



Arbitration CAS 2013/A/3094 Hungarian Football Federation v. Fédération Internationale de Football Association (FIFA), award of 14 January 2014

Panel: Mr Mark Hovell (United Kingdom), President; Mr Bernhard Welten (Switzerland); Prof. Ulrich Haas (Germany)

Football

Disciplinary measure against an association for improper conduct among spectators during a match (racist behavior)

Strict liability nature of the disciplinary sanction not contrary to the principles of Swiss law

Improper conduct and serious disturbances during a match

Proportionality of the sanction

Fine

1. Article 67 of the FIFA Disciplinary Code (FDC) is clear and expressly removes any consideration of fault. The rule has a preventive and deterrent effect. Its objective is not to punish an entity (club, national federation) as such, which may have done nothing wrong, but to ensure that the entity assumes responsibility for offences committed by its supporters. The underlying idea of the disciplinary measure, thus, is to influence the behaviour of the fans via the entity that is supported by them in order to ensure that violations of the rules in the context of the participation of this entity in further competitions are excluded. Such type of measures unlike typical disciplinary sanctions directed at penalising a past behaviour do not require that the addressee of said measure is at fault. In conformity with CAS jurisprudence, the objective liability foreseen in Article 67 of the FDC is compatible with Swiss public policy.
2. Supporters' racist behaviour falls into the category of "improper conduct" and "serious disturbances" and thus constitutes a violation of Article 67 FDC. Having determined that the strict liability aspect of Article 67 FDC is applicable, fault is therefore not a consideration.
3. FIFA has no direct means of punishing the perpetrators of racist actions during a match such as bringing racist flags and chanting anti-Semitic songs or sayings. This type of racist behaviour is serious enough to warrant a sanction more serious in nature than a fine. Therefore, whilst a sanction such as playing a game behind closed doors is harsh, the sanction is necessary to combat such a serious offence and to help to achieve the objective of ridding racism from football. This sanction is not the most severe that FIFA could have issued.
4. Much in the way that the ban on spectators should achieve a purpose (by in part encouraging the good fans to work against the perpetrators), a fine should help FIFA achieve its aim of combating racism. The facts of each case will differ, as will

the seriousness of any disturbances. It appears, that the initial sanction should be a fine and the amount of that fine should increase as the seriousness dictates until a “tipping point” is reached, whereby the next harshest sanction should be applied. That would seem to be the game without spectators. Where the harsher sanction is applied, the fine should be “reset” at the lower end of the range and it can be increased where the facts dictate until the sanction might be a large fine and one match without spectators. The next “tipping point” may then convert that to two matches and a low fine, and so on.

I. THE PARTIES

1. Hungarian Football Federation (hereinafter referred to as the “Appellant”) is the national football association governing football in Hungary. It is a member of the Fédération Internationale de Football Association.
2. Fédération Internationale de Football Association (hereinafter referred to as the “Respondent” or “FIFA”) is the international governing body of football. It is an association under Swiss law, has its headquarters in Zurich, Switzerland, and exercises regulatory, supervisory, and disciplinary functions over continental confederations, national associations, clubs, officials, and players, worldwide.

II. FACTUAL BACKGROUND

3. The elements set out below are a summary of relevant facts emerging from the parties’ written pleadings. The summary does not comprise every contention put forward by the parties. The Panel has considered all submissions, but does not make specific reference to them except to the extent that it deems them to be of material significance to its analysis.
4. On 15 August 2012, the Appellant’s national football team played a friendly match against Israel’s national football team in Budapest, Hungary (hereinafter referred to as the “Match”). During the Match a group of the Appellant’s spectators sang anti-Semitic songs and displayed symbols which were considered by the Respondent as anti-Semitic.
5. On 20 November 2012, the FIFA Disciplinary Committee found the Appellant guilty of a violation of Article 67 para. 1 and 3 of the FIFA Disciplinary Code (hereinafter referred to as the “FDC”) and, in addition, sanctioned the Appellant with the following (hereinafter referred to as the “First Decision”):

“2. *The “A” representative team of Hungary will play its next home match in the preliminary competition for the 2014 FIFA World Cup Brazil™, i.e. the match Hungary vs Romania of 20 March 2013, without spectators.*”

3. *The Hungarian Football Association is ordered to pay a fine in the amount of CHF 40,000. The fine is to be paid within 30 days of notification of this decision...*
4. *The Hungarian Football Association is warned as to its future conduct according to Article 13 of the FIFA Disciplinary Code. Any further infringement of Article 65 ff of the FIFA Disciplinary Code will lead to more severe sanctions, to be determined by the FIFA Disciplinary Committee.*
5. *The costs and expenses of these proceedings amounting to CHF 3,000 shall be borne by the Hungarian Football Federation and be paid according to the legalities stipulated under 3 above”.*

The First Decision was notified to the Appellant on 8 January 2013.

6. On 9 January 2013, the Appellant filed an appeal with the Respondent against the First Decision.
7. On 25 January 2013, the FIFA Appeal Committee rejected the appeal filed by the Appellant against the First Decision and confirmed the First Decision in its entirety and determined that the costs and expenses of the appeal, amounting to CHF 3,000, be borne by the Appellant (hereinafter referred to as the “Challenged Decision”). The Challenged Decision was notified to the Appellant on 4 February 2013.

III. PROCEEDINGS BEFORE THE CAS AND THE PARTIES’ SUBMISSIONS

8. On 25 February 2013, the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport (hereinafter referred to as the “CAS”) against the Challenged Decision, pursuant to Articles R47 *et seq.* of the Code of Sports-related Arbitration (hereinafter referred to as the “CAS Code”).
9. The Appellant sought the following relief:
 - “1. *The Appeal filed by the Hungarian Football Federation is admissible.*
 2. *The decisions rendered by the FIFA Appeal Committee on 4 February 2013 (decision 120597 APC HUN ZH) and by the FIFA Disciplinary Committee on 8 January 2013 (decision 120597 HUN ZH) are set aside.*
 3. *The Hungarian Football Federation is granted an award for costs”.*
10. Together with its Statement of Appeal, the Appellant made an application for Provisional and Conservatory Measures seeking the following relief:
 - “1. *The decision rendered on 4 February 2013 by the FIFA Appeal Committee against the Hungarian Football Federation (decision 120597 APC HUN ZH) is stayed.*
 2. *The match Hungary v. Romania of 22 March 2013, in the preliminary competition for the 2014 FIFA World Cup Brazil, is allowed to be played with spectators”.*

11. In its Statement of Appeal, the Appellant suggested a procedural calendar for a CAS panel to hear the appeal on the merits in May or June 2013, and for its Appeal Brief to be filed on 25 March 2013.
12. On 28 February 2013, the Respondent proposed that the matter in hand be dealt with in an expedited procedure, in accordance with Article R44.4 of the CAS Code, and further proposed the matter be referred to a sole arbitrator for reasons of urgency and economy of procedure, in accordance with Article R50 of the CAS Code.
13. On 1 March 2013, the CAS Court Office suggested an expedited procedural timetable which would result in a full hearing on the merits on 15 March 2013, whereby the Appeal Brief would be filed on 6 March 2013 and the Respondent's Answer by 13 March 2013. Later that day, the Respondent agreed with this procedural timetable and expressed its view that any sole arbitrator should be taken from the CAS football list of arbitrators.
14. On 4 March 2013, the Appellant wrote to the CAS Court Office, disagreeing with the expedited procedure. It stated that a Panel of three arbitrators was necessary and that a decision by 15 March may be too late to organise the match on 22 March 2013. Furthermore, 15 March 2013 was a holiday in Hungary so most of the witnesses would not be able to attend the hearing, not even by videoconference. As such, the Appeal Arbitration Procedure pursuant to Article R47 *et seq.* of the CAS Code should apply. Later that same day, the CAS Court Office noted that the expedited procedure would not apply in this matter, as there was no agreement between the parties as required by Article R52.3 of the CAS Code.
15. On 6 March 2013, pursuant to Article R53 of the CAS Code, the CAS Court Office advised the parties that having considered the parties' respective positions, the Deputy Division President of the CAS decided that the matter be submitted to a three-member Panel.
16. On 7 March 2013, the Appellant filed its Appeal Brief repeating its requests for relief.
17. Pursuant to Article R37 of the CAS Code, the CAS Court Office invited the Respondent to file its positions with respect to the Appellant's request for Provisional Measures by noon on 8 March 2013.
18. On 8 March 2013, the Respondent filed its answer to the Appellant's request for Provisional Measures, concluding that such request should be rejected in its entirety.
19. On 11 March 2013, the Appellant made additional submissions in response to the position submitted by the Respondent.
20. On 12 March 2013, the Respondent requested that the Appellant's letter of 11 March 2013 be disregarded as it was unsolicited; in the event the letter was admitted to the file, the Respondent responded to the points raised.

21. On 12 March 2013, the operative part of the Order on Request for Provisional and Conservatory Measures was released to the parties by the CAS Court Office, dismissing the Appellant's requests.
22. On 22 March 2013, the game between Hungary and Romania was played behind closed doors and without spectators, with the final result of 2-2.
23. On 27 March 2013, the Respondent filed its Answer with the following requests for relief:
 1. *To reject the Appellant's prayers for relief in their entirety.*
 2. *To confirm the decision hereby appealed against.*
 3. *To order the Appellant to bear all costs incurred with the present procedure and to cover all legal expenses of the Respondent related to the present procedure".*
24. On 2 April 2013, the reasoned Order on Request for Provisional and Conservatory Measures was released to the parties by the CAS Court Office.
25. On 3 May 2013, the Appellant filed an additional written submission, amending its prayers for relief by claiming damages of CHF 607,892, plus interest, from the Respondent for loss of revenues resulting from playing the match on 22 March 2013 behind closed doors.
26. On 2 July 2013, the CAS Court Office noted that the parties agreed to its suggestion that the matter be split into two procedures: (i) an Appeal Arbitration Procedure, dealing with the original prayers for relief of the Appellant; and (ii) an Ordinary Arbitration Procedure dealing with the damages claim of the Appellant. The CAS Court Office confirmed that the Appeal Procedure would therefore continue dealing with the sanction only and, depending on the outcome of the appeal, the Appellant's financial claim would either be confirmed, in which case the CAS Court Office would initiate an Ordinary Arbitration Procedure, or it would be withdrawn.

IV. THE CONSTITUTION OF THE PANEL AND THE HEARING

27. By letter dated 8 March 2013, the CAS informed the parties that the Panel to hear the appeal had been constituted as follows: Mr Mark Hovell, as President of the Panel, Mr Bernhard Welten, and Mr Ulrich Haas, as arbitrators.
28. A hearing was convened on 26 July 2013 at the CAS headquarters in Lausanne, Switzerland. All the members of the Panel were present. The parties did not raise any objection as to the constitution and composition of the Panel. The Panel was assisted by Ms. Louise Reilly, CAS Counsel.
29. The representatives for the parties attended the hearing, as follows:

Appellant: Mr Yvan Henzer (external counsel), Dr. Zoltan Borbily (legal director), Dr Banhegyi Gergely (legal adviser), Mr Zsigmond Nagy (HOC International Director) and Mr Istvan Samu (Chairman of the HFF security Committee).

Respondent: Mr Octavian Bivolaru (legal counsel).

30. The Appellant called four witnesses: Mr Adam Somogyi (President of the Carpathian Brigade supporters Group), Mr Csaba Toth (HFF Security Manager), Dr Gabor Mitto (Police Security Commander), and Prof Ivan Bertenyi (Member of the International Heraldic Academy) that all attended the hearing by video conference and their testimony (along with Mr Samu, that spoke as a party representative) is summarised as follows:
31. Mr Somogyi confirmed that he was present at the Match as he was the head of one of the supporters groups. His role was to help to control the fans and work with the HFF Security Manager, Mr Toth. He confirmed that there were discriminatory and racist acts perpetrated by approximately 200-300 spectators. The behaviour of the perpetrators was at its worst in the first half. At half time Mr Somogyi was involved in a discussion with Mr Toth and Mr Mitto to discuss the possibility of expelling the perpetrators. It was a unanimous view that trying to remove the perpetrators could have risked physical harm to the remainder of the spectators in that part of the stadium. The matter was further complicated by the fact that this was not one isolated group of 200-300 spectators, they were scattered all over the sector in smaller groups.
32. Mr Toth confirmed that he was the Security Manager leading the HFF Security Service at the Match. He confirmed that before the game, his colleagues had stopped a number of spectators coming into the sector with racist flags and he confirmed that he didn't observe any violent acts before, during, or after the game. He did confirm that approximately 100-200 activists were scattered across this particular sector and were chanting racist songs. It wasn't a united group so it was difficult to identify the perpetrators. In the second half Mr Toth and 70 colleagues had lined up at the very front of the sector to "display their force" and this resulted in the perpetrators lowering their voices. The remainder of the fans in that sector used their own "good attitude" against the 100-200 perpetrators and this was another reason why the chants died down in the second half.

Mr Toth had agreed with Dr Mitto from the Police that the removal of 100-200 trouble makers out of several thousand people would have lead to violence and harm to the proper spectators. Mr Toth confirmed that the sector was fitted with CCTV and that the perpetrators were filmed. The police were still conducting their enquiry into this case to try to identify and charge the perpetrators. He explained the difficulty was that there were no audio recorders attached to the CCTV so it was hard to see who was chanting what. The proper fans were chanting in support of their team, whereas the perpetrators were chanting racist songs. It was hard to see who was who, especially when they were scattered throughout the sector.

33. Dr Mitto confirmed that he was the Police Security Commander in charge of the Match. The Match had been categorised as “high risk” due to the fact that the Hungarian National Team were playing the Israeli National Team, and this meant that the security for the Match was completely under the control of the Police. It was explained that under Hungarian law each match would be categorised as either normal, increased, or exceptional/high risk. It was only this latter category that resulted in the Match being exclusively under the control of the Police. He confirmed that there were several incidents of racist chanting during the Match, but he didn’t believe that their actions constituted any breach of criminal law in Hungary. While it may harm people’s feelings, this did not amount to a criminal act. Again he was able to confirm that there were 200-300 perpetrators in a sector that contained 2,000 to 3,000 people. He also confirmed that the perpetrators were scattered into smaller units of 8 to 10 people. He did consider what possible actions the Police should take at half time in a meeting with Mr Toth, Mr Somogyi, and with the FIFA delegate. But they were all of the view that entering the sector to try to expel the perpetrators would result in “anti-force” by the perpetrators and this would result in fans being physically harmed.
34. Professor Bertenyi gave evidence regarding the Arphad striped flag. His view was that this was not a Nazi symbol, more an official symbol that was used in Hungary and could often be found on official buildings. He did acknowledge that groups such as the Arrow Cross did use the Arphad flag, as did other fascist and extremist groups. He also conceded that the use of the flag during a game against Israel, coupled with chants, might be viewed as anti-Semitic, discriminatory, or racist in that context.
35. Mr Samu confirmed that in the weeks leading up to the Match he had met with his Israeli counterpart and they had considered the Arphad/Greater Hungary flags and discussed them. His Israeli counterpart felt that these were just historical symbols and had no objections to them being present in the ground during the Match. They also confirmed that after the Match the Israeli delegation had had no issues with their actions and had even sent them letters thanking them for their assistance in putting on the game. He confirmed that he was aware of the FIFA Safety Regulations and in particular HFF’s own safety regulations. He could see there was a conflict between these regulations and Hungarian law, so that even if the chants did not amount to criminal acts, the HFF security should still have looked to remove the perpetrators. However, despite what the regulations may say, what happens in practice was that a panel of 4 (which would include the FIFA delegates, the HFF security manager, and the Police Security Commander) would meet and they would discuss any disruptions during the match and what actions to take. This happened in this instance and it was agreed by all not to intervene and to attempt to remove the perpetrators. He did confirm that messages were issued through the loud speaker systems, in addition to the display of security at the front of the sector, and this resulted in the disturbances dying down in the second half.
36. The parties were given the opportunity to present their cases, and submit their submissions and arguments. In the case of the Appellant, its witnesses and representatives were given the opportunity to answer questions posed by the Respondent and the Panel. Finally, at the hearing the parties agreed to include in the CAS file of a copy of FIFA’s 63rd Congress

Resolution on the Fight against Racism and Discrimination produced by the Respondent at the hearing. A summary of the submissions is detailed below. After the parties' final, closing submissions, the hearing was closed and the Panel reserved its detailed decision to its written award.

37. Upon closing the hearing, the parties expressly stated that they had no objections in relation to their right to be heard and had been treated equally in these arbitration proceedings. The Panel had carefully taken into account in its discussion and subsequent deliberation all the evidence and the arguments presented by the parties, both in their written submissions and at the hearing, even if they had not been summarised in the present award.

V. THE PARTIES' SUBMISSIONS

A. *The Appellant's Submissions*

In summary, the Appellant submitted the following in support of its Appeal:

38. The strict liability of Article 67 of the FDC is contrary to Swiss Law. Article 67 of the FDC contravenes the fundamental principle of "*nulla poena sine culpa*" – a sanction cannot be imposed without fault. Therefore, the provision is contrary to the Swiss legal order. The concept of strict liability does not exist in the Swiss criminal system. Indeed, it would contravene the fundamental principle of criminal law according to which a sanction can only be imposed when a fault is committed. The fundamental rights which are applicable under criminal law are commonly applied in disciplinary matters. Further, CAS jurisprudence has expressly held that the principle "*nulla poena sine culpa*" applies in disciplinary matters. The only recognised exception according to which someone can be sanctioned without fault or negligence is the automatic disqualification in the case of doping, for which the fault of the athlete is not relevant (strict liability). The Appellant made a particular reference to the CAS jurisprudence in *TAS 2007/O/1381*.
39. In relation to doping, the exception to the fundamental principle of "*nulla poena sine culpa*" is justified by the principle of equality of chances between the athletes and by sport fairness. Even if the doped athlete is disqualified automatically from the competition irrespective of his fault, such athlete has nevertheless the possibility to escape a period of ineligibility in case of no fault or negligence or the chance to obtain a reduction of the ordinary two year period of ineligibility in case of no significant fault or negligence. A match organiser must have the possibility to escape any sanction in the absence of fault. If a club or a federation has not had the chance to submit at least exculpatory evidence, Swiss law would be breached since one cannot be punished without fault.
40. While Swiss criminal law foresees that the fault is a necessary precondition to impose a sanction, civil law also requires a fault to find liability of a defendant. The analogy with the civil liability makes sense since disciplinary matters in Switzerland are considered as civil disputes. As a general principle, there is no civil liability without fault. However, some

specific categories of persons can be held liable for damage if he or she has not committed a fault but these persons can escape liability by providing exculpatory evidence. Therefore, these persons are liable only if they fail to supply their exculpatory proof offered by the law.

41. Pursuant to particular legislative acts, there is also liability for risks which applies to situations in which particular risks are created, however there is no federal law in Switzerland which foresees a causal or a strict liability for a sport event organiser. Therefore, the Appellant cannot be held liable for the conduct of spectators by analogy with Swiss law which would foresee an objective liability for a sport event organiser. Regarding the liability of a club or a federation for the conduct of spectators, there is consensus that a match organiser must have the possibility to establish that it bears no fault or negligence for the misconduct of spectators.
42. In view of the above, it is submitted that Article 67 of the FDC is valid and enforceable under Swiss law only in as much as the club or the federation has the possibility to establish that it bears no fault or negligence.
43. The Appellant does not bear any fault or negligence since it was not itself in charge of the security. The Match was classified as a high-security risk, with the consequence that the security was under the sole and exclusive responsibility of the Police pursuant to the Hungarian national law, as confirmed by Dr Mitto. Therefore, even if the security measures were insufficient, *quod non*, the Appellant cannot be blamed for this since the security was not within its sphere of responsibility.
44. The Appellant had not committed any fault on the occasion of the Match. There cannot be any fault of the organiser when a minority of troublemakers, not previously known to the Appellant, seek to hijack the sporting spectacle by engaging in racist chants and insults. The witnesses explained the positive steps the Appellant took at the Match. However, even if security measures are taken and enough controls made at the entrance of the stadium or during a match, the Appellant argued that one simply cannot prevent spectators from expressing their opinion during the course of a match. This is particularly true when the perpetrators were not football fans. Further, it is difficult to see how an organiser can be held responsible for the opinions of a minority group of fans, expressed *ex tempore* and without warning during a football match. It is possible to intercept weapons, Bengal lights, or illicit banners at the entrance of a stadium through security checks; however, it is not possible to identify the political ideas of each spectator by security measures. Given the specific circumstances of the case, the strict liability foreseen in the disciplinary rules cannot be applied blindly since the Appellant was not at fault and took exemplary safety measures, both before the game and during it (together with the Police) as had been demonstrated at the hearing by the Appellant's witnesses. Therefore, any sanction would breach the fundamental principle "*nulla poena sine culpa*" and must be annulled. The Appellant disagreed with the Respondent that the Appellant could have tackled the incidents through preventative action and through reactive measures. Regarding the preventative measures which could have been taken, a sport body does not have tools to educate spectators about

political and historical issues, such as fascism or anti-Semitism. Those issues go far beyond sport.

45. The FIFA Appeal Committee found that the Appellant should have identified the perpetrators of the incidents and immediately have them escorted out of the stadium by security personnel. All security measures which were taken during the Match were appropriate. The witness evidence demonstrates that the measures suggested by the Respondent would have been counterproductive. Such intervention could have resulted in fights or riots which would have threatened the players and the proper supporters in the stadium. Such solution was discussed with Dr Mitto, the chief police officer in charge of the security, and was deliberately excluded by the relevant security experts. It could easily have led to an escalation of physical and verbal violence. Thus, the Appellant cannot be held liable for a non-intervention by the Police.
46. The Appellant did not remain inactive during the Match. As soon as the demonstrations of a group of spectators were noticed, they were requested several times over the loud speaker system to cease their chants. This measure was appropriate and effective since verbal demonstration hardly occurred in the second half of the game. At hearing, it was confirmed that the Appellant's security team lined up in front of the spectators, as a show of force.
47. The FIFA Appeal Committee found that the incidents fell under the scope of Article 269 of the Criminal Code of the Republic of Hungary and therefore necessitated the intervention by the police. This finding was false. The police security commander was of the opinion that the incidents of the Match did not constitute a criminal offence.
48. The Appellant submitted that it bears no fault or negligence, since it was not in charge of the security (the police were). Moreover, proper and sufficient security measures were taken for the Match. In the absence of any fault, the sanction imposed upon the Appellant must be annulled. Any other conclusion would breach Swiss law.
49. The Appellant submitted that should the CAS sanction the Appellant despite the absence of any fault, the sanctions should be reduced as they are disproportionate.
50. The FIFA Disciplinary Committee had a large discretion as to the sanction to be imposed: the minimum sanction is a warning and the application to play a match without spectators was certainly a more severe sanction. The Respondent misused its discretion and imposed disproportionate sanctions by imposing a combination of three punishments, amongst which was more severe one, i.e. a match without spectators. A decision is licit only if it is consistent with the fundamental principle of proportionality. CAS jurisprudence has consistently found that Swiss Law requires that any sanction comply with this principle of proportionality. In order to fix an appropriate sanction, one should consider both mitigating and aggravating circumstances. In that respect, the Respondent did not consider any mitigating factors.

51. The incidents that happened at the Match were exceptional and had never occurred before. The absence of this is certainly a mitigating factor in the examination of the alleged violation. It is submitted that the sanction imposed by the Respondent is disproportionate considering that it is the Appellant's first violation for improper conduct of spectators.
52. Despite the highly regrettable incidents perpetrated by some spectators, nobody was hurt in the context of the Match and no equipment was damaged in the stadium or in its proximity. The Match was played without interruption. Due to appropriate security checks, no smoke bombs or Bengal lights were set off. The players of both teams were not threatened or disturbed.
53. A sanction must be proportionate to the fault committed. The more significant the fault is, the more severe the sanction must be. Therefore, the Respondent could not validly hold that the punitive element is "*of secondary importance*" to justify the sanction.
54. The sanction is not capable of achieving the envisaged goal i.e. to avoid a repetition of this unfortunate incident. Anti-Semitism is a political problem which goes far beyond sport. In short, the sanction against the Appellant is unlikely to deter a group of fascists who are not even football fans and no security system can prevent spontaneous outbursts of racism. As the sanction was not capable of achieving the goal of deterrence, it was necessarily disproportionate.
55. Should the Panel reject the Appellant's arguments, the Appellant further submitted that the sanction is disproportionate *stricto sensu*.
56. On the basis that (1) the sanction is incapable of achieving its aim; (2) the severe sporting and economic consequences are necessarily disproportionate bearing in mind the lack of any fault on the part of the Appellant; and (3) there are various mitigating factors to be taken into account, the Appellant submitted that the sanction imposed by the Respondent is disproportionate. In conclusion, should the CAS Panel find that a sanction must be imposed, even in the absence of any fault, such sanction must be reduced at least in a way that no match be played without spectators, in order to be proportionate.
57. Finally, the Appellant submits that the Respondent should treat all its members equally. Reference was made to a match between Bosnia and Belgium where the behaviour of the Bosnian fans was far worse than the behaviour of the perpetrators at the Match, yet the sanction on the Bosnian Federation far more lenient.

B. *The Respondent's Submissions*

In summary, the Respondent submitted the following in support of its Answer:

58. According to Article 67 paragraph 1 of the FDC, the home association is liable for improper conduct among 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. Furthermore, according to Article 67 paragraph 3 of the FDC, “improper conduct” includes “*violence towards persons or objects, letting off incendiary devices, throwing missiles, displaying insulting or political slogans in any form, or uttering insulting words or sounds, or invading the pitch*”. With regard to the uncontested facts of the case, at the Match a group of supporters displayed discriminatory behaviour as well as Nazi symbols, and repeated anti-Semitic chants.

59. It is the Appellant’s argument that a sanction cannot be imposed without fault; the Respondent noted that the CAS jurisprudence mentioned by the Appellant refers to a doping case in cycling, whereas the present matter deals with incidents involving discriminatory, racist, and anti-Semitic behaviour of supporters during a football match. The FIFA procedure, and in particular the question/principle of liability, is different in cases of doping than in cases of improper conduct of spectators. In accordance with the wording of Article 67 of the FDC, the association’s liability is triggered in the event of an act committed by spectators, regardless of the association’s lack of intention or negligence. In accordance with CAS jurisprudence, the CAS has consistently held that an athlete or club can be disqualified irrespective of fault.
60. The Appellant alleged that both Swiss Law and Civil Law require a fault to be found in order to be liable. The Respondent noted the Appellant’s submissions were based on Swiss Civil Law and the Swiss Code of Obligations; however, the applicable law is the FIFA Regulations and additionally Swiss Law. Swiss Law shall only be applied subsidiary to the FIFA Regulations.
61. Furthermore, the Appellant is a member association of FIFA and has adopted and is obliged to respect the FIFA Statutes. Article 13 paragraph 1 of the FIFA Statutes clearly states that all FIFA member associations have the obligation to comply fully with the Statutes, Regulations, Directives and Decisions of FIFA bodies at any time as well as the Decisions of the Court of Arbitration for Sport passed on appeal on the basis of Article 66 paragraph 1 of the FIFA Statutes. Therefore, FIFA who is an association according to Swiss civil law, has its own rules and regulations that have been approved by its members, among which is the Appellant. Since no connecting factor exists with Swiss law, the latter should not apply and only sports law (i.e. the FIFA Regulations) should be applicable. Further, the Respondent noted the Match was a friendly game, not part of a FIFA competition, and between two non-Swiss teams, again questioning the applicability of Swiss Law.
62. In accordance with the CAS jurisprudence *CAS/A/1583* and *CAS/A/1584*, the CAS has already confirmed that a penalty may be validly imposed even in the absence of wrongful conduct of its author. Without the indirect sanction, the Respondent would be deprived of any means to act against the improper conduct of an association’s or club’s supporters, if an association or club cannot be charged of any fault in connection with this conduct. Therefore, the Regulation fulfils a preventative and deterrent function. In accordance with Article 146 Paragraph 3 of the FDC, member associations shall also incorporate Article 65 to 72 of the FDC into their national regulations. Thus, not only is the Appellant well aware

of the principles set forth in Article 67 of the FDC, but it also has the obligation to incorporate it into its own national regulations. The Appellant has incorporated this principle into its own regulations. This proves that the Appellant not only agrees with the principle of strict liability, but also upholds it in its own regulations, which renders all the arguments contesting the principle as contradictory and nonsensical.

63. The Respondent strongly contested the Appellant's argument that it was not in charge of the security of the Match, stating it was under the sole and exclusive responsibility of the Police. This is simplistic, untenable, and bad faith. If this argument was to succeed, then no liability at all would ever exist for any incidents that would occur during the matches, which would prevent FIFA from ensuring that its Regulations are respected.
64. The Regulations Governing International Matches were also applicable to the Match, which sets forth the requirements for organising matches for teams belonging to different associations. These Regulations provide that such matches shall only take place in compliance with the FIFA Safety Regulations. In turn, the FIFA Safety Regulations imposed a number of obligations on the association hosting the match. Moreover, Article 26 of the FIFA Safety Regulations states that *"the match organisers have to guarantee in co-operation with the local security authorities that, in the stadium or its immediate vicinity, supporters do not act in a provocative or aggressive manner. This includes, for example, unacceptable levels of verbal provocation or aggression towards players, match officials or opposing fans, racist behaviour and banners and flags that bear provocative or aggressive slogans. If such actions arise, the event organiser and/or security forces must intervene over the public address system and immediately remove any offensive material. Stewards must draw the attention of the police to serious acts of misbehaviour, including racist insults, so that offenders may be removed from the stadium"*. This provision established clear measures to be taken by associations in relation to the safety and security of the matches they organise, which may be either preventative or reactive. The Appellant had proceeded to include the principles and measures in its own set of safety regulations.
65. The Appellant's claim that a football association is not equipped to educate spectators about issues such as fascism or anti-Semitism was contradicted by the fact that the Appellant, following the Match, started a campaign against racism which showed it is concerned about preventative measures.
66. In relation to the Appellant's submission that to escort the perpetrators out of the ground would incite physical and verbal violence, the Appellant was concerned that such action was not taken because the consequences could not be controlled by the police, who were supposedly prepared for a high-risk match. The result would mean that the supporters at the Match would be absolutely free to undertake unacceptable conduct, relying on the knowledge that no measures would be taken by the association in case those measures resulted in further violence. Further, at no point had the Appellant stated what action had been taken against the perpetrators after the Match. Indeed, at the hearing it was clear that no action was taken at that time.

67. Article 66 of the FDC concerns the liability of the association organising a match for a failure to fulfil its obligations to ensure the security of the match; the obligations being as listed at Article 65. These Articles clearly do not constitute a strict liability, as the fault of the association is necessary in order for it to be sanctioned. On the other hand, Article 67 of the FDC provides for the liability of the association organising the match for the improper conduct of its spectators, regardless of the question of culpable conduct or oversight (of the association). The object of this provision is different than that of Articles 65 and 66 of the FDC, as is the liability, meaning that there is no condition for its application. And since the Appellant had not been found guilty of a violation of Articles 65 and 66 of the FDC, all arguments submitted by the Appellant concerning the preventative or reactive measures that had allegedly been taken or could have allegedly not been taken were irrelevant in the present proceedings.
68. The FIFA Disciplinary Committee and the FIFA Appeal Committee considered in their respective judgements all elements and circumstances of the case that have been mentioned, shown or depicted in the documentation at their disposal, including the submissions provided by the Appellant. Furthermore, the FIFA Appeal Committee made an extensive analysis to the mitigating circumstances submitted by the Appellant to the extent that they were relevant.
69. In relation to the alleged lack of previous precedents, the Challenged Decision held that the gravity of the action in question outweighed the application of a circumstance such as the lack of previous precedents to have a mitigating effect on the sanctions to be imposed. The policy of the FIFA Disciplinary Committee is not to consider the lack of previous precedents, the so-called “clean record” of a subject charged with a disciplinary violation. Further, mitigating circumstances do not apply automatically and have to be analysed on a case by case basis and ultimately fall within the discretion of the FIFA judicial bodies.
70. In relation to the Appellant’s submission on damages, the Challenged Decision held that the behaviour involving words and actions which recall/refer to the Holocaust, as well as the display of banners and flags which represent aggressive and provocative messages towards other civil societies causes irreparable harm and damage to human dignity in general, and to the honour of the members of particular communities which were the target and victim of such behaviour. Thus, the Challenged Decision ruled that the incidents caused moral damages. The Appellant did not contest that the Israeli community was hurt by the behaviour of the group of spectators, thus accepting the moral damage caused. However, the Appellant claimed that such harm is not connected in any way with football. This argument is untenable as the incidents were committed on the occasion of a football match involving the national football teams of Hungary and Israel. The Match was organised by the Appellant.
71. In relation to the Appellant’s submission that the Match was played without interruption, etc, the Appellant was found guilty of a violation of Article 67 of the FDC – being liable for the improper conduct of its supporters. Paragraph 3 of Article 67 provides a non-exhaustive list of the activities considered to be improper conduct, which includes “displaying insulting

or political slogans of any form or uttering insulting words or sounds”. The Challenged Decision considered the absence of any other disturbances apart from the ones involving the denigratory, contemptuous, racist, discriminatory, and provocative behaviour of supporters which cannot constitute a mitigating factor in the calculation of the sanctions.

72. In relation to the Appellant’s submission regarding the absence of fault, the Respondent recalled the principle of strict liability to be applied in such circumstances to fulfil and achieve the *ratio legis* of the rule at stake.
73. In relation to the Appellant’s submission regarding proportionality, the Respondent found the Appellant’s argument in relation to it being a political problem as being untrue, defeatist, and a pessimistic resignation. The Appellant’s submission is untenable. The question is not whether the security can prevent outbursts of racism, as spontaneous as they might be, but what is the Appellant’s stance on preventing them and fighting discrimination in football; a question that has not been answered by the Appellant.
74. In relation to the equal treatment of other member associations, the Respondent stated that it had sanctioned the Bulgarian Football Association at the same time as the Appellant in a similar way (a fine and a game without spectators) for racist behaviour of its fans against a black player from the Danish opposition. Further, it distinguished between the facts of the Bosnian example cited by the Appellant and the facts involved in this matter.
75. In conclusion, after taking into account all of the above circumstances and legal considerations, the Respondent considered that all arguments brought forward by the Appellant claiming that the sanction imposed on it is contrary to the principle “*nulla poena sine culpa*” and disproportionate are to be rejected in their entirety.

VI. JURISDICTION OF THE CAS

76. 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 the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports related body”.
77. In accordance with Article 67.1 of the FIFA Statutes:
“Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, members or leagues should be lodged with CAS within 21 days of notification of the decision in question”.
78. The Panel determined that the Appellant had exhausted all of FIFA’s internal legal bodies and therefore the Appellant has a right of appeal to the CAS against the Challenged Decision. The jurisdiction of the CAS was not contested by the Respondent. The Panel further noted the parties had both confirmed that the CAS had jurisdiction to hear this

matter as confirmed by the signature of the Order of Procedure by the parties. Therefore the Panel is satisfied that the requirements set forth in Article R47 of the CAS Code are met, and that the Panel has jurisdiction to decide the present dispute.

VII. APPLICABLE LAW

79. In accordance with Article R58 of the CAS Code, 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”.

80. The Panel noted that the Challenged Decision was rendered by the Respondent pursuant to its Statutes and Regulations, in particular the FDC, and that the Respondent has its domicile in Switzerland. As such, and in accordance with Article 66 of the FIFA Statutes, the law applicable to this matter is the various Regulations of the Respondent, and Swiss Law shall apply complementarily.

VIII. ADMISSIBILITY

81. In accordance with Article R49 of the CAS Code:

“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”.

82. The Appellant submitted that it is appealing the Challenged Decision notified to it on 4 February 2013 and, as it filed its Statement of Appeal on 25 February 2013 its appeal was filed within the 21 day time limit.

83. The Respondent agreed with this submission, as does the Panel: the Appeal is admissible.

IX. MERITS OF THE APPEAL

84. In these present proceedings, the Panel addressed the following questions:

- (a) Does the system of strict liability offend the principles of Swiss Law?
- (b) If so, was the Appellant at fault?
- (c) In either case, were the sanctions imposed proportionate?

A. *Does the system of strict liability offend the principles of Swiss Law?*

85. As set forth above, the applicable law for the matter at hand is the various Regulations and Statutes of the Respondent, and Swiss Law applies on a complimentary basis. That is if there is a gap or a lacuna in the various Regulations, then the Panel should apply Swiss Law.

86. The Respondent has sanctioned the Appellant pursuant to Article 67 of the FDC (2011 edition), which states:

“The home association or home club is liable for improper conduct among 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”.

The regulation is one of strict liability. The sanctions may be issued if there is “improper conduct” regardless of any conduct or oversight by the home association.

87. The Appellant claims that Article 67 of the FDC breaches Swiss Law, whereas the Respondent submits that the regulation is clear and applicable. As such, there is no lacuna, no need to bring Swiss Law into play, as any judging body need only follow the applicable regulations. Further, the Respondent notes that the FDC regulations had been approved by all its members in Congress, which included the Appellant, and that the Appellant uses the exact same regulation at a domestic level. Finally, whilst the Respondent acknowledges it has its seat in Switzerland, neither of the association’s national teams were playing the Match, nor was the Match part of a FIFA competition; further arguments as to why Swiss Law is not applicable in this instance.

88. The Appellant claims that Article 67 of the FDC, whilst disciplinary in nature, is closer in nature to criminal procedures than civil, and that the criminal law principle of *nulla poena sine culpa* must apply. The Appellant made reference to certain CAS jurisprudence, particularly in the area of doping regulations, where strict liability can apply to disciplinary procedures, but only where the athlete has the opportunity of reducing the sanction if he or she can demonstrate a lack of fault.

89. The Panel notes the Respondent’s position that the doping regulations are also expressly clear, they have been drafted to include the possibility for the athlete to reduce or even eliminate the sanction if he can show no (or no significant) fault, in certain circumstances. In the same way, the wording of Article 67 of the FDC is clear – there is no possible way to eliminate the sanction, even if the association bears no fault at all. The Respondent also directs the Panel to other CAS jurisprudence that has confirmed the principle of *nulla poena sine culpa* need not apply in all disciplinary matters.

90. The Panel determines that Article 67 of the FDC was clear and expressly removed any consideration of fault, much in the same way doping regulations expressly included the ability to consider fault, provided certain express conditions are met. Article 67 of the FDC had intentionally been drafted that way. The Panel believes that even if they did have to

apply Swiss Law, which on balance they determine they need not, whilst it could be argued that certain rights available in criminal law procedures could apply to disciplinary matters, they do not automatically apply and not applying them in the matter at hand does not, in the opinion of the Panel, breach Swiss Public Policy. In this respect, the Panel would like to note that there is no unanimity in Swiss legal literature whether or not disciplinary measures issued by a sports body mandatorily require that the person upon which the measure is imposed be at fault (BICHOVSKY, *prevention de la violence commise par les spectateurs lors de manifestations sportives*, 2009 p. 427; BK-ZGB/RIEMER, 1990, Art. 70 no. 210; HAAS/JANSEN, in: *Sport und Recht*, Bd. 5, 2008, p. 143). Furthermore, the Panel notes that according to Swiss law, disciplinary measures imposed by associations are subject to civil law (CAS 2006/C/976 & 986 no. 127) and that the concept of causal or objective liability is not alien to Swiss civil law. Liability independent from the concept of fault maybe found – e.g. – in Art. 58 par. 1 SVG according to which the owner of a vehicle is liable for damages caused by the use of said vehicle. According to Swiss law, consequences other than damages may also be imposed on a person absent any concept of fault in certain fields of law. If – e.g. – a person violates personality rights, the victim may claim the abatement or removal of said nuisance, irrespective of whether the tortfeasor is at fault (cf. Art. 28a Swiss Civil Code). This concept of legal protection may be found also in other fields of law, where infringements other than a violation of personality rights are at stake (e.g. property, name, copyright, patent right) or in the context of violations of fair competition (Art. 9 UWG). It follows from all of the above that it depends on the specific legal remedy what prerequisites are applicable, in particular whether or not the concept of fault applies. The Panel is of the view that also disciplinary measures differ as to their objective and nature (cf. TAS 2007/O/1381 no. 21 *et seq.*) and that, accordingly also the prerequisites must differ according to the disciplinary measure in question. The Panel in this respect follows the reasoning in CAS 2008/A/1583 & 1584:

*“even if a principle of criminal law is the expression of this fundamental value system (across all areas of the law), it does not follow that the principle applies without exception and irrefutably in the relationship between a sports association and the athlete/club. This is clearly shown by, for instance, taking a look at the principle of criminal law “nulla poena sine culpa”. In this respect, although there is a large consensus that this principle is one of the fundamental legal principles that also applies in the relationship between a sports association and an athlete/club (cf. also TAS 2007/O/1381, no. 99 with numerous authorities), the principle nevertheless does not apply to every measure taken by an association that has a disciplinary character (cf. TAS 2007/O/1381, no. 59 *et seq.*) Thus, the CAS has consistently held that the an athlete or club can be disqualified irrespective of fault – even though such disqualification is painful for the person affected (CAS 94/129, Digest of CAS Awards I, p. 187, 193 *et seq.*; CAS 95/141, Digest of CAS Awards I, 2000, p. 215, 220)”.*

The characteristic feature of Article 67 of the FDC is – as the Panel in CAS 2002/A/423 no. 6.1.1.3 has put it – that the rule “under which clubs assume strict liability for their supporters’ actions,... has a preventive and deterrent effect. Its objective is not to punish the club as such, which may have done nothing wrong, but to ensure that the club assumes responsibility for offences committed by its supporters”. The underlying idea of the disciplinary measure, thus, is to influence the behaviour of the fans via the entity that is supported by them in order to ensure that

violations of the rules in the context of the participation of this entity in further competitions are excluded. Such type of measures – in the view of the Panel – unlike typical disciplinary sanctions directed at penalising a past behaviour do not require that the addressee of said measure is at fault. To conclude, therefore, the Panel finds – in conformity with previous CAS panels (cf. *CAS 2002/A/423*; *CAS 2007/A/1217*) – that the objective liability foreseen in Article 67 of the FDC is compatible with Swiss public policy.

B. *Was the Appellant at fault?*

91. Having determined that the strict liability aspect of Article 67 of the FDC is applicable, the Panel determines that the events at the Match fall into the category of “improper conduct” and “serious disturbances”. Fault is not a consideration; the Appellant must be sanctioned accordingly.
92. That noted, the Panel wish to put on record their views on the actions taken by the Appellant. The Panel has an advantage over the FIFA Disciplinary Committee and the FIFA Appeal Committee, in that it was able to hear the witnesses of the Appellant. The Panel notes the difficulty the Appellant faced in dealing with the perpetrators. Whilst there may have been up to 300 of them, they were in small groups spread out in one sector of the ground containing a few thousand other spectators. The use of CCTV to film the perpetrators proved to be of limited value, as they were spread out and it would be impossible to detect if a spectator was chanting in support of his team or chanting racist remarks, without audio recording. The use of warnings over the loud speaker system, coupled with the show of force by the 70 or so HFF security team, worked in reducing the outbursts. Whilst the various Regulations of FIFA may indicate that such perpetrators be removed, it seemed to this Panel eminently sensible to get the Police, the security managers and a representative of the legitimate fans together to discuss the pros and cons of taking such actions. If the collective view was that attempting to remove the perpetrators would make the situation worse, it seems hard to criticise that decision later. A proper risk-based assessment was made by the appropriate experts at the time.
93. At the hearing, when asked what the Appellant could have done differently, with the value of hindsight, it was to have audio and video recordings of the perpetrators and perhaps more security available in the sector that could have filmed the perpetrators up close. The Panel are aware of other instances of racism or violence at football matches where the perpetrators have been successfully filmed and later their images are published through the press and even on Twitter and other social media sites, so the legitimate fans are able to identify the perpetrators and hand that information over to the authorities and the perpetrators can later be brought to justice.

C. *Were the sanctions imposed proportionate?*

94. In the matter at hand, putting the sanction of costs to one side, as the Panel agree the costs of the 2 procedures before FIFA should have been borne by the Appellant, the Panel notes that the Appellant was both fined and compelled to play a game without spectators.
95. Taking these sanctions in reverse, the Panel notes that the Appellant argued that the sanction to play the game against Romania behind closed doors was disproportionate, would not help FIFA in its aim to combat racism and resulted in unequal treatment when compared to sanctions issued to the Bosnian Federation.
96. The Appellant argued that there must be a reasonable balance between the type of misconduct and the sanction. Whilst the Appellant did not condone the behaviour of the perpetrators, it submitted, and its witnesses confirmed, that there were no more than 300 perpetrators, not thousands, as had been portrayed to the FIFA Disciplinary Committee by the FARE Report. Further, that no damage was caused, the game was not affected, and no one was injured or hurt. Moreover, their Israeli counterparts thanked them after the Match.
97. The Appellant also argued that its “clean record” should be taken into account, before being sanctioned with “the most severe” sanction. The Appellant drew a comparison with the sanction handed down to Bosnian Federation by the Respondent (only a fine) in circumstances where their match was interrupted by fans entering the field of play, Bengal lights were set off and flags were set on fire – the Appellant argued FIFA had treated its members unequally.
98. The Respondent argued that the disturbances were severe. Further, that this was not the most severe sanction it could have levied against the Appellant – more than one game could have been held without spectators, points could have been deducted from the Appellant’s World Cup campaign, or it could have even been expelled from the competition. All far more severe sanctions. Finally, the Bosnian example was nothing to do with racism, a better example was the Bulgarian case (in the match against Denmark), where similar sanctions had been issued.
99. The Panel has no hesitation in finding that 200 to 300 people bringing flags that can be interpreted as fascist/racist, chanting anti-Semitic songs or sayings, in particular about the Holocaust, are extremely serious and such actions have no place in society, let alone at a friendly football match. The Panel felt it was unfortunate that the Appellant attempted to argue these actions caused no “harm”. The Panel strongly disagrees. Not only does it hurt the feelings of the other fans and players, it offends the memories of so many affected by the Holocaust.
100. The Panel notes that the Respondent has no direct means of punishing the perpetrators; this is the justification for the strict liability of the member association. If the association can track the perpetrators down, then it can ban them and potentially fine or sue them. But that was unfortunately not the case here. So does effectively banning all spectators from the next

home game punish the perpetrators? Does it help the Respondent with its aim to stamp out racism in football? The Appellant stated that the perpetrators were not even fans. That might be the case. Undoubtedly the sanction effects the perpetrators (they cannot attend the next game), but it also effects the true fans. However, the Panel see that as part of the solution. FIFA needs the good fans to turn on the perpetrators and to help to combat racism by helping the Police and the association identify the perpetrators, so they can be banned. Whilst a sanction such as playing a game behind closed doors is harsh, the Panel agree with the Respondent that the sanction is necessary to combat such a serious offence and to help to achieve the objective of ridding racism from football.

101. The Panel agrees that this sanction was not the most severe that FIFA could have issued. The Appellant went on the play in the World Cup qualifiers and drew its next match with Romania. If it had been expelled from the competition or had 3 points deducted, that would have been more severe. The Panel notes that the FIFA Appeal Committee did take into account the representations of the Appellant, including its clean record, before issuing the sanctions.
102. Finally, the Panel notes the parties' position regarding equal treatment. The facts of the Bosnia game were different – that match was interrupted, but the disturbances were not of a racist nature. The Panel notes the treatment by the Respondent against Bulgaria and, by analogy, the treatment of various clubs that have been held responsible by UEFA during its competitions for racist behaviour (as highlighted in *CAS/A/1583* and *CAS/A/1584*) and sees no unequal treatment in the matter at hand, as regards the sanction to play the match against Romania without spectators. This type of racist behaviour is serious enough to warrant a sanction more serious in nature than a fine, such as playing a game without spectators and if the behaviour continues, then perhaps two matches without spectators, deduction of points or even expulsion from FIFA competitions, until the behaviour is stamped out.
103. Turning then to the fine of CHF 40,000 issued in the Challenged Decision, the Panel has more sympathy with the Appellant. The Panel could see no guidance for a judging authority regarding the quantum of a fine within the FDC regulations. It noted Article 67 of the FDC implied a fine would be part of the sanction and heavier sanctions (such as the ban on spectators) would also be applied in serious circumstances. Even the new Resolution from the 63rd FIFA Congress provided to the Panel at the hearing, only refers to a “...*a fine and/or the playing of a match behind closed doors shall be applied...*”, but gives no guidance regarding the amount of any such fine
104. Much in the way that the ban on spectators should achieve a purpose (by in part encouraging the good fans to work against the perpetrators), this Panel determines that a fine should help FIFA achieve its aim of combating racism. If the Association had a way of passing any fine to the perpetrators (through its regulations or through any contract/ticket, should it be able to find the perpetrators) or if the Association had deliberately sought to save money by cutting back on security measures, then a larger fine could be warranted. Further, if more severe sanction had not been applied (as the facts of the case had not

merited it), then perhaps a higher fine be imposed instead. In this case, the amount seems to the Panel to be arbitrary, especially when in addition to the ban on spectators which already causes a financial damage to the Appellant.

105. The Panel refers to *CAS/A/3090* wherein the Respondent (at one end of its range) had fined the Bulgarian Association CHF 7,500 (but had not gone as far as imposing the harsher sanction of a game without spectators) due to its fans showing banners with political statements on them during a match with Albania; yet it had fined (further along its range) the Bosnian Federation CHF 50,000 (and had again not gone as far as imposing the harsher sanction either) for disturbances of the match itself by its fans. The facts of each case will differ, as will the seriousness of any disturbances. It appears to the Panel, that the initial sanction should be a fine and the amount of that fine should increase as the seriousness dictates until a “tipping point” is reached, whereby the next harshest sanction should be applied. That would seem to be the game without spectators. Where the harsher sanction is applied, the fine should be “reset” at the lower end of the range and it can be increased where the facts dictate until the sanction might be a large fine and one match without spectators. The next “tipping point” may then convert that to two matches and a low fine, and so on.
106. In the matter at hand, the Panel weighed up the behaviour of the perpetrators and also the actions of the Appellant. The Panel agrees with the Respondent that the Appellant should have been sanctioned with a fine and the harsher sanction of a game without fans, but determined that any such fine should have been “reset” at a lower end of the range available to FIFA. The Panel, therefore, determines that the fine should be reduced to CHF 20,000.

X. CONCLUSION

107. The Panel partially dismisses the Appeal and partially upholds the Challenged Decision, confirming the violation of Article 67 of the FDC by the Appellant, the sanction to play its home game against Romania without spectators (which has already been served), but for the Appellant to pay a fine in the amount of CHF 20,000 to the Respondent.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by the Hungarian Football Federation on 25 February 2013 is partially dismissed.
2. The decision of FIFA's Appeal Committee of 25 January 2013 is replaced by this award.
3. The Hungarian Football Federation is found guilty of a violation of art. 67 par. 1 and 3 of the FIFA Disciplinary Code;
4. The decision for the "A" representative team of Hungary to play its home match in the preliminary competition for the 2014 FIFA World Cup Brazil against Romania on 22 March 2013 is confirmed;
5. The Hungarian Football Federation is ordered to pay a fine in the amount of CHF 20,000 to FIFA within 30 days of this award.
6. (...).
7. (...).
8. All further prayers for relief are hereby dismissed.