



Arbitration CAS 2021/A/8075 Football Association of Albania (FAA) & Nedim Bajrami v. Fédération Internationale de Football Association (FIFA) & Swiss Football Association (SFA), award of 13 June 2022 (operative part of 30 August 2021)

Panel: Mr Francesco Macrì (Italy), President; Mr Julien Fouret (France); Mr Mark Hovell (United Kingdom)

Football

Nationality

Distinction between sporting nationality and legal nationality

Principle set forth in the FIFA New Eligibility Rules/ Regulations Governing the Application of the FIFA Statutes

Cumulative prerequisites of art. 9 para. 2 of the FIFA New Eligibility Rules regarding requests to change associations

Distinction between nationality and citizenship

Acquisition of Albanian citizenship under Albanian law

1. ***“Sporting nationality”*** does not necessarily correspond to the ***“legal nationality”*** as determined by each state. A person may have two or more legal nationalities, but every athlete can only have one sporting nationality. When the athlete has made his choice as to his sporting nationality, the possible benefits of dual nationality will disappear in sports. Consequently, there is no reason to treat athletes unequally in sports depending on whether an athlete has one or more legal nationalities.
2. According to art. 5 para. 1 of the Regulations Governing the Application of the FIFA Statutes (RGAS, ed. 2020), ***“Any person holding a permanent nationality that is not dependent on residence in a certain country is eligible to play for the representative teams of the association of that country”***. According to art. 5 para. 2: ***“there is a distinction between holding a nationality and being eligible to obtain a nationality. A player holds a nationality if, through the operation of a national law, they have: a) automatically received a nationality (e.g. from birth) without being required to undertake any further administrative requirements (e.g. abandoning a separate nationality); or b) acquired a nationality by undertaking a naturalisation process”***. Nationality by *jus sanguinis* or *ius soli* is ***“automatically”*** obtained and the formalities necessary to get it are not to be considered ***“further administrative requirements”***.
3. According to art. 9 para. 1 of the RGAS, ***“a player may, only once, request to change the association for which he is eligible to play to the association of another country of which he holds the nationality”***. Pursuant to art. 9 para. 2 (a) of the RGAS, the granting of such a request requires a demonstration that the player has not been fielded at the “A” level for his current nationality and that, at the time of being fielded for his first match in official competition at the non-“A” level for his current association, the player ***“already held”*** the nationality of the association which he wishes to represent. These two prerequisites are cumulative.

4. **Nationality does not correspond to the narrower content of citizenship, legal status in a political institution such as a city or a state. On the other hand, nationality denotes where an individual has been born or holds citizenship with a State. Nationality is obtained through inheritance from his/her parents, which is a natural phenomenon or through naturalization. Where nationality has a broader content that corresponds to the natural background of an individual, citizenship is a legal status that can be recognised only if a person holds nationality and political rights can be granted if he/she obtains citizenship.**
5. **According to art. 5 of the Albanian Law 113/2020 (acquisition of citizenship), *“Anyone born to at least one parent who is an Albanian citizen shall automatically acquire Albanian citizenship and shall be registered as an Albanian citizen. The entitlement to register as an Albanian citizen shall not expire after the person has reached 18 (eighteen) years of age”.***

I. THE PARTIES

1. The Football Association of Albania (the “First Appellant” or the “FAA”) is the football governing body in the Republic of Albania. It is a member of Fédération Internationale de Football Association and has its headquarters in Tirana, Albania.
2. Nedim Bajrami (the “Second Appellant” or the “Player”) is a professional football player of both Swiss and Albanian nationality.
3. Fédération Internationale de Football Association (the “First Respondent” or “FIFA”) is the international governing body of football with its registered office in Zurich, Switzerland. FIFA exercises regulatory, supervisory, and disciplinary functions over national associations, clubs, officials, and players worldwide.
4. The Swiss Football Association (the “Second Respondent” or the “SFA”) is the football governing body in Switzerland. It is a member of FIFA and has its headquarters in Muri, Switzerland.

II. FACTUAL BACKGROUND

5. On 18 September 2020, FIFA modernized its Regulations Governing the Application of the FIFA Statutes (ed. 2020) (the “Regulations”, the “RGAS” or the “New Eligibility Rules”). The Appealed Decision rejected the request made by the FAA for a change of association under Article 9 of the Regulations in respect of Mr Bajrami.

A. Background facts

6. Nedim Bajrami is a professional football player born on 28 February 1999 in Zurich, Switzerland, from Albanian parents.
7. As confirmed by the SFA, Mr Bajrami has appeared in 31 official matches for the Swiss national football team, none of which were at the so-called “A” level (*i.e.* with the senior Swiss national football team). Mr Bajrami played his first match for the Swiss U-15 national football team on 10 September 2013 and his last match for the Swiss U-21 national football team on 16 November 2020.
8. He had never been called to represent the Albanian national football team in a friendly match or an official competition.
9. On 17 March 2021, the Ministry of Interior of Albania issued a declaratory statement under Articles 4(b) and 6 of Law 113/2020 of 29 July 2020 officially recognising Mr Bajrami’s Albanian descentance, following which Mr Bajrami obtained an Albanian birth certificate on 19 March 2021 and an Albanian passport on 21 March 2021.
10. On 19 March 2021, the FAA submitted a (first) change of association request to the FIFA Players’ Status Committee (the “FIFA PSC”) concerning the Player (the “First Request”).
11. On 23 March 2021, upon request of the FIFA administration, the FAA clarified the following:
 - a. its request was filed under Article 9 para. 2 (b) of the Regulations;
 - b. “[t]he evidence as to the requirements provided in art. 6 or 7 of the RGAS in cases of invoking art. 9, par. 2, lit. b) of RGAS, are explicitly underlined in the official document (...) dated on 23.03.2021 of the sole state authority (Ministry of Interior of Albania)”;
 - c. the documentation submitted “*indicate[s] the exact date of obtaining the Albanian nationality by player Nedim Bajrami, 17.3.2020*”.
12. At the same time, the FAA provided additional documents, including:
 - a. a statement dated 23 March 2021 from the General Secretary of the Albanian Ministry of Interior “*certify[ing] that the [Player], on 17.03.2021 was granted Albanian citizenship based on Law 113/2020 ‘On Citizenship’ (...) in accordance with the provisions of Article 4 point b and Article 6 of the law*”;
 - b. a statement from the SFA clarifying that “*The two matches [played by the Player] on 12.11.2020 and 16.11.2020 against Azerbaijan and France are both qualifiers for the UEFA U21 EURO*” (emphasis omitted).

13. On 23 March 2021, the first application was rejected by the Single Judge of the FIFA PSC (the “First Decision”).
14. On 25 March 2021, the grounds of the First Decision were notified to the FAA. The relevant part reads as follows:
 - “23. *Against such background, as the Player had already turned 21 years old on the day of his last match in an official competition for the representative teams of the ASF-SFV, the Single Judge held that he had no other option but to conclude that one of the cumulative conditions provided in art. 9 par. 2 b) of the RGAS, namely iii), was, in casu, not met.*
 - (...).
 27. *(...) the Single Judge held that, in addition to the Player not complying with the “age requirement” of art. 9 par. 2 b) of the RGAS, the FSHF also failed to demonstrate that the Player meets the “genuine link” requirement of art. 6 or 7 of the RGAS (see also para. 75 of the Commentary).*
 28. *(...) based on the documentation submitted, the Player does not fulfil the objective (and cumulative) conditions for a change of association in accordance with art. 9 par. 2 b) of the RGAS, as a result of which the Single Judge decided that the request submitted by the FSHF for a change of association of the Player had to be rejected”.*
15. The First Decision was appealed before CAS, and the proceedings (CAS 2021/A/7869) were terminated by the President of the Appeals Arbitration Division due to the withdrawal of the Appeal, communicated by the Appellants on 29 June 2021.
16. On 21 May 2021, the FAA submitted a second change of association request to the FIFA PSC about Mr Bajrami (the “Second Request”), this time based on Article 9 para. 2 (a) of the Regulations.
17. In its request, the FAA reported that Mr Bajrami (i) had obtained the Albanian nationality by descentance and owned an Albanian birth certificate and passport; and (ii) benefited from the Albanian nationality since birth, according to an official statement by the Ministry of Interior of Albania issued on 18 May 2021.
18. Besides, the FAA argued that FIFA’s 2021 Commentary on the Rules Governing Eligibility to Play for Representative Teams (the “Commentary”) clarified that mere formalities, such as the requirement to request a birth certificate or to register oneself as a foreign-born national, do not constitute “*substantial*” preconditions to obtaining nationality and do not render the granting of a nationality non-automatic.
19. Lastly, the FAA argued that Mr Bajrami’s Second Request was identical to several requests granted to foreign-born Albanians in recent years, including a recent one awarded to another Swiss/Albanian player about a year earlier. Mr Bajrami presented the same documents and fulfilled the same conditions as his colleagues.

20. On that same day, 21 May 2021, FIFA requested the FAA to provide a copy of an Albanian passport issued between the Player's birth and 24 April 2014 (the date on which the Player played his first match in official competition for the SFA).
21. On 26 May 2021, the FAA stated that Mr Bajrami did not have to produce an Albanian passport valid at his first official match for the SFA's youth representative team.
22. On 27 May 2021, the Single Judge of the FIFA PSC rejected the request of FAA for a change of association of Mr Nedim Bajrami. The grounds of this decision (the "Appealed Decision") were notified to FAA on 4 June 2021.

B. The Decision of the Single Judge of the FIFA PSC

23. In the Appealed Decision, the Single Judge of FIFA PSC emphasised that the FAA's Second Request was filed under Article 9 para. 2 (a) of the RGAS that reads as follows:

"A request to change association may be granted only in the following circumstances:

a) the player:

- i. was fielded in a match in an official competition at any level (with the exception of "A" international level) in any kind of football for his current association; and*
 - ii. at the time of being fielded for his first match in an official competition in any kind of football for his current association, he already held the nationality of the association which he wishes to represent".*
24. In the Single Judge's view, such provision contains *"a clear and well-defined enumeration of objective and mandatory prerequisites which need to be fulfilled by any player wishing to exercise his right to change association on that basis"*. Such prerequisites are cumulative and *"a change of association would only be granted provided that all of the conditions stipulated in the relevant provision are complied with"*.
 25. On such foreword, the Single Judge ascertained that the Player never participated in official competition at "A" international level for the SFA and never represented Switzerland in such competitions. Therefore, the Single Judge found that the first requirement provided under Article 9 para. 2 (a)(i) of the RGAS was fulfilled.
 26. Concerning the second requirement provided by Article 9 para. 2 (a) RGAS, the Single Judge first observed (i) that the Player's Albanian passport on file was issued on 21 March 2021 and (ii) that the FAA submitted no previously issued Albanian passport.
 27. Besides, the Single Judge noted that the Second Request stood on a new statement from the Albanian Ministry of Interior issued on 18 May 2021, confirming that the Player *"has attained the*

Albanian nationality pursuant to the Law no. 113/2020 'On the Citizenship', and that "the citizen Nedim Bajrami (...) has the Albanian nationality since birth, a right benefited from the applicant's request".

28. This having stated, the Single Judge argued that there is a significant difference between "*holding a nationality of a particular country*" and "*being entitled to obtain such nationality upon specific request*". This difference is stated in Article 5 para. 2 of the RGAS and the Commentary.
29. In the first Commentary's scenario, the Player obtains the nationality "*automatically*" without being required to undertake any further administrative requirements (see para. 10); in the second scenario, nationality is acquired by undertaking a naturalisation process (see. paras 11 and 12).
30. After having analysed the Albanian Law no. 113/2020, the Single Judge concluded that to acquire Albanian citizenship (by descent), the Player (i) had to submit an application to the relevant Authorities and (ii) had to fulfil some predefined requirements, namely those of Article 8 para. 1 (dh) and (ë) of the Albanian Law. In this regard, "*the Single Judge underlined that, in addition to submitting an application, the Player had to meet some requirements determined by the Albanian Law under art. 8, namely (i) that he "has not been convicted by final judgement in his or her country, in the Republic of Albania, or any third state, of criminal offences for which the Albanian law imposes sentences of no less than 3 (three) years of imprisonment" and (ii) that he "does not pose a threat to the public order and national security of the Republic of Albania"*".
31. Therefore, in the Single Judge's view, the Player obtained the Albanian Citizenship on 17 March 2021 only after having applied for it "*and once he was deemed to have complied with further administrative requirements contained in Article 8(1) (dh) and (ë) of the Albanian Law*" and "*it remains that the Player did not hold it until he formally requested (and obtained) it in March 2021*". Consequently, the Player did not fulfil the cumulative prerequisites provided under Article 9 para. 2 (a) of the RGAS.
32. Moreover, the Single Judge argued that the previous decisions of the Players' Status Committee, which authorized three other players to the change of association requested by the FAA, were rendered before the entry into force of the 2020 edition of the RGAS "*where no distinction was made between "holding a nationality" and "being eligible to obtain a nationality"*". By way of consequence, the assessment made in the case at stake – on the basis of the 2020 edition of the RGAS where such distinction exists – can by no means be compared to those cases decided on the basis of previous editions of the RGAS – where such distinction did not exist".

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

33. On 23 June 2021, the Appellants filed a Statement of Appeal with the Court of Arbitration for Sport (the "CAS") in accordance with Article 58 of the FIFA Statutes and Articles R47 and R48 of the Code of Sports-related Arbitration (2020 edition) (the "CAS Code") against the Respondents with respect to the Appealed Decision. In their submission, the Appellants requested an expedited procedure due to the upcoming FIFA World Cup European Qualifiers match of 2 September 2021 between Albania and Poland and the possibility for the Player to

be fielded in such a match. Furthermore, the Appellants asked for a CAS Panel composed of three arbitrators and appointed Mr Julien Fouret.

34. On 29 June 2021, the SFA informed the CAS Court Office that it would not actively participate in the current arbitration (the SFA communicated the same regarding the previous CAS proceedings 2021/A/7869). The Second Respondent submitted that it would have agreed with any procedural step taken by FIFA as the First Respondent. Moreover, the SFA underlined that, at no time, it stood opposite to the change of association as requested by the Player and did not consider itself affected by the undergoing proceedings and the related costs.
35. On 30 June 2021, FIFA informed the CAS Court office that it agreed with the Appellants' request for an expedited procedure and to choose English as the language of the proceedings. Furthermore, FIFA communicated, and the Appellants confirmed, the agreed procedural calendar and issuing the operative part of the award before 31 August 2021. With the same letter, FIFA appointed Mr Lars Hilliger as arbitrator.
36. On 1 July 2021, Mr Hilliger returned the Arbitrator's Acceptance and Statement of Independence form with a disclosure. Since the Appellants objected to such an appointment, Mr Hilliger, with an email dated 5 July 2021, despite confirming his independence of the Parties, communicated his resignation to the CAS Court office.
37. On the same day, on behalf of the President of the CAS Appeals Arbitration Division, and in accordance with Article R52 of the CAS Code, the CAS Court Office confirmed the expedited procedural calendar.
38. On 12 July 2021, FIFA nominated Mr Alexis Schoeb as arbitrator. On 13 July 2021, Mr Schoeb submitted his Acceptance and Statement of Independence form to disclose previous appointments from FIFA to act as a CAS arbitrator in several other proceedings.
39. On 14 July 2021, the Appellants filed their Appeal Brief pursuant to Article R51 of the CAS Code within the agreed procedural calendar's time limit.
40. On 15 July 2021, the Appellants filed an email to the CAS Court Office, objecting to Mr Schoeb's appointment due to reasons therein explained and inviting him to resign from the present proceedings. On the same date, FIFA confirmed its appointment, concluding that there were no valid doubts over Mr Schoeb's independence and impartiality.
41. On 15 July 2021, Mr Schoeb decided to resign, and FIFA nominated Mr Mark Hovell as arbitrator. No challenge was filed against the nomination of Mr Hovell.
42. On 4 August 2021, the CAS Court Office informed the Parties that the Panel decided to hold a hearing on 24 August 2021. On 6 August 2021, the Second Respondent communicated that they would not participate in the scheduled hearing.

43. On 11 August 2021, the CAS Court Office informed the Parties that, pursuant to Article R54 of the CAS Code and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the Arbitral Tribunal appointed to hear the Appeal was constituted as follows: Mr Francesco Macrì, Attorney-at-Law in Piacenza, Italy (President of the Panel), Mr Julien Fouret, Attorney-at-law in Paris, France (nominated by the Appellants), Mr Mark Hovell, Solicitor in Manchester, United Kingdom (nominated by the First Respondent).
44. On 17 August 2021, the First Respondent filed its Answer to the Appeal Brief in accordance with Article R55 of the CAS Code.
45. On 18 and 23 August 2021, the First Respondent and the Appellants returned copies of the Order of Procedure to the CAS Court Office duly signed.
46. In addition to the Panel and Mrs Delphine Deschenaux-Rochat, Counsel to the CAS, the following persons attended the hearing by videoconference on 24 August 2021:
 - For the Appellants: Mr Giulio Palermo, Counsel, and Mr Panagiotis A. Kyriakou, Counsel; and
 - For the First Respondent: Mr Miguel Lietard Fernandez-Palacios, Director of Litigation, and Mr Jaime Cambreleng Contreras, Head of Litigation.
47. The Panel heard evidence from Mr Aldi Topciu, Integrity Officer and Head of the Legal Department of the FAA, presented by the Appellants. The President of the Panel invited the witness to tell the truth subject to the sanctions of perjury under Swiss Law. Both Parties and the Panel had the opportunity to examine and cross-examine the witness.
48. The Parties were afforded ample opportunity to present their case, submit their arguments and answer the questions posed by the Panel.
49. Before the hearing was concluded, the Parties expressly stated that they did not have any objection with the procedure adopted by the Panel and their right to be heard had been respected.
50. After the hearing, the First Respondent submitted the correct version of exhibit 12, namely Law 8389 on Albanian Citizenship. The Appellants provided the CAS Court Office with the slide deck projected during the concluded hearing.
51. The Panel confirms that it carefully heard and took into account in its decision all the submissions, evidence, and arguments presented by the Parties, even if they have not explicitly been summarised or referred to in the present arbitral award.

IV. SUBMISSIONS OF THE PARTIES

52. The following summary of the Parties' positions is illustrative only and does not necessarily comprise every contention put forward by the Parties. The Panel, however, has, for the legal analysis which follows, carefully considered all the submissions made by the Parties, even if there is no specific reference to those submissions in the following summary.

A. The Appellants

53. On 23 June 2021, the Appellants filed their Appeal Brief pursuant to Article R51 of the CAS Code. This document contained a statement of the facts and legal arguments. The Appellants challenged the Appealed Decision, submitting the following requests for relief:

- “(i) That the Decision of the Single Judge of the FIFA Players’ Status Committee dated 27 May 2021 (Ref. FPSD-2585) be annulled;*
- “(ii) That the request made by the FAA on 21 May 2021 for change of association under Article 9 of the Regulations in respect of Mr Bajrami be granted; and*
- “(iii) That the Respondents be found jointly liable to pay the costs of the arbitration and that FIFA be found liable to pay 75% the Appellants’ fees for legal representation”.*

54. In summary, the Appellants argue that the Player never played at “A” level for the Swiss National Football team and that he held the Albanian nationality from birth. In the Appellants' view, these two cumulative requisites matched the provision of Article 9 para. 2 (a) of the RGAS and the request for a change of association is worthy of upholding.

55. The Appeal rests on the pillar that Mr Bajrami “held” the Albanian nationality at the time of his first U-15 match for Switzerland, and said nationality was granted to the Player “since birth”/ “as from birth”.

56. This was confirmed by the certificate of the Ministry of Interior of Albania released on 18 May 2021. This statement, complying with the provision of Article 5 of the Regulations, confirmed that the Player was not simply “eligible to obtain” the Albanian nationality at the time of his first match for the Switzerland football team (as oppositely stated by the Single Judge of the FIFA PSC). Instead, Mr Bajrami already held Albanian nationality but simply did not file a request for a birth certificate and registration as a foreign-born Albanian until early 2021.

57. At all events, Mr Bajrami's case is a common one, in which a player who has been born abroad only applies for said documents during adulthood. This scenario is far apart from the notion of “further administrative requirements”, the existence of which implies that a player does not hold the relevant nationality for which he applies the request for a change, but he is only “eligible to obtain” it.

58. Also, the Commentary, published in January 2021, confirmed the “automaticity” of granting nationality to the players “born, subject to the relevant national law, in line with the principle of *jus solis* (nationality is linked to the place of birth) or *jus sanguinis* (nationality is linked to the nationality held by one or both parents), or a combination of both”.
59. The Single Judge of the FIFA PSC erred in stating that the Player had to fulfil “further administrative requirements” as substantial preconditions to obtain the Albanian nationality. In this regard, the Commentary illustrates the general nature of such preconditions by providing two concrete examples, namely the requirements to “abandon another nationality” and observe a “substantial waiting period following childbirth”. A FIFA representative referenced the same examples when asked to clarify the meaning of the term “substantial precondition” earlier this year. These examples suggest that a precondition is considered “substantial” when it requires the applicant to perform positive substantive actions and furnish substantive probatory documents instead of observing mere formalities, such as filling in and delivering administrative forms or attestations/certificates.
60. As a general starting point, the content of the “further administrative requirements” is strictly bound to the relevant Authority’s Decision (such as the Ministry of Interior) after carefully reviewing the documents submitted by the applicant.
61. This interpretation adheres to the provisions of the Albanian Law 113/2020 on Citizenship, where it is stated some substantial preconditions (such as long-term residence in Albania) to be fulfilled that are not the same asked the Player, namely Article 8 (dh) (absence of a criminal conviction) and (ë) (absence of a threat to national security). These provisions neither require the applicant to perform positive substantive actions nor do they require her/him/them to furnish any substantive probatory documents.
62. The New Eligibility Rules were, against this background, prompted mainly by the need to avoid “excessive severity or hardship” in deciding nationality requests. The Commentary notes, in this connection: “In adopting reforms, FIFA developed the following core principles that underpin its eligibility rules: (...) avoiding cases of excessive severity or hardship”.
63. In the present case, the Appealed Decision contradicts the objective of limiting severity and hardship as it leads to similar cases being treated unequally. The CAS jurisprudence has long recognised that “there is no reason to treat athletes unequally in sports depending on whether an athlete has one or more nationalities”. Moreover, the CAS has advised against “invariable policies” that inflict hardship on athletes by denying their eligibility to represent a particular federation without considering their position.
64. Previous Albanian players’ requests for a change of association were accepted by FIFA on the submission of the same declaration of the Albanian Ministry of the Interior as provided by the Player. Remarkably, Mr Bajrami is the same as Mr Florian Kamberi: both the athletes played in the same age category, were born in Switzerland by Albanian parents, and represented the Swiss

national football team in non “A” level matches. Nevertheless, only Mr Kamberi’s request was accepted, and this conclusion appears unequal and unacceptable.

65. Despite the Single Judge’s reasoning about the distinction between “*holding*” and “*being eligible to obtain*”, as provided by the New Eligibility Rules, all the requests from the Albanian players were granted on certificates issued by the Ministry of Interior of Albania: being merely “*eligible*” has never been considered by FIFA to obtain a nationality to compete in major representatives’ teams. As a result, Mr Bajrami meets all relevant criteria established under Article 9 para. 2 (a) of the Regulations.
66. The Appellants’ request for change of association does not try to circumvent FIFA’s commitments to avoid the so-called “*nationality shopping*”. Instead, the FAA has been consistent in its practice of filing change of association requests on behalf of foreign-born Albanians: it is a matter of fact, that all the requests were filed on behalf of those players whose parents migrated to Switzerland for a better future. To deny the change of association shall lead to an undue punishment of migration.
67. The Appealed Decision violates Swiss public policy, as the right of change of association pertains to exercising the Player’s right to personality under Article 28 of the Swiss Civil Code. The Swiss Federal Tribunal stated that discriminatory treatment must be the subject of a “*specific justification*” (“*justification particulière*”).
68. In the present case, the only justification offered in support of Mr Bajrami’s unequal treatment is the introduction of a new provision into the Regulations just months before Mr Bajrami’s application, namely Article 5 para. 2, which distinguishes holding a nationality and being eligible to obtain one. This Single’s Judge’s justification is far from being “*specific*” and has no justification at all. Besides, it is only formalistic and violates the provision of Article 29 para. 1 of the Swiss Constitution and the Swiss public order.

B. The First Respondent

69. On 17 August 2021, the First Respondent filed its Answer in accordance with Article R55 of the CAS Code, submitting the following requests for relief:

“(a) *rejecting the reliefs sought by the Appellants;*

“(b) *confirming the Appealed Decision;*

“(c) *ordering the Appellants (and principally the FAA) to bear the full costs of these arbitration proceedings; and*

“(d) *ordering the Appellants (and principally the FAA) to make a contribution to FIFA’s legal costs*”.

70. The submissions of the First Respondent, in essence, may be summarised as follows:

71. As a threshold, conveniently, the Appellants filed a misleading second request for change of association under Article 9 para. 2 (a) of the Regulations, assuming that the Player held Albanian nationality, after they realised that the First Request under Article 9 para. 2 (b) was wrong. Moreover, the prerequisites under Article 8 para. 1 (dh) and (e) of the Albanian Law 113/2020 on Citizenship are substantive. The Player had to undertake both before obtaining the requested nationality, thus incurring the prohibition of Article 5 para. 2 (a) of the Regulations. Finally, this case is different from the other Albanian players quoted by the Appellants. The Player's personality right has never been breached. He remains eligible for the SFA A team and is still playing as a professional footballer with the Italian Club, Empoli FC.
72. As a preliminary remark, it must be noted that before the FIFA Congress on 18 September 2020 which adopted the New Eligibility Rules, the change of association was governed by Articles 5 to 8 of the RGAS. Under those previous regulations, there was no distinction between the concepts of holding a nationality and being eligible to obtain a nationality that are now contained in Article 5 para. 2 of the RGAS.
73. Contrary to what is claimed by the Appellants, the Player obtained Albanian nationality only in March 2021.
74. The statement from the General Secretary of the Albanian Ministry of Interior is clear and undisputable as it reports that the Albanian citizenship was granted to the Player only on 17 March 2021 by descentance.
75. The wording of the Albanian Law 113/2020 on Citizenship clearly states that Albanian nationality can be automatically acquired only by birth (as provided by Articles 4 and 5) and not by descentance, as this is the case of the Player. Consequently, the Player did not hold Albanian nationality at his first official match with Switzerland and did not meet the second requirement of Article 9 para. 2 of the RGAS.
76. The Player acquired Albanian nationality only on 17 March 2021, and, to do so, he was required to undertake further administrative requirements in the sense of Article 5 para. 2 (a) of the RGAS.
77. Together with his application, the Player had to submit the proof of the absence of criminal records, and that he did not constitute a threat to Albania's public order and national security. In absence of these requirements, the Player's application for nationality would have not been granted for failure to demonstrate that he met the criteria established by Law.
78. Put in other words, even if the Player was eligible to obtain the Albanian nationality since birth, he only held it after demonstrating, through his application, that he met the substantial preconditions contained in Article 8 para. 1 (dh) and (ë) of Law 113/2020 and obtaining the relevant approval.

79. The statement of the Ministry of Interior proves that the Albanian nationality was granted to the Player only on 17 March 2021 and contradicts the reasoning of the Appellants where they claimed that the Player held Albanian nationality by birth.
80. The Appellants requested for a change of association based on a different legal framework than the one applied to the other Albanian players being compared in the Appeal Brief.
81. In none of the other cases, the Albanian authorities had to confirm, such as for Mr Bajrami, that those players had acquired their nationality upon applying for it. Instead, the other players' requests were granted based on Albanian passports issued before the date of the players' first matches with their former association and the statements from the Albanian authorities confirming that the players held Albanian nationality since birth. These requisites were not met in the case of Mr Bajrami.
82. The fact that a player's situation may not match any of the exceptions contained in the New Eligibility Rules does not mean that the Appealed Decision causes excessive severity or hardship or is incompatible with the applicable legal framework. Furthermore, any potential difficulties suffered by the Player should be assessed strictly concerning his situation and not by comparison to others.
83. The New Eligibility Rules were applied to all the Member Associations and their players. They, therefore, cannot be adjudicated unequal: Mr Bajrami did not hold Albanian nationality when he played his first official match for the SFA. Instead, he was eligible to obtain Albanian nationality, but he failed to acquire it in time. CAS cannot decide whether it is appropriate for FIFA to apply or introduce different rules but only apply the existing regulations.
84. The Single Judge of the FIFA PSC's application of the RGAS strictly aligns with its objective and literal meaning. Any court or deciding body that limits its decision to exactly apply the existing rules will rarely violate the personality rights of a person that has accepted to be regulated by said rules and regulations.
85. Moreover, the FAA took part in the FIFA Congress of 18 September 2020. The New Eligibility Rules were approved, without any indication from the FAA that it would have been the only association to object to this amendment. The undisputed reality is that the FAA voted affirmatively to pass the amendment; therefore, it is precluded from taking exception concerning a norm which it has expressly approved and committed to abide by.
86. Concerning the Player, should he have felt that the New Eligibility Rules were unlawful and directly negatively affected him, he was always free to challenge the Congress' Decision before CAS, yet he failed to do so. On this basis, as the Player was aware of the content of the New Eligibility Rules, no breach of his personality's right has occurred.
87. FIFA's and its members' overriding private interest in applying the Regulations derive from the need to ensure a correct application of the rules and protect the integrity and the nature of

national team competitions. In this sense, drawing up regulations governing the game of football and ensuring their correct application and enforcement is one of FIFA's primary objectives foreseen in Article 2 (c) of the FIFA Statutes. In addition, Article 2 (g) of the FIFA Statutes sets another objective: safeguarding and promoting the integrity of matches and competitions.

88. The restriction on the eligibility of players based on nationality, as well as the strict requirements established for a potential change of association, even after the passing of the New Eligibility Rules, protects the abovementioned objectives including the integrity and the nature of the national team competitions which, contrary to club competitions, are not guided by a financial interest but rather by national emotions.
89. Mr Bajrami is not limited to exercising his profession at a senior international level and gaining moral and economic benefits from there: currently, he is a professional footballer in Italy, and he can still play for a national association, *i.e.*, the SFA. These arguments align with recent CAS jurisprudence in case CAS 2020/A/7444 regarding the Spanish/Moroccan player, Munir El Haddadi.
90. The Appellants on their own decided to apply for a change of association after the RGAS were amended, and they cannot blame FIFA for these amendments, instead of themselves for the late decision.
91. FIFA's refusal to turn a blind eye to its regulations after their amendment cannot derive into a situation of excessive formalism. Moreover, the Appellants have failed to successfully explain how the application of the RGAS would offend Swiss public order.
92. The change of the RGAS (which was expressly approved by the FAA at the FIFA Congress) does not render the rules on change of association stricter than before the Amendment. On the contrary, it simply becomes clearer and adds other exceptions that did not exist before, such as Article 9 para. 2 (b) of the RGAS. Players now have more possibilities to successfully obtain the change of a national association as the new regulations are less restrictive than the previous ones.
93. Mr Bajrami obtained Albanian nationality under the new Albanian Law on Citizenship provision. Still, this novel path does not make the Player fall under the exceptions in the RGAS and obtain the requested change of association. Consequently, the appeal shall be rejected.

C. The Second Respondent

94. The Second Respondent did not file any written submissions and did not attend the hearing.

V. JURISDICTION

95. 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”.

96. The jurisdiction of the CAS derives from Article 58(1) of the FIFA Statutes (2019 edition), which reads:

“Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question”.

97. The jurisdiction of the CAS is further confirmed by the Orders of Procedure duly signed by the Parties.
98. It follows that the CAS has jurisdiction to decide on the present dispute.

VI. ADMISSIBILITY

99. 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 in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has already been constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties”.

100. The Panel notes that pursuant to Article 58(1) of the FIFA Statutes, the time limit to file an appeal is 21 days of receipt of the Appealed Decision.
101. In accordance with Articles R47 and R48 of the CAS Code, the Appellants filed their Statement of Appeal on 23 June 2021, which is within the deadline. The Statement of Appeal complied with the other conditions set out in Article R48 of the CAS Code.
102. Therefore, the appeal was timely submitted and is admissible.

VII. APPLICABLE LAW

103. Article R58 of the CAS Code provides more specifically the following:

“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 the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

104. Article 57(2) of the FIFA Statutes reads as follows:

“The arbitral tribunal shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to the rules of law with which the dispute has the closest connection”.

105. The Panel notes that the Appellants and the First Respondent have not chosen any law in a Private Agreement.

106. In their submissions, both the Appellants and the First Respondent submitted that FIFA Regulations and additionally Swiss Law applies pursuant to Article R58 of the CAS Code and the FIFA Statutes.

107. The Panel is satisfied that the FIFA Regulations, particularly the RGAS, are applicable, with Swiss Law applying to fill in any gaps or lacuna within those regulations.

VIII. MERITS

108. The main issues to be resolved by the Panel are:

A. What are the content and the scope of the New Eligibility Regulations?

B. What is the difference between nationality and citizenship, if any?

C. Did the Appellants’ request comply with the provision of Article 9 para. 2 (a) of the RGAS?

A. What are the content and the scope of the New Eligibility Regulations?

109. The Panel initially notes that the introduction to the Commentary reports that, according to CAS jurisprudence, “*sporting nationality*” does not necessarily correspond to the “*legal nationality*” as determined by each state.

110. In CAS 98/215, this was stated: “*A person may have two or more legal nationalities, but every athlete can only have one sporting nationality (...). When the athlete has made his choice as to his sporting nationality, the possible benefits of dual nationality will disappear in sports. Consequently, there is no reason to treat athletes unequally in sports depending on whether an athlete has one or more legal nationalities*”.

111. Sporting nationality's regulation is an issue that belongs to the international sports governing bodies as they are the only subjects designated to govern and regulate a private law system such as the sports system.
112. Sporting nationality is also, and maybe more, a subjective matter and need objective and identifiable criteria to regulate it: in CAS 2007/A/1377, this was stated: *"it is obviously delicate to define, evaluate and prove the emotional, sentimental, and cultural ties an athlete feels she/he has with a given country, because to a large degree these are subjective matters"*. This statement is more valid, noting that the membership of international sports federations is not strictly limited to sovereign nations. For the time being, FIFA has a membership of 211 football associations, compared to the United Nations, which has a membership of 193 sovereign states.
113. The rules governing eligibility for (national) representative teams in international football, found in the RGAS, changed over time. At the very beginning, the participation of the representative team of that football association in an official competition (at any level) tied the player to that football association for the duration of his career. Between 2004 and 2008, it was allowed for the players with *"dual nationality"* to change their sporting nationality if they met specific criteria.
114. The reform adopted by the FIFA Congress on 18 September 2020 stands on the following core principles as reported in the Commentary:
 - *'no nationality, no eligibility'. Eligibility must be based on an objective measurement (i.e. the nationality held by the player);*
 - *equal treatment of all [Member Associations];*
 - *the existence of a genuine link between the player and the [Member Association] they (intend to) represent;*
 - *avoiding cases of excessive severity or hardship;*
 - *prevention of abuse (i.e. 'nationality shopping'); and*
 - *protecting the sporting integrity of international competition"*.
115. The Panel emphasises that these principles contain three essential elements: nationality as a precondition to play for a representative football team; the existence of a genuine link between the player and the association, and the intention to avoid that such rules can frustrate the legitimate expectation of a player to joining the chosen association; to prevent any abuse (*i.e. "nationality shopping"*) and to protect the integrity of competitions.
116. Regarding the first topic, Article 5 para. 1 (Principles) of the Regulations reads as follows: *"Any person holding a permanent nationality that is not dependent on residence in a certain country is eligible to play for the representative teams of the association of that country"*; and Article 5 para. 2: *"there is a distinction*

between holding a nationality and being eligible to obtain a nationality. A player holds a nationality if, through the operation of a national law, they have: a) automatically received a nationality (e.g. from birth) without being required to undertake any further administrative requirements (e.g. abandoning a separate nationality); or b) acquired a nationality by undertaking a naturalisation process”.

117. The Commentary provides FIFA’s interpretation of the abovementioned rules:

“Eligibility is conditioned upon two (2) threshold matters:

2.1 the player ‘holding’ a nationality; and

2.2 that nationality being a ‘permanent nationality that is not dependent on residence in a certain country”.

118. The Panel will address the issue of nationality later below. At this point, it is worth noting that, as the Commentary stated: *“Following the September 2020 reform, a clear distinction is made between ‘holding a nationality’ and ‘being eligible to obtain a nationality’. There are two general scenarios where an individual may ‘hold a nationality’ through the operation of a national law”.*

119. Left aside the second scenario about naturalisation as this is not the case to be dealt with in these proceedings, FIFA’s Commentary explains as follows about such *“first scenario”*:

“The first element requires that nationality be obtained ‘automatically’. This will generally occur when a player is born, subject to the relevant national law, in line with the principle of jus solis (nationality is linked to the place of birth) or jus sanguinis (nationality is linked to the nationality held by one or both parents) or a combination of both.

The second element requires that the automatic grant of nationality does not oblige the player to ‘undertake any further administrative requirements”.

120. This provision corresponds to the principles enshrined in the European Convention on Nationality, issued on 6 November 1997, that reads:

“Article 6 –Acquisition of nationality

1 Each State Party shall provide in its internal law for its nationality to be acquired ex lege by the following persons:

a. children one of whose parents possesses, at the time of the birth of these children, the nationality of that State Party, subject to any exceptions which may be provided for by its internal law as regards children born abroad. With respect to children whose parenthood is established by recognition, court order or similar procedures, each State Party may provide that the child acquires its nationality following the procedure determined by its internal law.

b. foundlings found in its territory who would otherwise be stateless”.

121. Despite being not an EU country, also Swiss Law recognises the same principles regarding the acquisition of nationality by filiation (Article 1 of the Federal Act on Swiss Citizenship):

“1 The following persons are Swiss citizens from birth:

a. a child whose parents are married to each other and whose father or mother is a Swiss citizen;

b. the child of a female Swiss citizen who is not married to the child's father.

2 The minor foreign child of a Swiss father who is not married to the child's mother acquires Swiss citizenship as if at birth on establishing filiation with the father.

3 If a minor child who acquires Swiss citizenship under paragraph 2 has children, they also acquire Swiss citizenship”.

122. Such as the FIFA Regulations, also under EU and Swiss public order, it is worth noting that the “birth” requisite (*i.e. ius sanguinis*) takes on primary value in recognition of the acquisition of nationality in favour of the applicant.

123. A brief comparison with FIBA Internal Regulations – Book 3, Chapter 1, confirms the above as follows under Articles 15 and 16 (Players with two or more Nationalities):

“Any player with two (2) legal nationalities or more, by birth or by naturalisation, may choose at any age the national team for which the player wishes to play. Any such choice must be made in a written declaration to FIBA. This provision applies also to any player having acquired legal nationality by birth or having the right to acquire a second nationality at birth, but who does not lay claim to this right until a given time in the future.

However, if a player having two (2) or more nationalities is summoned by a National Member Federation after reaching the age of eighteen (18), the player is obliged to choose for which national team the player wishes to play. If the player has declined the summons, the player may choose only the national team of the other country/ one of the other countries, unless the player declares, in writing, within fifteen (15) days of receiving the summons that the player has chosen the country that summoned the player first”.

124. In sum, to obtain a sporting nationality, the player must hold the nationality of the relevant country; this requisite can be easily found in each hypothesis under Articles 7, 8 and 9 of the RGAS, as provided by FIFA’s cumulative requirements illustrated by FIFA’s “*Guide to submitting a request for eligibility or change of association*”:

i. Article 7: the player can play for the new association after having acquired the new nationality after having moved to the territory of the relevant association and lived there for at least five years, not with the only purpose of participating for its representative

team. The requested documentary evidence, among others, are passport, residence certificates, school records, or employment contracts.

- ii. Article 8: the player does not hold any nationality and, due to the country's national law of their domicile, will never be granted the nationality of such country. Furthermore, the player has lived on the territory of the relevant association for at least five years, not with the only purpose of participating for its representative team. The requested documentary evidence, among others, are proof of identity and stateless status, residence certificates, school records, or employment contracts.
 - iii. Article 9: the player holds the nationality of the country of the new association, even at the time of being fielded in any kind of football competition for their current association; [the player] has parents or grandparents born on the territory of the relevant association; [the player] lived on the territory of the relevant association for an expected time or loses their nationality without their consent. The requested documentary evidence, amongst others, are passport indicating player's nationality; birth certificate and documentation corroborating the player's filiation; residence certificates, school records or employment contracts; official statement issued by the player's current association containing a list of all the matches in which the applicant played for its representative teams.
125. This summary emphasises and clearly demonstrates the content of the two other topics indicated by the Commentary and found above by the Panel: nationality is a link between the player and the country to which he belongs or requires to join. This status can be created only by the applicant's desire to follow the hereditary trail of the parents or to implement the genuine sense of belonging to the new living country after an appropriate residence time.
126. Only nationality can lead to sporting nationality due to requirements provided by FIFA's regulations. This choice must be permanent to avoid following self-absorbed requests for further association change.

B. What is the difference between nationality and citizenship, if any?

127. The Panel deems it worthwhile to underline the difference between nationality and citizenship for this legal discussion.
128. In this regard, the Panel finds that nationality, as outlined by FIFA's regulations, does not correspond to the narrower content of citizenship, legal status in a political institution such as a city or a state. On the other hand, nationality denotes where an individual has been born or holds citizenship with a State. Nationality is obtained through inheritance from his/her parents, which is a natural phenomenon or through naturalization.
129. The Panel notes this difference: where nationality has a broader content that corresponds to the natural background of an individual, citizenship is a legal status that can be recognised only

if a person holds nationality and political rights can be granted if he/she obtains citizenship. This finding can be easily proved by thinking to those ethnic groups worldwide that recognise a unique and peculiar cultural heritage that identifies and differentiates them even from the country in which they live (the Kurdish people, for example).

130. Moreover, these findings correspond to the statement of the International Court of Justice describing “nationality”, as quoted in the FIFA’s Commentary: *“legal bond having at its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties. It may be said to constitute the juridical expression of the fact that the individual upon whom it is conferred either directly by the law or as a result of an act of the authorities, is in fact, more closely connected with the population of the state conferring nationality than with that of any other state”* (Nottebohm case, 6 April 1955).
131. The same keynote is contained in Article 2 (definitions) of the Albanian Law 113/2020 on citizenship, quoted in the present proceedings, that reads *inter alia*:
- “d) “descent” means a direct lineal kinship up to third-degree between an applicant and their ancestor holding Albanian citizenship;*
 - e) “Albanian citizenship” shall mean the stable legal bond between a person and the Albanian state as expressed in the fundamental rights and freedoms, as well as in the mutual obligations, and which shall not indicate the ethnic origin of the person”.*
132. Law 113/2020 stresses the concept of citizenship as *“the stable legal bond”* that only can grant to an individual to exercise rights and the duty to comply with obligations in the Albanian State. How to acquire citizenship is detailed in the following articles of the Law, from Article 5 to Article 11.
133. Notably, the Panel observes that Law 113/2020 provides two significant events to obtain Albanian citizenship by parenthood or kinship:

Article 5 – Acquisition of citizenship by birth:

“Anyone born to at least one parent who is an Albanian citizen shall automatically acquire Albanian citizenship and shall be registered as an Albanian citizen. The entitlement to register as an Albanian citizen shall not expire after the person has reached 18 (eighteen) years of age”.

Article 6 - Acquisition of citizenship by descent:

“1. A foreign citizen whose ancestors are of Albanian descent shall acquire Albanian citizenship, provided that a direct lineal kinship up to the third degree established between the applicant and their ancestor.

2. *In such case, the citizen shall submit an application to acquire Albanian citizenship by descent and shall fulfil the requirements under Article 8(1)(dh) and (ë) of this Law.*
 3. *The documentation required to establish Albanian descent shall be defined in an instruction by the Minister”.*
134. It remains understood that the Law at stake recognises the idea of nationality as that personal link and cultural heritage originated from birth between an individual and the country of the parents, the primary requirement for obtaining “*automatically*” citizenship. Consequently, the individual will be able to take an active part in the life of his state, exercising rights and undergoing duties. Such “*national*” bound is so essential that it entitles the applicant to be registered as an Albanian citizen even after 18 years of age (Art. 5: “*does not expire*”).
135. Given this framework, also under football regulations, to hold (or be eligible to obtain) nationality is necessary to play for the representative team of the association of the chosen country, *i.e.*, getting the so-called “*sporting nationality*”.
136. FIFA’s principle “*no nationality, no eligibility*” requires that only through nationality, the player can obtain eligibility for a representative. This choice, differently from the legal concept, can be submitted only once to prevent abuse. In this regard, rules about participation in official matches are provided to determine the different situations in which the player can represent the relevant national team.
137. FIFA’s RGAS recognise the difference between nationality and citizenship as detailed above (“*The RGAS have historically referred to ‘nationality’ in the context of eligibility to participate for representative teams. This has occasionally caused confusion with [Member Associations] where national laws differentiate between the terms ‘nationality’ and ‘citizenship’*” (Commentary, para. 4, page 9)).
138. It is worth noting that “*FIFA competition regulations consistently state that the proof of nationality is only provided through the holding of a permanent international passport*”: this clarifies that the player must hold “*permanent*” nationality and become a citizen of the chosen country to be allowed to play for the representative team of the [Member Association].
139. This having stated, the Commentary clarifies that FIFA acknowledges that nationality by *jus sanguinis* or *ius soli* is “*automatically*” obtained and that the formalities necessary to get it are not to be considered “*further administrative requirements*”. This scenario fully corresponds to Albanian Law’s provisions on citizenship by birth.
140. To sum up, FIFA rules recognise the primary importance of the player’s nationality to allow the applicant to play in the representative team of the relevant state. Such status will have to be in accordance with the rules of the relevant country to assess whether the applicant has already met this requirement (“*hold nationality*”) or has to go through a specific administrative procedure (“*being eligible to obtain nationality*”). Whether the player holds nationality due to childbirth,

passports and other similar certificates to obtain citizenship must be considered formalities and cannot prevent the acquisition of sporting nationality.

C. Did the Appellants' request comply with the provision of Article 9.2 (a) of the RGAS?

141. The Panel turns now its attention to the FAA's request for change of association of the Player dated 21 May 2021 and the grounds of the Appealed Decision.
142. It is not contested that Nedim Bajrami is a professional football player born on 28 February 1999 in Switzerland by Albanian parents, as proved by the birth certificate of the Office of Civil Registry, issued on 19 March 2021.
143. In this regard, on 17 March 2021, the Ministry of Interior of the Republic of Albania issued this first attestation: *"We hereby certify that the citizen Nedim Bajrami born on 28th february 1999 obtained the Albanian citizenship based on the Law no. 113/2020 'On the Citizenship'. The citizenship obtained by Mr Bajrami is pursuant the provisions of the Article 4 point b and article 6 of the Law as a right the citizen is entitled of due to the Albanian origin"*.
144. On 18 May 2021, the Ministry of Interior of the Republic of Albania issued another attestation: *"Through the present document, we confirm that the citizen Nedim Bjrami, born on 28.02.1999, has attained the Albanian nationality pursuant to the Law 113/2020 'On Citizenship'. Moreover, we hereby clarify that the citizen Nedim Bajrami, according to the abovementioned Law, has the Albanian nationality since birth, a right benefited from the applicant's request, or his parents in case of minors under the age of 18, as per legal procedures in force"*. The Player obtained an Albanian passport on 21 March 2021.
145. Moreover, both Parties confirm that Mr Bajrami has appeared in 31 official matches for the Swiss national football team, none of which were at the so-called "A" level (*i.e.*, with the senior Swiss national football team). Mr Bajrami played his first match for the Swiss U-15 national football team on 10 September 2013 and his last match for the Swiss U-21 national football team on 16 November 2020, as communicated by the SFA on 1 March 2021.
146. The FAA's Second Request, dated 21 May 2021, was filed based on Article 9 para. 2 (a) of the Regulations. In its Request, the FAA submitted that Mr Bajrami (i) had obtained the Albanian nationality by descendance and owned an Albanian birth certificate and passport; (ii) benefited from the Albanian nationality since birth, according to an official statement by the Ministry of Interior of Albania issued on 18 May 2021; and (iii) has not been fielded by the Swiss national team at "A" level competitions.
147. Furthermore, by communication on 23 February 2021, the Player had previously confirmed his will to play for the representative team of the FAA and was aware that his decision had definitive nature.
148. According to Article 9 para. 1 of the Regulations, *"a player may, only once, request to change the association for which he is eligible to play to the association of another country of which he holds the nationality"*.

Pursuant to Article 9 para. 2 (a) of the Regulations, the granting of such a request requires a demonstration that:

- i. The player has not been fielded at the “A” level for his current nationality; and
 - ii. At the time of being fielded for his first match in official competition at the non-“A” level for his current association, the player “*already held*” the nationality of the association which he wishes to represent.
149. As provided by FIFA’s Regulations, these two prerequisites are cumulative. A change of association will only be granted if all the conditions in the relevant provision are fully complied with.
150. It is undisputed that the Player has never represented Switzerland in a match during an official competition at “A” international level and, consequently, the first prerequisite was fulfilled. Besides, when the FAA filed the Second Request, the Player held Albanian nationality.
151. Therefore, the Panel will focus on this legal discussion whether the Player “*already held*” the Albanian nationality on the date of his first appearance for the Swiss national U-15 football team or whether he had to undertake “*further administrative requirements*” to obtain such nationality.
152. In this regard, Mr Aldi Topciu, the Head of the Legal Department of the FAA, provided and confirmed by his witness statement that the Appellants filed a citizenship request according to Articles 4(b) and 6 Albanian Law 113/2020. Besides, Mr Topciu testified that he submitted to the Albanian Ministry of Interior an unsolicited excerpt of the Player from the criminal records of Switzerland. Still, he was never requested by such Authority to submit evidence that the Player posed no threat to the national security.
153. The Panel notes that the Player’s parents were of Albanian nationality but, even though he could have filed a request to obtain citizenship under Article 5 of Law 113/2020, the Player’s request was filed according to Article 6 of the Law, triggering the requirements under Article 8 para. 1 (dh) and (ë) that reads as follows:

“Article 8 - Acquisition of citizenship by naturalisation:

1. *A foreign citizen shall acquire Albanian citizenship by naturalisation by submitting an application and upon meeting the following requirements, namely he or she: (...).*

(db) has not been convicted by final judgement in his or her country, in the Republic of Albania, or any third state, of criminal offences for which the Albanian law imposes sentences of no less than 3 (three) years of imprisonment. An exception to this rule shall be made only in cases where it is established that the conviction was politically motivated; (...).

(ë) does not pose a threat to the public order and national security of the Republic of Albania”.

154. The Appealed Decision stated that these two requirements were considered substantial preconditions to obtain Albanian nationality. Therefore, the Single Judge stated that “33. (...) although entitled to obtain the Albanian nationality as from birth – due to Albanian descent, it remains that the Player did not hold it until he formally requested (and obtained) it in March 2021” and “34. In view of the above, (...) the latter (the Player) did in fact not hold the nationality of Albania at the time he played his first match in an official competition for the ASF-SFV on 24 April 2014”.
155. The Panel finds that, despite the Law conditions under which the request to obtain citizenship was filed (Article 5 or 6), the Player held Albanian nationality by birth since he was born by Albanian parents.
156. Firstly, as above outlined, Article 5 of the Regulations provides that nationality by birth, in line with the principle of *ius sanguinis*, is obtained automatically without undertaking “further administrative requirements”.
157. These requirements are considered substantial preconditions, and, if needed, the player is considered only eligible to obtain the relevant nationality.
158. The Panel finds that “substantial preconditions” are needed to move from a previous legal *status* to the one related to the acquired nationality, namely what is stated in the FIFA’s Commentary: “to abandon another nationality” or “substantial waiting period following childbirth”. In these cases, the player is expected to undertake actions that will bring him into a new status due to his voluntary and conscious choice.
159. Bearing this in mind, the Panel observes that Article 8 para. 1 (dh) and (ë) of Law 113/2020 provides “negative” requirements about previous situations in which the individual may have been involved, namely not been convicted, or not posed a threat to the public order. In the case of Mr Bajrami, as confirmed by Mr Aldi Topciu, the Ministry of Interior of Albania was fully satisfied by the excerpt from the Swiss criminal records filed by Mr Topciu but never followed up to request additional documentation or an excerpt from Italy (Mr Bajrami’s country of residence) or any other country and, even more, required no substantive probatory document or positive substantive action on the part of Mr Bajrami for Article 8 para. 1 (ë).
160. More to the point, the Albanian Ministry of Interior only considered that the Player was born by Albanian parents to grant him the requested citizenship, as clearly stated in the official declaration issued on 18 May 2021. This is the reason why the Albanian authorities never asked for full documentary evidence under Article 8 para. 1 (dh) and (ë).
161. These findings also comply with the New Eligibility Rules’ principles to avoid “excessive severity or hardship” in deciding nationality requests. The Player was born by Albanian parents; his mother tongue is Albanian; he was nourished in Albanian culture so much that he spontaneously decided to obtain such nationality as of definitive choice. To deny the Player’s

will would contradict the spirit of the rule and the very definition of nationality as outlined by FIFA, far from the undesirable “*nationality shopping*”.

162. The Panel finds that, despite the Appealed Decision, the New Eligibility Rules have been announced and introduced in the spirit of ensuring that the applicant players could have the possibility to complete their sense of belonging to a nation with being able to play, if fielded, for the representative team of the chosen country. This is something that goes beyond the simple playing football for one team or another.
163. In this regard, the Panel deems that the objection about excessive formalism and possible violation of Swiss public order can be left undecided. Under Swiss jurisprudence, excessive formalism is a particular aspect of the denial of justice prohibited by Article 29 para. 1 Cst. (ATF 142 I 10) and it is considered to be excessive when the strict application of the rules is not justified by an interest worthy of protection and unsustainably complicates the realization of substantive law or restricts access to courts (ATF 130 V 177, 5.4.1, p.183; ATF 128 II 139, at 2a, pp. 142; ATF 127 I 31).
164. Nevertheless, the New Eligibility Rules are well-drafted in a clear, well-commented manner and include a comprehensive case law on eligibility for national representative teams. They are based on shared principles that merely require a proper application to grant a well-founded and reasoned application, such as in the case at stake.

D. Conclusion

165. Based on the foregoing, and after considering all the specific circumstances of the case, the evidence produced, and the arguments submitted by the Parties, the Appeal is upheld. The Panel concludes that Mr Nedim Bajrami is an Albanian national and is eligible to represent Albania under Article 9 of the Rules Governing the Application of the FIFA Statutes.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by the Football Association of Albania and Mr Nedim Bajrami on 23 June 2021 is upheld.
2. The decision rendered by the Single Judge of the FIFA Players' Status Committee on 27 May 2021 is annulled.
3. Mr Nedim Bajrami is an Albanian national and is eligible to represent Albania under Article 9 of the Rules Governing the Application of the FIFA Statutes.
4. (...).
5. (...).
6. All other motions or prayers for relief are dismissed.