) APPLICABLE LAW

7. In continuation, the Committee deems that it has to determine which edition of the FDC applies to the substance of the matter at stake.
8. In these circumstances, the Committee notes from the Appealed Decision that the Appellant was sanctioned for the incidents during the match played between Malaysia and Indonesia in the scope of the preliminary competition of the FIFA World Cup Qatar 2022™ on 19 November 2019.
9. Consequently, the Committee considers that the present matter should be analysed in light of the 2019 edition of the FDC.
10. This being established, the Committee will subsequently analyse the merits of the present case.

B. MERITS OF THE CASE

11. As starting point, the present proceedings are related to a decision rendered by the Disciplinary Committee by means of which the Appellant has been sanctioned for the infringement of art. 16 of the FDC related to order and security at matches.
12. In this sense, the Committee notes that the Appellant challenges the decision passed by the Disciplinary Committee and claims, *inter alia*, that the fine imposed by the FIFA Disciplinary Committee is too high, i.e. disproportionate, as the Appellant has done everything possible to ensure a safe and secure match.
13. This being established, the Committee considers that in order to decide on this appeal, there are three questions that have to be answered:
- a) Is the Appellant liable for the inappropriate behaviour of its supporters?
 - b) Has the Appellant done everything possible to ensure a safe and secure match?

- c) If not, is the sanction imposed on the Appellant by the Disciplinary Committee proportionate?

a) Is the Appellant liable for the inappropriate behaviour of its supporters?

14. As a preliminary remark, the Committee highlights that it is undisputed that the incidents mentioned in the Match Commissioner's report (smoke flares were ignited and thrown, seats were damaged and some objects were thrown) were committed by spectators.
15. In this respect, the Committee recalls that the facts contained in the match officials' reports and in any additional reports or correspondence submitted by the match officials are presumed to be accurate (art. 40 of the FDC).
16. Against such background, in the Appealed decision the Disciplinary Committee considered that the Appellant had to be sanctioned for a breach of art. 16 par. 1 and par. 2 lit. b) and c) of the FDC.
17. In this sense, the Committee notes that the Appellant admits the charges. However, for the sake of good order and in order to establish the proportionality of the sanction, the Committee analyses whether the Appellant is liable for the incidents committed by the spectators, namely the throwing and igniting of smoke flares, the damaged seats and the throwing of objects, in accordance with art. 16 par. 2 lit. b) and c) of the FDC.
18. In this regard, the Committee would first like to recall the content of art. 16 par. 2 of the FDC:

"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:

(...)

b) the throwing of objects;

c) the lighting of fireworks or any other objects;

(...)"

19. In view of the foregoing, the Committee draws its attention to the pictures and videos provided by the Match Commissioner and confirms that smoke flares were thrown by the Malaysian supporters towards the Indonesian supporters and vice versa. The video clearly shows how one smoke flare was thrown from the Malaysian supporters towards the Indonesian supporters.

20. Furthermore, the Committee observes from the evidence on file that some objects were thrown by the Malaysian supporters. It is not possible to identify what kind of objects were thrown, however, the Committee does not deem the identification of the objects necessary in order to establish a breach of art. 16 par. 2 lit b) of the FDC.
21. In view of the above, the Committee deems that the Appealed Decision correctly established that the lighting of smoke flares and the throwing of objects are undoubtedly to be considered as inappropriate behaviour in line with art. 16 par. 2 lit. b) and c) of the FDC.
22. With respect to the damaged seats, the Committee notes that the Appealed decision already established that such incident was committed by the Indonesian supporters. Consequently, as such incident was not committed by Malaysian spectators the Appellant cannot be held liable for such conduct.
23. Consequently, as the throwing of objects and lighting of fireworks were committed by Malaysian supporters, the Committee has no doubt that the Appellant is responsible for a violation of art. 16 par. 2 lit b) and c) of the FDC and fully adheres with the conclusions of the Appealed Decision.

b) Has the Appellant done everything possible to ensure a safe and secure match?

24. Having established the above, the Committee subsequently refers to the allegation made by the Appellant that it had done everything possible to ensure safety and security in the stadium.
25. First, the Committee would like to recall the content of art. 16 par. 1 of the FDC, which establishes that:

“Host clubs and associations are responsible for order and security both in and around the stadium before, during and after matches. They are liable for incidents of any kind and may be subject to disciplinary measures and directives unless they can prove that they have not been negligent in any way in the organisation of the match. In particular, associations, clubs and licensed match agents who organise matches shall:

- a) assess the degree of risk posed by the match and notify the FIFA bodies of those that are especially high-risk;*
- b) comply with and implement existing safety rules (FIFA regulations, national laws, international agreements) and take every safety precaution demanded by the circumstances in and around the stadium before, during and after the match and if incidents occur;*
- c) ensure the safety of the match officials and the players and officials of the visiting team during their stay;*

- d) keep local authorities informed and collaborate with them actively and effectively;
- e) ensure that law and order are maintained in and around the stadiums and that matches are organised properly.”

26. In particular, the Committee notes that the Appellant, as the host association, was not only required to ensure that law and order were maintained in and around the stadium and that the match was organised properly, but also to comply with and implement existing safety rules (FIFA regulations, national laws, international agreements) and take every safety precaution demanded by the circumstances in and around the stadium before, during and after the match and if incidents occur.
27. Consequently, the Committee highlights that the Appellant was responsible to implement security measures in order to ensure that no prohibited items or dangerous objects were brought into the stadium (art. 29 of the FIFA Stadium and Safety Regulations).
28. Bearing this in mind, the Appealed Decision pointed out that *“the Malaysian FA had failed (i) to implement the relevant security measures to ensure safety and security in the stadium, namely, the provisions established in the FIFA Stadium Safety and Security Regulations and (ii) to ensure that law and order are maintained in the stadium during the match”*.
29. Against such background, the Committee takes into account the efforts undertaken by the Appellant, namely the meetings prior to the match to discuss the issue of security and safety and the three tier system of security checks.
30. However, the Committee notes that despite the security measures taken by the Appellant, the supporters were still able to enter the stadium with the prohibited items and to ignite them. In addition to this, seats were damaged and thrown. The Committee also points out that as a consequence of the smoke flares, some spectators were injured and had to be treated by a medical team, which clearly shows that the security checks implemented by the Appellant were not sufficient to ensure safety and security in the stadium and to ensure that law and order were maintained in the stadium during the match.
31. With those considerations in mind, the Committee deems that the Appellant has undoubtedly failed to implement the measures demanded by the circumstances in order to ensure safety and security in the stadium at the match at the stake.
32. In light of the above, the Committee fully adheres to the Disciplinary Committee’s conclusions with respect to the violation of art. 16 par. 1 of the FDC by the Appellant.

c) Is the sanction imposed on the Appellant by the Disciplinary Committee proportionate?

33. Having established that the Appellant breached art. 16 of the FDC, the Committee subsequently notes that the Appellant considered that the sanctions imposed by the Disciplinary Committee were disproportionate.
34. In this respect, the Committee notes that the Appellant was sanctioned with a fine of CHF 50,000. Additionally, the Appellant was warned as to its future conduct.
35. In this respect, the Committee recalls the jurisprudence of CAS according to which 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 circumstances¹.
36. In light of the foregoing, the Committee observes that the Appellant infringed art. 16 of the FDC, a provision aiming at guaranteeing order and security at matches.
37. In this regard, the Committee wishes to endorse the developments of the Appealed Decision in the sense that it is completely unacceptable that fireworks are brought into the stadium and ignited during a match, but above all, thrown into another group of spectators, putting their safety at risk. Such behaviour cannot be tolerated by any means and is absolutely forbidden. In particular, the Committee reiterates that associations are liable for the inappropriate behavior of its supporters and that host associations are responsible for order and security in and around the stadium.
38. In this sense, the Appealed Decision took into account the efforts allegedly undertaken by the Appellant, namely the implementation of three layers of security checks, organising meetings prior to the match to discuss the security issues as well as the fact that the security personnel controlled the situation immediately after the incidents. Nevertheless, while the Disciplinary Committee acknowledged the efforts undertaken by the Appellant to ensure public safety, it also recognized that the aforementioned incidents took place and that therefore, despite the three tier security system, the security checks were not sufficient.
39. Furthermore, the Committee notes that the Disciplinary Committee had previously dealt with cases related to similar incidents concerning the Appellant.
40. Taking into account constant jurisprudence and the amount imposed in the past for violations similar to the present case as well as the precedents of the Appellant and the deterrent effect a sanction should have on the reprehensible behaviour, the Disciplinary Committee considered a fine of CHF 50,000 to be appropriate and proportionate.

¹ CAS 2014/A/3813.

41. In light of the above, the Appeal Committee considers that the Disciplinary Committee took into consideration the facts and circumstances of the case and correctly applied the principle of proportionality when deciding on the sanctions to be imposed.
42. In this sense, the Committee highlights that FIFA can no longer tolerate that associations do not take the demanded measures to guarantee safety and security and any lower fine would not have the desired deterrent effect.
43. In view of all the circumstances pertaining to the present matter, the Committee deems that the imposition of a fine of CHF 50,000 and a warning on the Appellant are appropriate and congruent sanctions.
44. As a result, the Committee is of the opinion that the fine imposed is not oppressive and wishes to highlight that the purpose of such a fine is to be a deterrent sanction to avoid conducts like the one of the Appellant in the present case.

C. CONCLUSION

45. Bearing in mind the foregoing, the Committee concludes that the decision taken by the FIFA Disciplinary Committee on 19 December 2019 is to be confirmed in its entirety, namely the fine amounting to CHF 50,000 and the warning.

D. COSTS

46. The Committee decides based on art. 45 par. 1 of the FDC that the costs and expenses of these proceedings amounting to CHF 1,000 shall be borne by the Appellant.
47. In this sense, the Committee notes that the Appellant has already paid the appeal fee of CHF 1,000 and decides that the aforementioned costs and expenses of the proceedings are set off against this amount.

III. has therefore decided

1. The FIFA Appeal Committee found the Football Association of Malaysia responsible for the infringement of the relevant provisions of the FIFA Disciplinary Code related to order and security at matches (art. 16).
2. The appeal lodged by the Football Association of Malaysia is rejected and the decision of the FIFA Disciplinary Committee rendered on 19 December 2019 is confirmed in its entirety.

3. The costs and expenses of these proceedings in the amount of CHF 1,000 are to be borne by the Football Association of Malaysia. This amount is set off against the appeal fee of CHF 1,000 already paid by the Football Association of Malaysia.

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Thomas Bodstrom
Chairman of the FIFA Appeal Committee

LEGAL ACTION

According to 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.

The full address and contact numbers of the CAS are the following:

Avenue de Beaumont 2
1012 Lausanne
Switzerland
Tel: +41 21 613 50 00
Fax: +41 21 613 50 01
e-mail: info@tas-cas.org
www.tas-cas.org