



Arbitration CAS 2009/A/1944 Football Federation of Bosnia and Herzegovina (FFBH) v. Fédération Internationale de Football Association (FIFA), award of 20 January 2010

Panel: Mr Rui Botica Santos (Portugal), President; Prof. Peter Grilc (Slovenia); Mrs Margarita Echeverria (Costa Rica)

Football

Disciplinary sanctions for improper conduct of supporters

Definition of “group of spectators”

Strict liability

CAS power of review

- 1. The expression “own group of spectators” established in article 67 of the FIFA Disciplinary Code (FDC) is not only related to the spectators or fans of national clubs, but it is also extended to national teams, since this provision is also applicable to “visiting associations”.**
- 2. Under article 67.2 FDC, member associations bear strict liability for the actions of third parties, who are nonetheless specifically identified. This rule leaves absolutely no room for any other interpretations in as far as its application is concerned. Visiting associations are responsible, even if they are not at fault, for the improper conduct of their supporters.**
- 3. CAS has no competence and powers to change, amend or abolish any regulations of the FIFA or of any sports federation. Rather, the strict duty of the CAS is to implement, interpret and/or apply the regulations of the said sports federation as they are.**

Football Federation of Bosnia and Herzegovina (FFBH; the “Appellant”) is a national football association with its seat in Sarajevo, Bosnia and Herzegovina and is affiliated to the Fédération Internationale de Football Association.

The Fédération Internationale de Football Association (FIFA; the “Respondent”) is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the governing body of international football. It exercises regulatory, supervision and disciplinary functions over continental confederations, national associations, clubs, officials and players, worldwide.

This appeal was filed by the FFBH against the decision rendered by the FIFA Appeal Committee dated 24 July 2009 and notified to the FFBH on 27 July 2009 (the “FIFA AC Decision”).

On 28 March 2009, a preliminary competition match for the 2010 FIFA World Cup in South Africa took place at the Cristal Arena in Genk, Belgium, between the national football teams of Belgium and the visiting team, the Republic of Bosnia and Herzegovina.

During the said match, a number of incidents took place, which were reported as follows:

- In the 7th minute of the match, 12 Bengal lights were set off in the sector of the visiting team, two of which were thrown onto the pitch;
- In the 29th minute of the match, one smoke bomb was set off in the sector of the visiting team;
- In the 33rd and 43rd minute of the match, supporters of the Bosnia – Herzegovina national football team tried to break down the fence at the north tribune of the stadium, but without success;
- In the 70th minute, 12 rockets, 25-30 Bengal lights and one smoke bomb were set off in the sector of the visiting team and about 15 of these devices were thrown on to the pitch which caused an interruption of the match for about eight minutes;
- In the 75th minute, one Bengal light was thrown on to the pitch from the sector of the visiting team;
- In the 81st minute, a supporter carrying the flag of Bosnia – Herzegovina entered the pitch which caused an interruption of play for about one minute; and in addition
- One Bengal light was set off in the sector of the visiting team.

Following the aforesaid incidents and reports, the FIFA Disciplinary Committee (the “FIFA DC”) took up the matter and instituted disciplinary proceedings against the FFBH on 31 March 2009 for violation of article 67 of the FIFA Disciplinary Code (the “FDC”) and gave it until 15 April 2009 to take position on the investigation.

On 13 April 2009, the FFBH provided FIFA with its position through a letter, indicating that security planning meetings had been held 15 days prior to the match and a request for 1,060 tickets for away supporters was made to the Belgian Football Association (BFA). However, it was eventually agreed between the two federations involved that an entire sector with a capacity of 3,800 would be allocated to the Bosnia – Herzegovina supporters.

The FFBH claimed that security plans had been made by the Bosnian officers in charge and both the BFA and that FIFA had been informed of such plans. It further claimed that a list of all 3,800 away ticket holders had been made, including all personal details.

The FFBH maintained that all incidents occurred without any possibility for them to avoid such incidents and that the pitch invasion had been perpetrated by a supporter who did not purchase his ticket through the official association channels.

The FFBH further maintained that it would have cooperated with the identification of the perpetrators of such actions, had the BFA requested so, and that ticket holders who were on the official list might have given away some tickets to non-identified people.

The FFBH concluded by stating that it did everything it could in order to avoid such incidents and that the responsibilities should also be of the organizing association (the BFA).

The FIFA DC delivered its ruling and held as follows:

- “a) The [FFBH] is liable for the improper conduct among its own group of spectators and is therefore in violation of art. 67 par. 2 of the FDC.*
- b) The Football Federation of Bosnia and Herzegovina is ordered to pay a fine of CHF 50.000. This fine is to be paid within 30 days of receipt of the ruling (...)*
- c) The Football Federation of Bosnia and Herzegovina is warned as to their future conduct. Should incidents of such gravity occur again in the future, the FIFA Disciplinary Committee will impose harsher sanctions, such a points deduction or elimination of the representative team of BH from a respective tournament.*
- d) The costs of these proceedings of CHF 3,000 are to be borne by the Football Federation of Bosnia and Herzegovina”.*

On 18 May 2009, following its dissatisfaction with the above ruling, the FFBH appealed against the aforementioned decision and filed its appeal brief before the FIFA Appeal Committee (the “FIFA AC”).

In its appeal before the FIFA AC, the FFBH requested the reduction of the fine imposed by the FIFA DC, by at least 50%, on grounds that:

- a. They had at all material times collaborated with FIFA and the BFA, but that the responsibility of personally controlling the supporters lay in the hands of the BFA;
- b. They were neither in possession of the video material nor of any information concerning the persons who committed the incidents;
- c. Most of the supporters of the Bosnia and Herzegovina team have foreign nationality and passports; and
- d. UEFA and FIFA had rarely punished them because of the behaviour of the real supporters of Bosnia and Herzegovina.

During the hearing of the FIFA AC proceedings, the FFBH introduced the following new facts and pleadings:

- a. They claimed to have requested both the BFA and FIFA to provide them with information about the trouble makers in order to take measures for the next matches, but however claimed not to have received any answer from either party;
- b. They claimed not to be sure that the person who entered the pitch with a flag was a supporter of Bosnia and Herzegovina, claiming it could also be that this was a supporter of Belgium;

- c. The BFA had offered them an extra number of tickets for that match (3,800) and they just accepted upon the condition that the sector would have a special protection, and which condition the BFA accepted; and
- d. They did not deny having had part of the responsibility, but nevertheless asked for a reduction of the sanction on grounds that they took all the measures which were in their hands.

On 24 July 2009, the FIFA AC delivered its ruling, dismissing the FFBH's appeal, upholding the FIFA DC Decision, and holding that:

- a. In accordance with article 67.2 of the FDC, the FFBH, as the visiting association, was liable for the improper conduct of its own group of spectators, regardless of the question of culpable conduct or culpable oversight, and was considered as having infringed the said provision.
- b. A fan need not be a citizen of his country in order to support a team. Therefore, the FFBH's argument that it was not in possession of any evidence related to the persons who committed the incidents in question, and its argument that most of the supporters of Bosnia and Herzegovina have foreign nationality was rejected. The FIFA AC reiterated its certainty that most of the people who committed the incidents in questions were supporters of Bosnia and Herzegovina.
- c. The fine as imposed by the FIFA DC was fair and reasonable on the following grounds:
 - i. Not only was it within the scale of CHF 300 and CHF 1,000,000 set out under article 15.2 of the FDC but also because article 67 of the FDC does not establish the minimum or maximum fine;
 - ii. It was the third offence committed by the Bosnia and Herzegovina fans during the South Africa 2010 World Cup qualifiers, and that in accordance with article 40 of the FDC, such previous offences were also to be taken into account; and
 - iii. The fine of CHF 50,000 was concurrent with previous FIFA DC jurisprudence.
- d. In addition, the FIFA AC warned the FFBH of its future conduct, informing it that in case of future incidents of such nature, harsher sanctions such as the deduction of points or the elimination of the Bosnian national football team from the respective tournament would be imposed on them. The FIFA AC also ordered the setting off of the CHF 3,000 which the FIFA DC ordered the FFBH to pay as costs, on the grounds that the FFBH had paid a similar amount when filing its appeal.

The relevant paragraphs of the FIFA AC Decision read as follows:

“(…)

3. *[T]he Federation said that they did not have control on the fireworks introduced into the stadium since this was the responsibility of the Belgian FA. In this regard, the Committee observes that according to Art.67 par.2 of the FDC the visiting association is liable for improper conduct among its on group of spectators, regardless of the question of culpable conduct or culpable oversight, and depending on the situation may be fined. Therefore, the Committee considered that in application of the FDC, the Football Federation of Bosnia Herzegovina can be considered as having committed an infringement.*

4. *Another argument given by Football Federation of Bosnia Herzegovina is that they are not in possession of the evidence concerning the persons who committed the incidents and that most of the supporters of Bosnia and Herzegovina have a foreign nationality. They added that FIFA and UEFA rarely punished them because of the behaviour of the real supporters from Bosnia and Herzegovina. In this regard, the Committee remarked that there is no need to be a citizen of a country to support a team. For the Disciplinary Code, what is important is the fact of being a supporter and in this regard there is no doubt that the persons who caused the incidents were supporters of the Bosnia and Herzegovina team. (...) The Committee is of the firm opinion that the FIFA Disciplinary Committee took its decision based on facts that were correct.*

5. *As a second step, the Committee checks if the FIFA Disciplinary Committee applied the law correctly (cf.art.121 of the FDC). In this regard, the Committee took note that in respect to the infringement committed, the provisions applied by the FIFA Disciplinary Committee were not contested by Football Federation of Bosnia and Herzegovina. The Football Federation limited itself to request a reduction of the sanction of at least 50 %.*

6. *The Committee then concentrates its analysis to the fine, particularly if the amount imposed by the FIFA Disciplinary Committee complies with the FIFA regulations and with the jurisprudence in these cases. Art. 67 of the FIFA Disciplinary Code does not establish a minimum or a maximum for the fine. Therefore, the general rule of the fine should be applied. Art. 15 par.2 of the FDC established that the fine shall not be less than CHF 300 and not more than CHF 1000,000. Since the margin for the fine is large, the Committee decided to analyse the elements taken into account by the FIFA Disciplinary Committee.*

7. *The FIFA Disciplinary Committee emphasised that this was the third offence of its kind perpetrated by supporters of the football Federation of Bosnia and Herzegovina in the Preliminary Competition for the 2010 FIFA World Cup South Africa and that according to art.40 of the FDC this shall be taken into account when determining the sanction to be imposed on the Football Federation of Bosnia and Herzegovina. On 3 November 2008 the Disciplinary Committee had imposed on the association a fine of CHF 6.500 for the improper conduct among its own group of spectators. On the same date, and for the same offence perpetrated in a different match, the Disciplinary Committee had imposed on the Association a fine of CHF 10.000 plus a warning as to their future conduct. The Committee agrees that this is an important element to take into account and since the other fines imposed seemed insufficient in order to find a remedy to this problem, the Committee is of the same opinion as the FIFA Disciplinary Committee that a severe sanction was necessary.*

8. *As a last point, the Committee took a look at the jurisprudence of the FIFA Disciplinary Committee. The Committee confirmed that a fine amounting to CHF 50.000 is commensurate. Therefore, the Committee decided to confirm the sanction imposed by the FIFA Disciplinary Committee.*

9. *Moreover, the Committee would like to remind the Football Federation of Bosnia and Herzegovina of the warning as to their future conduct imposed by the FIFA Disciplinary Committee. Should incidents of such gravity occur again in the future, the FIFA Disciplinary Committee will impose harsher sanctions, such as a points deduction or elimination of the representative team of Bosnia and Herzegovina from a respective tournament.*

10. *In accordance with art.105 of the FDC, the Committee decided to impose costs and expenses of CHF 3.000 on the Football Federation of Bosnia and Herzegovina. This amount is set off against the appeal fee of CHF 3.000 paid by the Football Federation of Bosnia and Herzegovina.*

(...)"

Taking into consideration the abovementioned reasoning, the FIFA AC rendered the following decision on 24 July 2009:

- “1. *The appeal lodged by the football Federation of Bosnia and Herzegovina has been rejected entirely, the federation is liable for the improper conduct among its own group of spectators and is therefore in violation of art.67 par.2 of the FDC.*
2. *The Football Federation of Bosnia and Herzegovina is ordered to pay a fine of CHF 50.000. This fine is to be paid within 30 days of receipt of the ruling. Payment can be made either in Swiss francs (CHF) (...) or in US Dollars (...).*
3. *The Football Federation of Bosnia and Herzegovina is warned as to their future conduct. Should incidents of such gravity occur again in the future, the FIFA Disciplinary Committee will impose barsber sanctions, such as a points deduction or elimination of the representative team of Bosnia and Herzegovina from a respective tournament.*
4. *The costs of these proceedings of CHF 3.000 are to be borne by the Football Federation of Bosnia and Herzegovina. This amount is set off against the appeal fee of CHF 3.000 paid by the Football Federation of Bosnia and Herzegovina”.*

On 17 August 2009, the FFBH filed an appeal against the FIFA AC Decision with the Court of Arbitration for Sport (CAS) pursuant to article 63.1 of the FIFA Statutes. By CAS Court Office decision, a further deadline was granted to the FFBH to complete the Statement of Appeal. The Statement of Appeal was considered to be completed on 3 September 2009, within the extension granted to the FFBH, and no further submissions have been filed by it because the Statement of Appeal incorporates all the requirements of the appeal brief.

On 24 September 2009, following receipt of a notice dated 3 September 2009 from the CAS Court Office informing them of the FFBH’s appeal, FIFA filed its «Answer» in which it states the facts and legal arguments of its defence, together with all documents and evidences upon which it intends to rely.

On 30 September 2009, the FFBH paid the CAS Court Office fee of CHF 500 and sent a letter dated 1 October 2009 to the CAS Court Office indicating its wish to have the matter heard. FIFA also indicated its wish to have the matter heard through a letter dated 2 October 2009.

On 1 December 2009, the CAS Court Office issued an Order of Procedure, on behalf of the Panel, which was signed by FIFA on 7 December 2009 and by FFBH on 8 December 2009.

The matter was heard on 16 December 2009 at the CAS Court Office in Lausanne, Switzerland. During the hearing all the Parties presented their respective cases and arguments before the Panel. At the close of the hearing, the Panel asked the Parties to state whether they had any objections in relation to how the hearing had been conducted, specifically in relation to whether their right to be heard and the equally treatment of the Parties have been respected. Both Parties confirmed having no objection in relation to the manner in which the hearing was held, and also confirmed that their right to be heard had been granted and well respected.

LAW

Jurisdiction of the CAS

1. The jurisdiction of the CAS, which is not disputed, derives from article R47 of the CAS Code as well as articles 60.4 and 63.1 of the FIFA Statutes (the “FIFA Statutes”) as read together with article 128 of the FDC.
2. The Parties confirmed the jurisdiction of the CAS by signing the Order of Procedure. It therefore follows that the CAS has jurisdiction to decide the dispute.

Law Applicable

3. Article R58 of the CAS Code provides the following:
“The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.
4. Article 62.2 of the FIFA Statutes provides:
“The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA [...] and, additionally, Swiss law”.
5. The Panel remarks that the “*applicable regulations*” are indeed all applicable FIFA rules and regulations material to the dispute at stake, and in particular the FDC.
6. Therefore, the Panel holds that the dispute must be decided according to FIFA Statutes and regulations and, complementarily, if necessary, Swiss law.

Admissibility

7. The statement of appeal was filed by the FFBH on 17 August 2009 against the FIFA AC Decision received by the FFBH on 28 July 2009 and the FFBH, upon an extension granted by CAS Court Office complete the appeal on 3 September 2009. Article 63.1 of the FIFA Statutes provides:
“Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question”.
8. It therefore follows that the appeal as filed by the FFBH is admissible.

9. FIFA filed its answer on 24 September 2009 following receipt of a notice dated 3 September 2009 from the CAS Court Office informing them of the FFBH's appeal. It therefore follows that the said answer is admissible, having been filed within the 20 day time limit set out under article R55 of the CAS Code.

Merits of the Dispute

10. As a general principle, the Panel has full power to review the facts and the law (article R57 of the CAS Code) but, under this provision, the Panel's scope of review is limited to the issues addressed in the appealed decision, *in casu* the FIFA AC Decision.
11. The Panel has full power to establish whether or not the challenged decision is lawful, whether the sanctions are correct and whether they are fair and proportionate, but cannot extend beyond the limits of a review of the disciplinary sanction imposed by the FIFA AC.
12. In the present case, the FFBH requests "(...) *to be totally liberated of the or the fine to be reduced at least 50% and to make a correction of Point 3 of the Decision, that is, to set up a limitation only for home matches (...) and to consider changes of regulations, which could provide a possibility to the security organs of any visiting association to take security measures for the hole sector of its supporters (...)*". This request is made on grounds that small associations such as the FFBH would cease to exist.
 - A. *The incidents that took place during the match played on 28 March 2009 between Belgium and Bosnia and Herzegovina*
13. A sequence of incidents and events which took place during the match between Belgium and Bosnia and Herzegovina on 28 March 2009 have been well highlighted by FIFA as laid out in its Answer and re-visited on paragraph 16 hereunder. In addition, both the FIFA DC and FIFA AC Decisions brought out these incidents. The video footage adduced by FIFA and FIFA's explanation of the incidents during the hearing further corroborates these facts.
14. The aforesaid acts constitute part of improper conduct on the part of spectators, which has been defined under article 67.3 of the FDC to include "(...) *violence towards persons or objects, letting off incendiary devices, throwing missiles, displaying insulting or political slogans in any form, uttering insulting words or sounds or invading the pitch*".
15. Furthermore, the FFBH has neither denied FIFA's allegations that these incidents took place, nor has it adduced any evidence showing that the chain of events as described by FIFA is inaccurate. The incidents reported in the FIFA AC Decision are not disputed by FFBH and, therefore, it follows that the Panel has no doubt that violence took place on 28 March 2009 in the match between Belgium and Bosnia and Herzegovina as reported in the FIFA AC decision.

- B. *Who were the perpetrators of the violence and incidents related to the match between Belgium and Bosnia and Herzegovina on 28 March 2009?*
16. The Panel reverts to the facts and evidences adduced by FIFA in its Answer and reiterated during the hearing and notes that the following incidents specifically took place and emanated from the section occupied by the fans of the Bosnia and Herzegovinian national football team during the match:
- a. That in the earlier parts of the match, Bengal lights were set off in the sector belonging to the visiting team, two of which were thrown onto the pitch. The said Bengal lights were also thrown onto the pitch in the late parts of the match;
 - b. That one smoke bomb was set off in the sector of the visiting team;
 - c. That Bosnian – Herzegovina supporters tried to break down the fence at the north tribune of the stadium, but without success;
 - d. That a number of rockets, more Bengal lights and one smoke bomb were further were set off in the sector of the visiting team (Bosnia – Herzegovina) in the late parts of the match, with some of these devices being thrown onto the pitch, causing the match to be interrupted for about eight minutes; and
 - e. That a supporter with the flag of Bosnia and Herzegovina entered the pitch and caused play to be interrupted for about one minute.
17. These incidents are further corroborated through the video footage adduced by FIFA. This notwithstanding, and in addressing the FFBH claims that Bosnia and Herzegovina is a specific country with three quarter of its supporters living outside Bosnia and Herzegovina and who bear passports of their countries of residence, thereby making it difficult for it them to control any incidents which take place in a foreign country, especially in relation to the depriving off fireworks from these supporters in away matches, the Panel refers to the provisions of article 51 of the FDC in accordance with which “[i]f, in the case of violence, it is not possible to identify the perpetrator(s), the body will sanction the club or association to which the aggressors belong”.
18. The Panel is left without any doubt that these incidents were perpetrated by fans belonging to the Bosnia and Herzegovina national team. Apart from the incident related to the supporter carrying the flag of Bosnia Herzegovina who entered into the pitch¹, all the other incidents were caused in the Bosnia Herzegovina sector. As a matter of fact, the FFBH has itself confirmed in its Appeal brief that these incidents were committed by its supporters, saying, “[w]ith our apologies for the incidents, committed by BH supporters on the match in Belgium on 28.03.2009 (...)”.
19. The Panel also stresses that the expression “own group of spectators” established in article 67 of the FDC is not only related to the spectators or fans of national clubs, but it is also extended to national teams, since this provision is also applicable to “visiting associations”. The Panel underlines the collaboration and efforts done by the FFBH to avoid incidents during the match,

¹ At the hearing FIFA stressed that this particular incident was not determinant in relation to the sanctions imposed on the FFBH.

however, article 67.2 of the FDC is a strict liability provision, since the visiting association may be sanctioned “*regardless of the question of culpable conduct or culpable oversight*”.

C. *What are the legal consequences for the said violence?*

20. The FFBH claims that the FIFA match commissioner for the match in question expressed his satisfaction that all the necessary safety measures for the match had been met by the FFBH, who provided detailed copies of the passports and addresses of its 3,800 fans for the match to both FIFA and the BFA.
21. The FFBH further states that it requested the Turkish Football Federation and the BFA to provide them with information and video footage of all the troublemakers in order to enable them to take the necessary steps for the forthcoming matches, but that this was never done.
22. In consideration of the aforesaid pleadings from the FFBH, the Panel refers to the legal provisions related to the responsibilities of clubs and football associations and their liabilities for spectator conduct as provided for under the FDC, whose object has been described under article 1 to “*(...) describes infringements of the rules in FIFA regulations, determines the sanctions incurred, regulates the organisation and function of the bodies responsible for taking decisions and the procedures to be followed before these bodies ...*”.
23. Article 67.2 of the FDC provides for one such infringement and reads as follows:
“The visiting association or visiting club is liable for improper conduct among its own group of spectators, regardless of the question of culpable conduct or culpable oversight, and, depending on the situation, may be fined. Further sanctions may be imposed in the case of serious disturbances. Supporters occupying the away sector of a stadium are regarded as the visiting association’s supporters, unless proven to the contrary”.
24. The sanctions imposable on a legal person such as a football association under the FDC for violation of any rules prescribed thereunder range from fines to warnings, reprimands, or return of awards as provided for under article 10 of the FDC.
25. Having found that the perpetrators of the violence were fans of the Bosnia and Herzegovinian national team, it follows that the FFBH, as the association in charge of football in Bosnia and Herzegovina is liable for the improper conduct of the said supporters in accordance with the strict liability set forth on article 67.2 of the FDC.
26. The Panel disagrees with the FFBH’s implication that the FIFA match commissioner’s report indicating his satisfaction with the security measures taken prior to the match is sufficient evidence to indicate that the FFBH had fulfilled its obligations and released the FFBH off the strict liability established in article 67.2 of FDC. The incidents which took place during the match and immediately following the FIFA match commissioner’s report are a clear indication that insufficient safety measures had been taken. In addition, the provisions of article 67.2 of the FDC are clear that the liability of the visiting association for improper conduct on the part of its fans is regardless of the question of culpable conduct or culpable oversight.

27. It is clear that the home association has also not adopted a proper conduct to avoid the incidents which occurred², but the lack of diligence and security survey from the BFA cannot be a legal ground to remove or mitigate the liability of the FFBH under article 67.2 of the FDC.
28. There is no doubt that, under article 67.2 of the FDC that member associations bear strict liability for the actions of third parties, who are nonetheless specifically identified. This rule leaves absolutely no room for any other interpretations in as far as its application is concerned. Visiting associations are responsible, even if they are not at fault, for the improper conduct of their supporters. Under this rule, visiting associations are automatically held responsible once such acts have been established. The objective of this rule is to ensure that visiting associations are responsible for their supporters' conduct, since FIFA has no direct disciplinary authority over a national team's supporters but only over football associations. Without such indirect sanction over the supporters, FIFA would be powerless to deal with supporters' misconduct.
29. The principle of strict liability is therefore applicable to the FFBH and due to this principle, the FFBH is responsible for the behaviour of its supporters.

D. Is the fine imposed by the FIFA AC Decision fair, reasonable and proportional?

30. The Panel proceeds to analyse the sanctions imposable for such improper conduct, and also assesses the reasonability of the sanctions imposed by the FIFA AC.
31. The FFBH had asked the Panel to cancel or reduce the fine imposed by the FIFA AC Decision by at least 50%.
32. The appealed FIFA AC Decision ordered the FFBH to pay a fine of CHF 50,000 in consideration of the fact that:
 - i. As a football association, the FFBH was liable for the improper conduct of its own fans as provided for under article 67.2 of the FDC.
 - ii. This was the third such offence committed by the FFBH during the 2010 South Africa World Cup qualifiers, and that the previous fines of CHF 6,500 and CHF 10,000 which had been imposed on the FFBH for similar conduct among its fans seemed not to be sufficient. This was considered in line with article 40 of the FDC, and the FIFA AC deemed that a severe sanction of CHF 50,000 was necessary and commensurate to the offence.
 - iii. The said fine was within the minimum and maximum limits of CHF 300 and CHF 1,000,000 respectively as set out under article 15.2 of the FDC.
33. The Panel begins by referring to the provisions of article 39.1 of the FDC in accordance with which “[t]he body pronouncing the sanction decides the scope and duration of it”.

² At the hearing, FIFA stated that the BFA was also sanctioned for the incidents occurred.

34. Article 39.3 of the FDC further adds that “[u]nless otherwise specified, the duration of a sanction is always defined. The body shall take account of all relevant factors in the case and the degree of the offender’s guilt when imposing the sanction”.
35. The Panel notes that in accordance with article 15.2 of the FDC, the fine issued for any disciplinary sanctions “shall not be less than CHF 300, or in the case of a competition subject to an age limit not less than CHF 200, and not more than CHF 1,000,000”. In light of this, the Panel is of the view that the fine of CHF 50,000 imposed by the FIFA AC was within the legal parameters and it is proportional to the gravity of the incidents, considering the circumstances and FIFA precedents, the previous incidents and sanctions imposed to FFBH and the maximum scale for this type of sanctions, which is CHF 1,000,000.00.
36. The Panel now refers to the provisions of article 40.1 of the FDC which govern repeated infringements and provides that “[u]nless otherwise specified, the body may increase the sanction to be pronounced as deemed appropriate if an infringement has been repeated” and notes that this is the third similar offence committed by the fans of Bosnia and Herzegovina during the 2010 South Africa World Cup qualifiers.
37. Despite having been earlier fined CHF 6,500 and CHF 10,000 respectively by FIFA on 3 November 2008 for improper conduct among its fans for different matches which had taken place on earlier dates, the FFBH failed to exercise precautionary measures to prevent further acts of violence on the part of its fans, and barely four months later on 28 March 2009, similar incidents occurred in Belgium.
38. The Panel takes note of this additional relevant conduct on the part of the FFBH, and finds that the degree of fault on the part of the FFBH can in no way be said to have been absent following the aforesaid previous fines, and its failure to react with equal precautionary measures and urgency in relation to the matches which took place after 8 November 2008, including the one which took place in Belgium on 28 March 2009.
39. Therefore, and in consideration of this fact, the Panel is of the view that harsher sanctions, as was rightfully imposed by the FIFA AC ought to have been imposed on the FFBH.
40. In reason whereof the Panel is of the similar opinion that a fine of CHF 50,000 is fair, proportional, just, reasonable and within the legal parameters set out under article 15.2 of the FDC. Likewise, the Panel notes that this was the third offence committed by the fans of Bosnia and Herzegovina, and therefore this amount should act as a deterrent to the FFBH in order to move it to act swiftly and to take appropriate measures to control the future conduct of its own supporters. The FFBH’s request that the said fine of CHF 50,000 be reduced by at least 50% is therefore dismissed.

E. Can CAS review or amend the warning contained on point 3 of the FIFA AC Decision?

41. The Panel now proceeds to address the FFBH's request that point 3 of the FIFA AC Decision be corrected in order to limit the possible sanctions and warnings contained thereunder to home matches played in Bosnia and Herzegovina because only in home matches would the FFBH have authority to take away any fireworks, solid materials and "*transparents of insulting*" texts from the fans.
42. Article 10 of the FDC stipulates as sanctions common to natural and legal persons, among others, "warnings"³, with this sanction being the lightest one contemplated in the ranking of possible applicable sanctions.
43. Article 67.2 of the FDC is clear in its wording that visiting associations are liable for the improper conduct of their own spectators and the warning given by FIFA to the FFBH, in addition to the fine imposed, is within the competence and discretionary powers of FIFA, taking into consideration the gravity of the incidents and previous behaviour of Bosnia Herzegovina's supporters.
44. Any review by the CAS of point 3 of the FIFA AC Decision in a way that would remove the liability of the visiting association and only limit such liability to home matches would be tantamount to the CAS amending and/or going against the discretionary powers given by the FDC to FIFA. The Panel states that its duties and powers are restricted to review the FIFA AC Decision and check whether the imposed sanctions have been decided in accordance with the FDC, *i.e.* whether they are lawful, proportional, fair and reasonable. The warning contained in the FIFA AC Decision is within the list of sanctions of the FDC and no formal or substantive valid ground has been invoked by the FFBH to consider such decision invalid, unfair and not proportional. The Panel also took into consideration that the annual budget of the FFBH is approximately four million euros and the imposed fine should not put in risk the existence and/or the activities of the FFBH.
45. In consequence, the FFBH's request for the revision of the warning contained on FIFA AC Decision is dismissed.

F. Can CAS amend FIFA FDC regulations?

46. The Panel similarly addresses the FFBH's request that the CAS considers changing the FDC regulations in a way that could make it possible for the security organs of the visiting association to take security measures for the entire sector of its supporters and to be authorised to take away all solid things and fireworks, as well as to be able to control tickets with Identity Cards.
47. The Panel highlights that it has no competence and powers to change, amend or abolish any regulations of the FIFA or of any sports federation for that matter. Rather, the strict duty of

³ As foreseen on article 13 of FDC "*a warning is a reminder of the substance of a disciplinary rule allied with the threat of a sanction in the event of a further infringement*".

the CAS is to implement, interpret and/or apply the regulations of the said sports federation as they are. Therefore, the FFBH's request for the changing of the regulations is dismissed.

G. Other prayers for relief

48. Following all the conclusions highlighted on section V of this award, the Panel dismisses any and all other prayers and requests for relief filed by the FFBH in relation to the aforementioned case.

H. Conclusion

49. In light of the above, the Panel concludes that the disciplinary measures imposed on the FFBH in the FIFA AC Decision are legal, reasonable, proportional and, therefore, the appeal filed by FFBH must be dismissed.
50. On account of all the aforementioned, the Panel upholds the FIFA AC Decision dated 24 July 2009 in its entirety and orders the FFBH to pay a fine of CHF 50,000.

The Court of Arbitration for Sport rules:

1. The appeal filed by the Football Federation of Bosnia and Herzegovina against the FIFA Appeal Committee Decision dated 24 July 2009 is dismissed in full.
2. The FIFA Appeal Committee Decision dated 24 July 2009 is upheld and confirmed in full.
- (...)
5. Any other or further claims are dismissed.