



**Arbitration CAS 2020/A/6920 Al Hilal Club v. Confédération Africaine de Football (CAF),  
award of 15 December 2020**

Panel: Prof. Ulrich Haas (Germany), President; Prof. Jacopo Tognon (Italy); Mr Manfred Nan (The Netherlands)

*Football*

*Disciplinary sanctions against a club for the behaviour of its supporters*

*Right to be heard*

*Safeguarding of procedural rights*

*Strict liability of a club for the behaviour of its supporters*

*Proportionality of a sanction*

1. A party against which a disciplinary measure is issued must have the possibility (orally or in writing) to defend itself against the charges forming the matter in dispute in the disciplinary proceedings. Such right includes the opportunity to file submissions and to present evidence in order to challenge the allegations brought forward against it. Furthermore, the right to be heard is also breached with respect to the provision stating that the decision contains the legal reasons for the decision, when such legal reasoning does not explain what provisions were applied to which of the addressees of the decision, and why. The legal reasoning must be such that the addressee understands why the judicial body has decided the way it has and not in a different manner.
2. According to Article R44.3 of the CAS Code, which is also applicable in appeal proceedings, a party can request the CAS panel to order the other party to produce documents in its custody or under its control. Furthermore, Article R56 of the CAS Code does not prevent a party from filing a reply once the first exchange of documents is concluded. It is true that the CAS Code foresees, in principle, one exchange of submissions only in appeals arbitration procedures. However, there is an exception to the rule. According thereto a party may supplement its request or its arguments, produce new exhibits and specify further evidence if all parties agree or if the President of the panel so orders based on exceptional circumstances. The need to safeguard the parties' fundamental procedural rights must always constitute an exceptional circumstance within the meaning of Article R56 of the CAS Code. Furthermore, additional submissions are generally allowed when the respondent's answer contains defenses that need to be rebutted in writing. A reply is also permitted, if the need to file rebuttal evidence or arguments only became apparent after receipt of the other party's submissions. However, in accordance with the obligations of the parties in the adversarial system governing CAS proceedings, it is for the parties to submit the relevant facts and present the evidence to the panel. If a party wishes to react to a submission of the other party, it has the obligation to do so (and file a request according to Article R56 of the CAS Code) and thereby to safeguard its procedural rights.

3. In accordance with strict liability provisions providing that clubs are liable *“for incidents of any kind”* based on the conduct of their supporters, whether or not a club handed over the stadium to security forces is immaterial with respect of the question whether the club is liable for the conduct of its supporters.
4. Sanctions must comply with the principle of proportionality. According thereto the severity of the sanction must relate to the gravity of the wrongdoing displayed. Although autonomy of association may grant sports bodies margin of discretion in the context of the determination of disciplinary measures, such discretion (and any immunity from review that comes along with it) can in any case only be accepted if the sports body in question provides sufficient justification for its conclusions. An association cannot claim immunity from judicial review and not disclose its (legal) reasoning. In such case, autonomy turns into arbitrariness, which is not acceptable.

## I. PARTIES

1. Al-Hilal Club (“Al-Hilal” or “Appellant”) is a professional football club from Omdurman, Sudan. It is a member of the Union of Arab Football, competes in the Sudan Premier League and participated in the CAF Champions League 2019/2020 edition.
2. Confédération Africaine de Football (“CAF” or “Respondent”) is the governing body of football at African level. It exercises regulatory, supervisory and disciplinary functions over national federations, clubs, officials and players in Africa. Its principal place of business is at 6<sup>th</sup> of October City, Egypt.

## II. FACTUAL BACKGROUND

3. Below is a summary of the main relevant facts and allegations based on the Parties’ written and oral submissions and allegations. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.

### A. The Match

4. The CAF Champions League consists of 16 teams. These 16 teams are divided into four groups. Within each group, each team plays a home and away match against the other three teams in the group.
5. The Group Stage of the 2019/2020 edition of the CAF Champions League took place

between 29 November 2019 and 1 February 2020. Al-Hilal was drawn into Group B along with Etoile Sportive du Sahel, Al Ahly and FC Platinum.

6. On 1 February 2020, Al-Hilal played a final Group Stage home match against Al Ahly (the “Match”).
7. During the course of the Match, match officials reported numerous issues and incidents. For example,
  - (a) the Match referee reported the following issues:
    - Throwing water bottles, chairs and projectiles on the field of play more than 3 times during the Match;
    - Use of laser lights in an excessive manner during the Match; and
    - During the periods of interruption and until the conclusion of the Match, Mr. El Hassan Mohamed, public relations officer of Al-Hilal, verbally insulted and threatened the Match referee.
  - (b) the Safety and Security Officer reported the following issues:
    - Use of laser lights against Al Ahly players and the referee;
    - Throwing water bottles and broken chairs during second half of the Match;
    - Stoppage of Match play for 9 minutes; and
    - Shouting at the referee by Mr. Mohammed.
  - (c) The General Coordinator of the Match reported the following issues:
    - Throwing water bottles and chairs more than 3 times during the Match;
    - Use of laser lights during the Match;
    - Stoppage of Match play for 9 minutes (at the 73<sup>rd</sup> minute of play) due to objects thrown on the pitch and 2 fans of Al-Hilal entering the field of play; and
    - Shouting of insults by Mr. Mohammed to the referee.
  - (d) The Match Commissioner report the following issues:
    - Poor attitude of the fans and throwing bottles on the field of play;
    - Use of laser lights during the Match; and
    - Stoppage of Match play for 9 minutes (at the 73<sup>rd</sup> minute of play) due to objects thrown on the pitch and 2 fans of Al-Hilal entering the field of play.
8. On 2 February 2020, Al Ahly filed a protest with the CAF. The protest alleged, *inter alia*, the following:
  - Al-Hilal’s fans spread various threats against Al Ahly across social media platforms,

noting that they would “kill” and “bury” the team and fans in reference to the Post-Said massacre. Some threats included Al-Hilal’s fans holding weapons and tools to be used during the Match;

- Two weeks before the Match, a terrorist attack occurred at the Match venue;
- On the day of the Match, Al Ahly was forced to delay its arrival at the stadium;
- During the Match, Al-Hilal’s fans invaded the field of play and attacked Al Ahly players;
- The head coach of Al Ahly was hit by a chair and the 1<sup>st</sup> assistant referee was hit by an undefined substance, which led to the Match being further delayed;
- The players and officials of Al Ahly were terrified and felt unsafe; and
- Insulting banners were waived by Al-Hilal’s fans while they chanted violent and political songs.

## **B. Findings of the CAF Disciplinary Board**

9. On 4 February 2020, the CAF Disciplinary Board, upon reviewing the file materials, imposed the following sanctions on Al-Hilal and Mr. Hassan Mohamed (an official of Al-Hilal) in accordance with Articles 82, 83.1, 83.2, 133 and 151 of the CAF Disciplinary Code (the “Disciplinary Decision”):

- *Ban Al Hilal club from playing their next four (4) home CAF interclub matches with spectators.*
- *Impose a financial sanction of \$100,000 (One Hundred Thousand US Dollars) on Al Hilal club of which \$50,000 (Fifty Thousand US Dollars) are suspended on condition that they are not found guilty of a similar offence for one year.*
- *Suspend the official Hassan Mohamed for his next five (5) CAF interclub matches and impose upon him a fine of \$10,000 (Ten Thousand US Dollars).*

## **C. Findings of CAF Appeals Board**

10. On 6 February 2020, Al-Hilal announced an appeal vis-à-vis CAF and on 13 February 2020, Al-Hilal appealed the Disciplinary Decision to the CAF Appeals Board. In doing so, the CAF invited Al-Hilal to participate in an in-person hearing at CAF Headquarters. Al-Hilal did not attend.

11. On 16 March 2020, following a review of the written file materials, the CAF Appeals Board upheld the Disciplinary Decision (the “Appealed Decision”) as follows:

1. *The appeal lodged by Al Hilal is admissible.*
2. *The appeal lodged by Al Hilal club of Sudan lacks merit.*
3. *The decision no. 001-CAI-04.02.2020 is confirmed.*
4. *All other requests of relief are dismissed.*

12. It is from the Appealed Decision that Al-Hilal now appeals to the Court of Arbitration for Sport (the “CAS”).

### **III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

13. On 26 March 2020, Al-Hilal filed its Statement of Appeal against the CAF with the CAS in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (the “CAS Code”) challenging the Appealed Decision. In its Statement of Appeal, the Appellant appointed Mr. Jacopo Tognon, Attorney-at-Law in Padova, Italy as arbitrator.

14. On 3 April 2020, Al-Hilal designated its Statement of Appeal as its Appeal Brief in accordance with Article R51 of the CAS Code.

15. On 17 April 2020, the CAF nominated Mr. Manfred Nan, Attorney-at-Law, Arnhem, The Netherlands as arbitrator in accordance with Article R53 of the CAS Code.

16. On 15 May 2020, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, confirmed the constitution of the Panel as follows:

President: Prof. Ulrich Haas, Professor of Law, Zurich, Switzerland  
Arbitrators: Prof. Jacopo Tognon, Professor and Attorney-at-Law, Padova, Italy  
Mr. Manfred Nan, Attorney-at-Law, Arnhem, The Netherlands

17. On 20 May 2020, following agreed-upon extensions of time, the CAF filed its Answer in accordance with Article R55 of the CAS Code.

18. On 22 May 2010, the CAS Court Office invited the Parties to indicate whether they wished a hearing to be held in this matter.

19. On 27 May 2020, Al-Hilal confirmed that it deemed a hearing necessary in this procedure.

20. On 29 May 2020, the CAF confirmed that it did not deem a hearing necessary in this procedure.

21. On 16 July 2020, the CAS Court Office, on behalf of the Panel, invited the Appellant to file a witness statement on behalf of Dr. Hassam Ali Eissa. Furthermore, the Panel invited the Appellant to clarify whether its appeal was only filed in the name of Al-Hilal or also to the benefit of Al-Hilal’s representative, Mr. Hassan Mohamed.

22. On 23 August 2020 and 24 August 2020, the Parties submitted the names of the persons attending the hearing on their behalf.
23. On 25 August 2020, the CAS Court Office acknowledged receipt of the Parties' respective letters. Furthermore, the letter noted that the Appellant had failed to respond to the CAS Court Office letter dated 16 July 2020.
24. With letter dated the same day, the Appellant informed the CAS Court Office that it had not received the CAS Court Office letter dated 16 July 2020.
25. Following the above letter by the Appellant, the CAS Court Office, on 26 August 2020, resent the letter dated 16 July 2020 and invited the Appellant to provide its response by 4 September 2020.
26. On 3 September 2020, Al-Hilal provided its response to the CAS Court Office letter dated 16 July 2020.
27. On 4 September 2020, the CAS Court Office acknowledged receipt of the Appellant's response.
28. On 7 September 2020, the CAS Court Office on behalf of the Panel advised the Parties that the Respondent will have an opportunity to address the Appellant's response dated 3 September 2020 at the outset of the hearing.
29. On 7 and 8 September 2020, the Parties signed and returned the respective Order of Procedure ("OoP").
30. On 11 September 2020, a hearing was held at the CAS Court Office. The Panel was assisted by Mr. Brent J. Nowicki, Managing Counsel to the CAS, and joined by the following persons:

For Al-Hilal:

- Dr. Hassam Ali Eissa, General Secretary of Al-Hilal
- Dr. Pedro Mecieirinha, counsel

For the CAF:

- Mr. Marc Cavaliero, counsel
- Ms. Carole Etter, counsel
- Ms. Achta Mahamaf Saleh, Legal Director of the CAF
- Mr. Nedim Magdy, counsel of the CAF;

31. At the outset of the hearing, the Parties confirmed that they had no objection to the constitution of the Panel. At the conclusion of the hearing, the Parties confirmed that their right to be heard had been fully respected. At the conclusion of the hearing the Panel advised the Parties that still at this stage it was possible for them – if they so wish – to enter into a settlement agreement.
32. On 16 September 2020, the Respondent informed the CAS Court Office that “*after due consideration, CAF regrets to inform you that it is not in a position to settle ... [and that therefore CAF] wishes that the Panel passes a decision in this case*”.
33. On 18 September 2020, the CAS Court Office acknowledged receipt of the Respondent’s email and advised the Parties that an award in this matter will be issued in due course.

#### **IV. THE PARTIES’ SUBMISSIONS**

34. The following summary of the Parties’ positions is illustrative only and does not necessarily comprise each and every contention put forward by the Parties. The Panel, however, has carefully considered all the submissions made by the Parties, even if no explicit reference is made in what immediately follows.

##### **A. The Appellant**

35. Al-Hilal’s submissions may be summarized as follows:

Al-Hilal does not contest the incidents registered by the Match referee, the Safety and Security Officer, the General Coordinator of the Match or the Match Commissioner. Instead, Al-Hilal challenged the Appealed Decision on the following grounds, because

- it disrespects Articles 51 d) and e) of the CAF Disciplinary Code (“DC”), since it lacks sufficient motivation;
  - the provision applies to the Appeal Board and
  - requires the latter to motivate its legal reasoning and mention the provision on which it is based.
  - Only if these prerequisites are fulfilled the parties are in a position “*to understand the legal reasons of the decision, and if they want to do so, to appeal of it*”.
- Al-Hilal further submits that it was prevented to present its version of the facts. The Appeal Body failed to properly apply Article 45 (3) DR according to which the CAF secretariat must verify the parties’ versions of the facts.
  - The decision-making body cannot decide a sports-related dispute without the version of the facts submitted by either of the parties. The decision-making body must observe the contradictory principle. Al-Hilal in particular takes issue with the decision of the Appeal Board in which the latter stated “*that Article 45 of the Disciplinary Code does not in any way present an obligation for the secretariat to request a*

*response from the concerned parties but merely indicates the option to do so whenever deemed necessary”.*

- Al-Hilal is of the view that the Appeal Body did not consider all of the circumstances of the case and, thereby violated Article 156 DC. The provision demands that the hearing body follows *“settlements already established by sports doctrine and jurisprudence”*. Furthermore, Al-Hilal submits that the Appeal Body violated the principle of proportionality, a principle that is firmly enshrined in CAS jurisprudence, in particular CAS 2014/A/3578, CAS 2016/A/4558, and CAS 2017/A/5299. In this regard, Al-Hilal states that
  - It has a long history and was established in 1930. It has since its very existence promoted football activity not only at a professional level, but also on youth levels.
  - It has never been punished for misconduct of its fans or for any violent behaviour. Instead, Al-Hilal is *“a fine example of football integrity, fair-play and good faith”*. Instead, Al-Hilal fans have been granted the title of ideal fans by CAF. They do not have *“black spots in their history”*.
  - The referee assigned to the Match (Mr. Radwan Gaid) was *“pivotal”* to the incidents. The latter had a *“special dealing with the Egyptian Football Association”* and had *“deep ties”* also with the Egyptian teams. Furthermore, this referee was assigned to the Match despite Al-Hilal’s objection. *“Fairness, logic and proper sense require assigning the match refereeing to a referee from a region different from the one to which the rival team belongs”*.
  - The referee had a track record of being *“unjust, systematic and intended targeting against Al-Hilal and its sport career ... coupled with siding with its contesters from the northern part of the continent and Arab Maghreb”*. Also, in the Match the referee *“provoked Al-Hilal players, made them nervous ... [and] out of mood”*. The referee was *“blatantly partial, siding with Al-Ahly and provoking our team players and fans”*.
  - CAF imposed *“on Al-Hilal a specific French company to transfer the African matches from its stadium in Sudan for USD 40,000 ... citing the pretext that the necessary technical tools and devices required for the transfer are not available in Sudan”*.
  - Al-Hilal submits that *“by this historical account”* a *“magnitude of injustice, harm and targeting ... against Al Hilal throughout its African career”* had been inflicted.
  - Al-Hilal has suffered *“losses of billions of Sudanese pounds in form of devastated seats, gates and some electricity systems”*.
  - Al-Hilal administration had handed over *“its stadium to the Organizing Committee and security forces entrusted with keeping order therein, for clearing its responsibilities for riots, disorder or entering of prohibitions into the stadium”*. Such handover to the security forces occurred on 2:00 pm of the day of the Match. Thus, Al-Hilal cannot be responsible



for any fireworks or throwing of water bottles.

- The presence of the security forces was the request of the club Al-Ahly and the Egyptian authorities and the Egyptian Embassy. The Sudanese authorities promptly responded to that request.
- The sanction imposed on Al-Hilal is harsher than sanctions imposed in comparable cases. Al-Hilal refers insofar – inter alia – to the sanctions imposed on the club Esperance Sportive de Tunis on 27 July 2019.

36. Al-Hilal therefore requested the Panel to decide as follows:

*“The present appeal has to be considered admissible and accepted, and consequently the Appellant requests to the Court of Arbitration for Sport:*

- (a) *That no sanction shall be applied to appellant club and its official and that the appealed decision shall be revoked and consequently cancelled;*
- (b) *All because the sanctions imposed by CAF are excessive, disproportionate and unjustified;*
- (c) *If not so, lighter sanctions shall be imposed to the appellant and its official, namely the warning sanction or the reprimand sanction, provided for in article 88 no. 1 (a) and (b) of the CAF Disciplinary Code”.*

## **B. The Respondent**

37. The Respondent’s submissions may be summarized as follows:

- Al-Hilal was invited to attend the hearing before the Appeals Board on 1 March 2020. However, it decided not to attend. Thus, any procedural violation that occurred before the first instance was *“already cured before the CAF Appeal Board”*. Furthermore, the Respondent submits that the entire disciplinary process that took place before its judicial bodies was *“thorough, fair and balanced”*. In any event – in light of constant CAS jurisprudence – the fact that the case is heard the novo before CAS *“cures alleged flaws”*.
- The Respondent notes that Al-Hilal does not contest the infringements committed by it, in particular they do not contest the factual circumstances of the case. It is, thus, uncontested that the referee had to suspend the Match for 9 minutes because of the behaviour of Al-Hilal’s fans. Furthermore, it is uncontested that the public relations officer of Al-Hilal, Mr. Hassan Mohamed, insulted and threatened the referee as of the moment of the interruption and continuously until after the Match.
- With respect to the proportionality of the sanction the Respondent submits that
  - Associations are given considerable freedom and wide margin of discretion in the context of the determination of disciplinary measures. Consequently, panels shall show restraint when reviewing the sanctions imposed by a disciplinary body.
  - It follows from CAS jurisprudence (CAS 2015/A/3875, para. 125 et seq.) that harsher sanctions are warranted in case *“of serious infringements, structural non-*

*compliance with the various obligations and in case of recidivism”.*

- It is Al-Hilal’s responsibility to ensure that *“the game is not brought into disrepute in any way whatsoever by the conduct of their players, officials, members, supporters, spectators ... and any other person exercising a function at a match at the request of the association or club”* (Article 83.1 DR). In particular, the hosting club carries a particular responsibility in relation to the security both inside and around the stadium, before, during and after the Match (Article 83.2 DR).
- The incidents for which the sanctions were imposed were particularly serious. In addition, Al-Hilal displayed a *“high degree of guilt”*. The sanctions are necessary to serve as a deterrent against such offensive and violent conduct. This is even more true considering that Al-Hilal did not show any remorse and has never tried to apologize. In no way can the appointment of the referee serve as an excuse for the breaches committed.
- The Respondent further submits that there are a number of aggravating factors to be considered. Al-Hilal is a *“repeated offender ... and has been sanctioned ... since 2019 for similar incidents., i.e. on 5 October 2017 (fine of USD 10,000 for throwing missiles towards the assistant referee and for the unruly behaviour of its fans), 13 January 2019 (fine of USD 30,000 for usage of flares and throwing stones and water bottles and for failing to provide adequate security for the match), 13 January 2019 (fine of USD 10,000 for the use of fireworks and for causing stoppage of the match), 24 March 2019 (fine of USD 20,000 for excessive usage of laser, usage of flares/fireworks and for failure to provide security and prevent pitch invasion by the supporters) and 8 March 2020 (fine of USD 45,000 for the usage of flares and lasers, throwing water bottles and plastic debris and for failure to provide adequate security)”*. Thus, Al-Hilal’s fans are notorious for this kind of infractions.
- Al-Hilal has failed to learn its lessons from the previous sanctions imposed on it. It is unwilling to take any appropriate measures to put an end to these serious infringements. Under such circumstances, the sanctions need to be escalated to discourage Al-Hilal’s fans. Four matches behind closed doors is the only logical consequence in accordance with the principle of proportionality.
- This is all truer considering that there are no mitigating circumstances. The allegations in relation to the referee *“are completely irrelevant, unsubstantiated and a vain attempt to distract the Panel from the substantial issues of the case and the infringements committed by its fans”*.
- The burden of proof that the sanctions imposed are disproportionate rests on the Appellant. This follows from constant CAS jurisprudence (CAS 2017/A/5336, para. 108). This burden of proof cannot be discharged by referring to other cases that *“are neither helpful nor comparable to the matter at hand”*. In particular, the Respondent finds that the cases referred to by the Appellant *“do not reach the level of seriousness of the infringements committed here”*.
- Finally, the Respondent rejects the comparison with the case of the club Esperance Sportive de Tunis on 27 July 2019. The reference to *“several news articles”* is unsubstantiated and insufficient to discharge the Appellant’s burden of proof.

38. The Respondent therefore requests the Panel to decide as follows:

*“The Appeal shall be rejected and the decision of the CAF Appeal Board shall be confirmed in its entirety. Al Hilal Club shall be ordered to bear the costs of the arbitration and it shall be ordered to contribute to the legal fees incurred by the Respondent at an amount of CHF 10,000”.*

## V. JURISDICTION OF THE CAS

39. The question of whether or not the CAS has jurisdiction to hear the present dispute must be assessed on the basis of the *lex arbitri*. As Switzerland is the seat of the arbitration and not all Parties are domiciled in Switzerland, the provisions of the Swiss Private International Law Act (“PILA”) apply, pursuant to its Article 176 (1). In accordance with article 186 of PILA, the CAS has the power to decide upon its own jurisdiction (*Kompetenz-Kompetenz*).

40. Pursuant to Article R27 of the CAS Code:

*“These Procedural Rules apply whenever the parties have agreed to refer a sports-related dispute to CAS. Such reference may arise out of an arbitration clause contained in a contract or regulations or by reason of a later arbitration agreement (ordinary arbitration proceedings) or may involve an appeal against a decision rendered by a federation, association or sports-related body where the statutes or regulations of such bodies, or a specific agreement provide for an appeal to CAS (appeal arbitration proceedings).*

*Such disputes may involve matters of principle relating to sport or matters of pecuniary or other interests relating to the practice or the development of sport and may include, more generally, any activity or matter related or connected to sport”.*

41. Article R47 of the CAS Code provides as follows:

*“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body.*

*An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned”.*

42. The Appellants rely on Article 8 DR, which states as follows:

*“Decisions taken by the Appeal Board shall be final and binding on all the parties concerned. This provision is subject to appeals lodged with the Court of Arbitration for Sport (CAS) (art. 45 para. 4 of the Statutes)”.*

43. The Appellants also rely on Article 48 of the CAF Statutes, which states as follows:

1. *CAF authorizes appeals to the Court of Arbitration for Sport; an independent arbitration tribunal based in Lausanne (Switzerland) to resolve any disputes between CAF, national associations, members, leagues, clubs, players, officials, and licensed match agents and licensed players’ agents.*

2. [...]

3. *Only CAS shall be empowered to adjudicate on appeals against any decisions or disciplinary sanctions taken in the last instance by any legal body of CAF or FIFA, a national association, league, or club. Any appeal must be filed with CAS within ten (10) days following the notification of the decision.*

4. [...].

44. The Panel notes that the Appealed Decision qualifies as a “*decision of a federation*” in the meaning of Article R47 of the CAS Code, and thus subject to appeal before the CAS. Moreover, the Panel notes that the jurisdiction of CAS is not disputed by the Parties and was further confirmed by the OoP duly signed by the Parties.

45. It follows that the CAS has jurisdiction to hear this dispute.

## **VI. ADMISSIBILITY**

46. Article R49 of the CAS Code provides as follows:

*“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late”.*

47. Further to the above, Article 48 (3) of the CAF Statutes provides that any appeal to the CAS must be filed within ten (10) days of receipt of notification of the decision.

48. The grounds of the Appealed Decision were notified to the Appellant on 17 March 2020. The Statement of Appeal was filed on 26 March 2020 (i.e. within the 10-day deadline).

49. It follows, therefore, that this appeal is admissible.

## **VII. OTHER PROCEDURAL ISSUES**

50. In the letter to the CAS Court Office dated 25 August 2020, Dr. Pedro Macieirinha submitted that the appeal lodged on 26 March 2020, was not only filed in the name of Al-Hilal, but also “*for the benefit of the Official of the Club, Mr Hassan Mohamed*”. At the outset of the hearing, however, Dr. Pedro Macieirinha, clarified that this – contrary to his previous letter – was not the case and that he did not have power of attorney from Mr. Hassan Mohamed to act in the latter’s name. The Respondent took note of this clarification and did not object to it. It follows from the above, that this Panel does not need to deal with the Appealed Decision insofar as it refers to Mr. Hassan Mohamed. No appeal has been lodged in the latter’s name and Mr. Hassan Mohamed is, therefore, not a party to these proceedings.

### VIII. APPLICABLE LAW

51. Pursuant to Article R58 of the CAS Code, in an appeal arbitration procedure before the CAS:

*The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.*

52. In addition, Article 48 (2) of the CAF Statutes provides the following:

3. *The Code of Sports-related Arbitration shall govern the arbitration proceedings. With regard to substance, CAS shall apply the various regulations of CAF and FIFA or, if applicable, of national associations, members, leagues and clubs, and, as a last resort, Swiss law.*

53. The Panel is satisfied to primarily apply the various regulations of CAF and FIFA, and, subsidiarily, Swiss law.

### IX. MERITS OF THE APPEAL

54. In the view of the Panel, the dispute pivots around the following questions:

- Did the Respondent breach the Appellant's right to be heard, in particular Articles 51 d) and e) DC according to which the decision must contain "*the legal reasons for the decision*" and "*the provisions on which the decision was based*" and – in case the question is answered in the affirmative, what are the consequences thereof?
- Does the Appealed Decision violate any rules and regulations / statutory principles in relation to the determination of the sanction?

#### A. Did the Respondent breach the Appellant's Right to be Heard?

55. The Appellant submits that the Respondent breached its right to be heard in numerous ways. The Appellant is of the view that the CAF judicial bodies did not observe the "*contradictory principle*". The judicial bodies – according to the Appellant – should have "*verified the parties' version of the facts*". Furthermore, they should have allowed the Appellant to "*submit written statements*" and should have invited the Appellant to the hearing of the Appeal Body held on 13 February 2020.

56. In addition, the Appellant submits that the Appealed Decision violates Articles 51 d) and e) DC, which are based on the right to be heard. These provisions read as follows:

*"The decision contains ... the legal reasons for the decision ... the provisions on which the decision was based".*

57. The Panel finds that – in fact – the CAF breached the Appellant’s right to be heard. The Appellant was not given a possibility to participate before the first instance, the CAF Disciplinary Board. It clearly follows from the decision of said instance that Al-Hilal was not given the opportunity to present its version of the facts. The decision states that

the CAF Disciplinary Board “[a]t its meeting held on 4 February 2020, ... examined all the documents relevant to the above mentioned case including the reports of the match officials, as well as the protest of Al Ahly club and the video footage in question”.

58. Further evidence of this can be found in the Appealed Decision, in which it stated that the DC “does not in any way present an obligation for the secretariat to request a response from the concerned parties but merely indicates an option to do so whenever deemed necessary”.

59. The Panel finds that this is not in line with Article 28 DC, which clearly states that the “parties can defend themselves before any decision is passed”. In the case at hand, Al-Hilal neither had the possibility to submit written observations in the proceedings before the CAF Disciplinary Board nor was it invited to the meeting, following which the decision was taken. It is a firmly enshrined principle in CAS jurisprudence that a party against which a disciplinary measure is issued must have the possibility (orally or in writing) to defend itself against the charges forming the matter in dispute in the disciplinary proceedings. Such right includes the opportunity to file submissions and to present evidence in order to challenge the allegations brought forward against it.

60. This breach of the Appellant’s right to be heard was not cured before the next instance (the CAF Appeal Board). It is true that the Appellant was given the opportunity to file an appeal against the first-instance decision. However, the Appellant was not given the opportunity to challenge the evidence brought forward by the CAF, since it was not provided with it. It is not clear to the Panel whether the Appellant was invited to attend the hearing before the Appeal Board. However, no evidence was submitted by the Respondent that the Appellant was notified of the date of the hearing and/or that the Appellant was invited by the Respondent to attend the hearing before the Appeal Board.

61. Furthermore, the Panel notes that the Appellant’s right to be heard was also breached with respect of Articles 51 d) and e) DC. The legal reasoning in the first instance decision of the CAF Disciplinary Board comprises only two lines. According thereto, the severe disciplinary measures against the Appellant are based on “... the CAF Statutes and regulations [and] ... Articles 82, 83.1, 133 and 151 of CAF Disciplinary Code”. This does not amount to a “legal reasoning” within the meaning of the above provisions. It is neither clear from these two lines what provisions were applied to which of the two addressees of the decision (Al-Hilal and Mr. Hassan Mohammed) and why. Furthermore, none of the provisions cited justify the amount of the fine or the number of games to be played behind closed doors. Even considering a considerable workload of the judicial bodies of the CAF and that the yardstick applicable in proceedings before association tribunals differs from decisions by state courts; the Panel finds that the legal reasoning is insufficient in the case at hand. In the Panel’s view the legal reasoning must be such that the addressee understands why the judicial body has decided the way it has and not in a different manner. This threshold, however, is not met in the case at

hand.

62. The Appealed Decision does not cure these deficiencies. The latter does not even cite the provisions that the Appellant allegedly breached. Furthermore, the Appealed Decision explains the gravity of the sanction imposed on the Appellant by simply stating that the first instance decision “*is in no way disproportionate as per articles 115-118 of the Disciplinary Code*”. Considering that the proportionality of the (severe) sanction was one of the main elements of the Appellant’s appeal, such an empty phrase by the Appeals Board is simply insufficient to qualify as “legal reasoning”.

### **B. The Consequences of the Above Breaches for the Proceeding before CAS**

63. Because CAS has full power to assess the facts and the law of the dispute and, thus, hears the case *de novo* (Article R57 (1) of the CAS Code) the question arises whether or not the violation of the Appellant’s procedural rights in the previous instances are cured in these adversarial proceedings before the CAS. It is standing CAS jurisprudence that procedural violations in previous instances “*fade to the periphery*” before the CAS. As the Panel in CAS 1998/A/208 (at para 5.3 seq.) rightly stated, “[*t*he virtue of an appeal system which allows for a full rehearing before an appellate body is that issues of the fairness or otherwise of the hearing before the tribunal of first instance fade to the periphery ... The Panel therefore finds it unnecessary to consider the charge made by the Appellants as to FINA’s violation of due process”.
64. The Appellant submits that this principle cannot apply in the case at hand, because when it filed the Statement of Appeal and the Appeal Brief it had not yet seen the evidence on which the CAF relied, in particular the referee reports. The same is true for the legal reasoning on which the Respondent’s Appealed Decision is based. All of this was – according to the Appellant – only known to it once the Respondent filed its answer (together with the respective exhibits). At that point in time, however, Article R56 of the CAS Code prevented the Appellant from addressing this new evidence and the charges submitted by the Respondent. Thus, the Appellant concludes that since it had no opportunity to rebut the submissions and evidence submitted by the CAF in the CAS proceedings, the (procedural) breaches that occurred before the previous instances could not be cured before the CAS.
65. The Panel cannot follow this reasoning. According to Article R44.3 of the CAS Code, which is also applicable in appeal proceedings, the Appellant could have requested “*the Panel to order the other party to produce documents in its custody or under its control*”. Furthermore, Article R56 of the CAS Code does not prevent the Appellant from filing a reply once the first exchange of documents is concluded. It is true that the CAS Code foresees, in principle, one exchange of submissions only in appeals arbitration procedures. However, there is an exception to the rule. According thereto a party may supplement its request or its arguments, produce new exhibits and specify further evidence if all parties agree or if the President of the panel so orders based on exceptional circumstances. RIGOZZI/HASLER (in ARROYO (ed.) *Arbitration in Switzerland*, 2nd ed. 2018, Art. 56 no. 6) rightly point out that “*the need to safeguard the parties’ fundamental procedural rights must always constitute an ‘exceptional circumstance’ within the meaning of Art. R56 (1)*”. Furthermore, the commentary states that additional submissions are generally allowed when the respondent’s answer contains defenses that need to be rebutted in writing. Furthermore,

a reply is also permitted, if the need to file rebuttal evidence or arguments only became apparent after receipt of the other party's submissions. In all these instances, the party's right to be heard commands that exceptions to Article R56 of the CAS Code be accepted. In the case at hand, the Appellant did not avail itself of these procedural rights.

66. The Appellant submits that even if it may have had the above rights to obtain the information required or to file its objections to the answer of the Respondent, it was under no obligation to do so and that, therefore, the procedural violations were not cured in the proceedings before the CAS. The Panel finds that this is a misconception of the obligations of parties in CAS proceedings that are governed by the adversarial system. According thereto it is for the parties to submit the relevant facts and present the evidence to the panel. If a party wishes to react to a submission of the other party, it has the obligation to do so (and file a request according to Article R56 of the CAS Code) and thereby to safeguard its procedural rights. The Panel is guided in that respect by the jurisprudence of the Swiss Federal Tribunal (SFT 4D\_27/2014, consid. 4.2.1) that has found as follows:

*“Gemäss Art. 29 Abs. 2 BV haben die Parteien Anspruch auf rechtliches Gehör. ... Die Garantie umfasst auch das Recht, von den beim Gericht eingereichten Stellungnahmen Kenntnis zu erhalten und sich dazu äussern zu können (sog. Replikrecht). Die Wahrnehmung des Replikrechts setzt voraus, dass die fragliche Eingabe der Partei vor Erlass des Urteils zugestellt wird, damit sie sich darüber schlüssig werden kann, ob sie sich dazu äussern will oder nicht ... Es obliegt dem Gericht, in jedem Einzelfall den Parteien ein effektives Replikrecht zu gewähren. Es kann dem Betroffenen hierfür eine Frist setzen ... . Indes genügt grundsätzlich, dass den Parteien die Eingaben zur Information ... zugestellt werden, wenn von ihnen, namentlich von anwaltlich Vertretenen oder Rechtskundigen, erwartet werden kann, dass sie unaufgefordert Stellung nehmen ... Das Gericht hat bei der letztgenannten Vorgehensweise mit der Entscheidfällung so lange zuzuwarten, bis es annehmen darf, der Adressat habe auf eine weitere Eingabe verzichtet ...”.*

**Free translation:** According to Art. 29 (2) of the Swiss Constitution the parties have a right to be heard. ... This guarantee also covers the right, to obtain the submissions filed with the court by the other party and the right to comment thereupon (the so-called right to reply). In order to be able to make use of this right to reply, the submissions in question must be notified to the other party before the court issues its final decision, in order for that party to make up its mind whether or not it wishes to comment or not. ... It is the court's duty to ensure that the parties are granted an effective right to reply. The court may set a deadline to the respective party .... However, it also suffices, in principle, to forward the submission for information purposes only, if one may reasonably expect the other party, in particular if represented by legal counsel, to comment on the submissions unsolicited. In the latter case, the court must wait with the issuing of the final decision until it may assume that the addressee has waived its right to comment ....

67. This case law is also in line with the jurisprudence of the European Court of Human Rights. In the matter *Joos v. Switzerland* 15.11.2012, application no- 43245/07, para. 27 et seq.), the Court found as follows:

*“The Court reiterates that the concept of a fair hearing implies the right to adversarial proceedings,*



*according to which the parties must have the opportunity not only to have made known any evidence needed for their claims to succeed, but also to have knowledge of, and comment on, all evidence adduced or observations filed, with a view to influencing the court's decision ... Under ... [the practice before Swiss courts], if submissions were served on the adverse party "for information", that party had the option either to request leave to submit comments or to submit such comments straight away. Conversely, if the adverse party did not react without undue delay after having taken notice of the new submissions, the tribunal could assume that he or she had waived the right to comment.*

*The Court accepts that the practice adopted by the Federal Tribunal is calculated to save time and expedite the proceedings. As its case-law bears out, the Court attaches great importance to that objective, which does not, however, justify disregarding such a fundamental principle as the right to adversarial proceedings. In fact, Article 6 § 1 is intended above all to secure the interests of the parties and those of the proper administration of justice (see Nideröst-Huber, cited above, § 30). Consequently, it falls within the responsibility of the domestic courts to ensure that the standards set by Article 6 § 1, and, in particular, the protection of the equality of arms, are respected in each individual case. This implies the obligation to interpret the provisions on the admissibility of a further exchange of comments (see paragraph 12, above) in a way which does not curtail the adverse party's right to comment on any new submissions.*

*The Court further considers that the applicant, in his capacity as a lawyer, could have been expected to be aware of the Federal Tribunal's relevant case-law and to act accordingly. The Court considers that the new practice might raise problems with regard to legal certainty. It observes, in particular, that the Federal Tribunal, when serving new submissions on the adverse party "for information", does not appear to indicate to that party when it will give its decision on the case. Consequently, the adverse party may encounter difficulties in assessing how much time is left for examining the new submissions and preparing comments. However, in the specific circumstances of the instant case, the Court is satisfied that this procedural disadvantage was sufficiently counterbalanced by the option to request leave to submit comments. In this respect, the Court notes that the comments of the Federal Department of Interior that had been served on the applicant contained not more than two pages and that the Federal Tribunal gave its judgment more than three weeks after serving this document on the applicant. The Court consider that the applicant should have been in a position to examine whether the content of the documents necessitated further comments, in which case he could have requested leave to submit such comments".*

68. In the case at hand, the Appellant was made aware of the provision in Article R56 of the CAS Code in the CAS Court Office letter dated 22 May 2020. The Panel also finds that the proceedings before the CAS are adversarial in nature and granted the Appellant all possibilities – unlike in the previous instances – to become knowledgeable of and comment upon the arguments and evidence relied upon by the Respondent as well as to counter such submissions by submitting its own arguments and evidence. Given the specific circumstances and absent any indication to the contrary the Panel could reasonably assume that the Appellant did not wish to comment in writing on the evidence and arguments submitted by the Respondent and consequently, finds that the procedural flaws of the previous instances are cured before the CAS.

**C. Does the Appealed Decision violate any rules and regulations / statutory principles in relation to the determination of the sanction?**

**1. *The Facts of the Case***

69. The Panel notes that the Appealed Decision relies on the facts recorded in the various match officials' reports (mentioned supra). The Panel also notes Article 32 DC, which states as follows:

*“(1) Facts contained in match officials' reports are presumed to be accurate.*

*(2) Proof of the inaccuracy of the contents of these reports may be provided.*

*(3) If there is any discrepancy in the reports from the various match officials and there are no means of resolving the different versions of the facts, the referee's report is considered authoritative regarding incidents that occurred on the field of play, the match commissioner's report is considered authoritative regarding incidents that took place outside the field of play”.*

70. The Appellant submits that it was deprived from rebutting the accuracy of the reports, because it had only seen them once the Respondent filed its answer. Furthermore, the Appellant submits that the reports are not detailed enough in order for it to be able to contest the facts recorded therein and to rebut them. The Appellant states that – e.g. – the reports do not state why the use of lasers lights was deemed “excessive” and at what minute of the game the use of the laser lights occurred. The reports further do not specify – according to the Appellant – who the victims of the use of the lasers lights were (players, referee and/or fans of the other team). In addition, the reports do not specify how many water bottles were thrown at what minute of the match and where in the stadium the invasion of the pitch by Al-Hilal's supporters was stopped.

71. The Panel is not prepared to follow the argument of the Appellant. As previously mentioned, the proceedings before the CAS are adversarial in nature and it was the Appellant's choice not to adduce evidence (other than the witness testimony of Dr Hassam Ali Eissa). Furthermore, the allegations contained in the reports are specific enough for the Appellant to be able to contest them and provide evidence for its position in support. The Panel finds that neither the testimony of Dr. Hassam Ali Eissa nor the submissions of the Appellant were substantiated enough to cast doubt on the accuracy of the reports. Since the reports do not contradict each other, the Panel finds that the Appellant failed to provide proof that the contents of the reports is wrong or otherwise inaccurate. Consequently, when examining the legality of the sanctions, the Panel will start from the assumption that the facts as recorded in the reports are truthful and correct.

**2. *The rules violated by the Appellant***

72. As previously noted, the decisions of the CAF Disciplinary Board or the Appeals Board do not sufficiently explain which violations the Appellant committed. It was only with the help of counsels of Respondent that the Panel was able to – at least partially – find its way through the complex rules in the DC.

73. The starting point of the Appellant's wrongdoings is to be found in Article 83(1) and (2) DC. The provision reads as follows:

*“(1) National associations, clubs and officials are responsible for ensuring that the game is not brought into disrepute in any way whatsoever by the conduct of their players, officials, members, supporters and any other persons exercising a function at a match at the request of the association or club.*

*“(2) The host association or club is responsible for order and security both inside and around the stadium before, during and after the match. It is liable for incidents of any kind, and can be rendered subject to disciplinary measures”.*

74. It is beyond question that the incidents recorded in the match officials' report and attributable to the fans and officials of the Appellant are such to bring the sport of football in disrepute. Article 83(2) DC further clarifies that such behaviour attributable to the Appellant may be subject to disciplinary sanctions.

75. Counsels for Respondent further submitted that the Appellant breached Article 151 DC. The provision reads as follows:

*“(1) National associations that organise matches shall*

- a) Assess the degree of risk posed by matches and notify the CAF bodies of those that are especially high risk;*
- b) Comply with and implement existing safety rules ... and take every safety precaution demanded by the circumstances before, during and after the match and if incidents occur;*
- c) Ensure safety of 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 the stadia and immediate surroundings and that matches are organised properly.*

*“(2) National associations are held responsible for the behaviour of their supporters (especially with regard to throwing missiles and invading the pitch) and auxiliary staff”.*

76. It is neither clear from submissions of counsels of Respondent (nor from the various decisions of the judicial bodies of the CAF in this matter), which precise paragraph of the provision has been breached by the Appellant. Furthermore, the Panel notes that the provision is directed to “national associations” only and not to clubs. The Respondent explained that the provision needs to be applied by analogy also to clubs and that the obligations in Article 151 only substantiate and further concretise the general obligation and duty of care enshrined in Article 83 (1) and (2) DC. Whether this is correct is difficult to follow, since the other decisions of the CAF Disciplinary Board submitted by the Respondent as exhibits 13-17 sometimes, but not always refer to Article 151 DC in the context of violations of a club's supporters. Furthermore, it is not clear what consequences follow from a breach of Article 151 DC. Respondent submits that the consequences of such breach are dealt with in Article 153 DC, which provides for the possibility of a fine in para 1 and – in case of more serious

infringements (para 2) – also for other kinds of sanctions. The crux is, however, that Article 153 (2) DC specifically refers to infringements set out in Article 150 (1) DC and not to violations of Article 151 DC that are in question here. Respondent invited the Panel to read the reference in Article 153 (2) DC – contrary to its wording – to also cover Article 151. The Panel finds that since, according to the Respondent, Article 151 DC only serves to firm up the obligations already contained in Articles 83 (1) and (2) DC and in view of the obvious deficiencies of the rules, it will solely rely on Article 83 (1) and (2) DC and refrain from following any double (or triple) analogy of the rules as skilfully pleaded by the Respondent.

### **3. *The types of sanctions imposed***

77. Article 83 (2) DC does not limit the kinds of disciplinary measures that may be imposed on a club in case an infringement is established. Thus, any of the disciplinary measures found in Article 88 DC may be imposed, in principle, on a club. The list of possible disciplinary measures in Article 88 DC covers fines (Article 88 (1) lit. c DC) and playing matches behind closed doors (Article 88 (3) lit. b DC). Furthermore, Article 107 (1) DC provides that the sanctions “may be combined”. Furthermore, Article 108 DC provides that sanctions may also be suspended. Thus, the types of sanctions imposed on Al-Hilal do not – *prima facie* – infringe the applicable rules.

### **4. *The circumstances that need to be taken into account***

78. With respect to the scope and the duration of the sanction to be imposed, Article 115 (1) DC provides that such decision is within the discretion of the legal body pronouncing the sanction. Furthermore, para 4 of said provision foresees that “*when deciding the sanction, the legal body will take account of all of the circumstances of the case, in particular the age of the person sanctioned and his record*”. In addition, Article 116 DC provides that one important factor to be considered when determining the scope of the sanction is whether the club is a repeated offender. A further aspect that affects the scope and the duration of the sanction is whether the victim of the infringement is a match official (Article 117 DC).
79. In the case at hand Al-Hilal is a repeated offender and has been sanctioned in the past (four times) since 2019 for similar incidents. This follows from the disciplinary decisions of the adjudicatory bodies of the CAF that were filed by the Respondent together with its answer. Furthermore, it follows from the match reports (the contents and accuracy of which was not rebutted by the Appellant, see *supra*) that some of the incidents that occurred during the Match and that are attributable to Al-Hilal according to Article 83 (2) DC were directed against match officials. The reports state in that respect that there was a pitch invasion of two of the Appellant’s fans, who headed directly towards the referee to aggress him and that an official of the Appellant insulted and aggressed the referees.
80. The Appellant submits that there are further (in particular mitigating) facts that the Appeal Board should have considered.

- In his testimony, Dr. Hassam Ali Essa put great emphasis on the fact that the CAF

could have easily avoided the incidents by not appointing the Moroccan referee Radwan Gaid to the Match. The latter belongs – according to the Appellant – “to the same geopolitical region” as the club Al-Ahli. According to Dr. Hassam Ali Essa this constitutes an “*apparent imbalance of the principle of justice and fairness in respect of the match*”. Furthermore, the referee had “*caused the defeat of Al-Hilal ... in the last Copy of the Confederation Championship, as he effected three penalty-chicks (sic!) against Al-Hilal and turned a blind eye to a crystal clear penalty-chick in favour of Al-Hilal*”. Dr. Hassan Ali Essa continued to say that the appointment of the referee was only one element in a pattern of behaviour of the CAF designed to unjustly and systematically target Al-Hilal. This discrimination of Al-Hilal has led – according to Dr. Hassam Ali Essa – to a “*state of extreme congestion, suspicion, and bitterness in the Sudanese sport street towards the eccentric referee and CAF*”.

- Dr. Hassam Ali Essa testified that Al-Hilal cannot be held liable for the incidents during the Match, since the “*Al-Hilal Club Administration did handover the stadium to the security forces on 2.00 pm, dated of the match*” and that, therefore, “*the club should not be responsible for any fireworks, lazir works or throwing of mineral water bottles*”.
- Finally, Dr. Hassam Ali Essa stated that the political and economic situation of Sudan and of Al-Hilal in particular are difficult. Dr. Hassam Ali Essa explained that sporting events are considered by some fans as a valve to express their general and overall frustration of their living conditions.

81. In the view of the Panel, the above facts do not constitute mitigating factors when determining the scope and extent of the sanction. The responsibility for the incidents at the Match cannot be shifted to the CAF simply by stating that the CAF should have appointed a different referee. The appointment of a referee from the same geopolitical region as Al-Hilal’s opponent can by no means serve as an excuse for the violence displayed by the fans of Al-Hilal. Justifying the fans’ behaviour in such a way displays little understanding of a club’s obligations. Furthermore, the Panel notes that apart from trying to shift the blame for the incidents that occurred, Al-Hilal did not show any remorse for what had happened. There is no proof whatsoever on file for any systematic discrimination of Al-Hilal or other kind of provocation by the CAF. The Panel further points to the provision in Article 83 (2) DC according to which clubs are liable “*for incidents of any kind*” based on the conduct of their supporters. This is a strict liability provision. Thus, whether or not Al-Hilal handed over the stadium to security forces is immaterial with respect of the question whether Al-Hilal is liable for the conduct of its supporters. The Panel also finds that violence at football games cannot be justified with the difficult political and economic situation in Sudan. However, what the Panel accepts and retains is that a fine in the magnitude of USD 100,000 hits a club from Sudan much harder than a club located in a country enjoying more favourable political and economic conditions.

### **5. *The proportionality of the sanction***

82. Irrespective of whether the DC refers to the principle of proportionality, it is firmly enshrined in CAS jurisprudence that sanctions must comply with such principle. According thereto the

severity of the sanction must relate to the gravity of the wrongdoing displayed. The Respondent submits that this Panel, because of the autonomy of associations, only submits the proportionality of a sanction to a limited review. This autonomy of association – according to the Respondent – grants the sports bodies “*a considerable freedom and wide margin of discretion in the context of the determination of disciplinary measures*”. Whether this is true in such absolute terms can be left unanswered here. In any event a Panel is only prepared to accept such discretion (and any immunity from review that comes along with it) if the sports body in question provides sufficient justification for its conclusions. An association cannot claim immunity from judicial review and not disclose its (legal) reasoning. In such case, autonomy turns into arbitrariness, which the Panel will not accept. Thus, considering that the CAF failed to submit any valid legal reasoning as to the proportionality of the sanction in the Appealed Decision, the Panel will apply a stricter legal yardstick as it may have otherwise done in case the CAF would have provided a transparent and coherent explanation.

83. The Panel observes that leaving aside the fine, the sanction in the case at hand constitutes a significant step up compared to previous cases involving Al-Hilal. While in all other cases Al-Hilal was sanctioned with a fine (between USD 10,000 and USD 45,000), the CAF this time – in addition to the higher fine – imposed on Al-Hilal the sanction to play the next four home CAF interclub matches without spectators. No explanation was provided why – in addition to the fine – a sanction to play 4 matches behind closed doors was considered appropriate and proportionate.
84. Absent any explanations provided by the CAF in the Appealed Decision, the Panel finds that there is a certain logic to impose the sanction to play behind closed doors. Al-Hilal’s fans have displayed violent behaviour over the past years and Al-Hilal has been sanctioned 4 times for its fans’ behaviour over a short period (since 2017). The Panel also notes that the fines were not effective in that they did not help to bring about a change of the fans’ violent behaviour. Since the incidents on the occasion of the Match are a sad culmination of a string of wrongdoings, the Panel accepts that the CAF resorted to other types of sanctions in order to provoke behavioural change within Al-Hilal’s fan community. Consequently, the Panel finds that it is proportionate to sanction Al-Hilal with playing matches behind closed doors. This is all truer considering that the incidents on the day of the Match were somewhat graver than in the past, leading to an interruption of the Match and menacing the well-being and security of a match official.
85. In order to convey the clear message that such fans’ behaviours can no longer be tolerated, the Panel unanimously finds that a sanction consisting of 3 matches to be played behind closed doors in combination with a fine of USD 60,000 is, in principle, necessary, adequate and proportionate. However, the Panel also finds that the fans and Al-Hilal should be given the opportunity to reduce the burden of the sanction in case they accept their wrongdoings and commit to learn their lesson from these incidents. The Panel therefore finds that part of the sanction should be suspended within the meaning of Article 108 DC. Thus, the Panel finds that one match behind closed doors and USD 30,000 of the fine shall be suspended on the condition that Al-Hilal is not found guilty of a similar offence for a probationary period of one year as from the date of this award.

## ON THESE GROUNDS

### The Court of Arbitration for Sport rules that:

1. The appeal filed by Al Hilal Club against the decision rendered by the CAF Appeal Board on 1 March 2020 is partially upheld.
2. The operative part of the decision rendered by the CAF Appeal Board on 1 March 2020 is amended with respect to Al Hilal Club as follows:

Al Hilal Club is banned from playing their next three (1) home CAF interclub matches with spectators of which one (1) match is suspended on the condition that Al Hilal Club is not found guilty of a similar offence for one year as from the date of this award.

A financial sanction of USD 60,000 is imposed on Al Hilal Club of which USD 30,000 are suspended, on condition that Al Hilal Club is not found guilty of a similar offence for one year as from the date of this award.
3. This arbitration procedure is free of charge, except for the Court Office Fee, which is retained by the CAS.
4. (...).
5. All other motions or prayers for relief are dismissed.