



**TAS / CAS**

TRIBUNAL ARBITRAL DU SPORT  
COURT OF ARBITRATION FOR SPORT  
TRIBUNAL ARBITRAL DEL DEPORTE

**CAS 2024/A/10384 Luis Rubiales v. Fédération Internationale de Football Association**

**ARBITRAL AWARD**

**delivered by the**

**COURT OF ARBITRATION FOR SPORT**

**sitting in the following composition:**

President: Mr Lars Hilliger, Attorney-at-Law in Copenhagen, Denmark  
Arbitrators: Prof Dr Martin Schimke, Attorney-at-law in Düsseldorf, Germany  
Ms Janie Soublière, Attorney-at-law in Beaconsfield, Canada

**in the arbitration between**

**Mr Luis Rubiales, Spain**

Represented by Mr Enric Ripoll, Attorney-at-law, ER Sports Law in Miami, United States of America

**Appellant**

**and**

**Fédération Internationale de Football Association (FIFA), Zurich, Switzerland**

Represented by Mr Miguel Liétard, Director of Litigation, FIFA Litigation Department and Mr Carlos Schneider, Director of Judicial Bodies

**Respondent**

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## **I. PARTIES**

1. Mr Luis Rubiales (“Mr Rubiales” or the “Appellant”) is a Spanish citizen and former president of the Real Federación Española de Fútbol (the “RFEF”) and former vice-president of the Union Européenne de Football Association (“UEFA”).
2. The Fédération Internationale de Football Association (“FIFA” or the “Respondent”) is the world governing body of football, whose headquarters are in Zurich, Switzerland. FIFA is the governing body of international football and is recognised as such by the International Olympic Committee. It exercises regulatory, supervisory and disciplinary functions over continental confederations, national associations, clubs, officials and players worldwide.
3. The Appellant and the Respondent are collectively referred to as the “Parties”.

## **II. FACTUAL BACKGROUND**

### **A. Background Facts**

4. Below is a summary of the relevant facts and allegations as established by the Panel based on the decision rendered on 16 January 2024 by the FIFA Appeal Committee (the “Appeal Committee”) (the “Appealed Decision”), the written and oral submissions of the Parties and evidence adduced. Additional facts and allegations found in the Parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, the Panel refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.
5. On 20 August 2023, the Final of the FIFA Women’s World Cup Australia and New Zealand 2023 was played in Sydney, Australia, between the representative teams of Spain and England (the “Match”).
6. The Match, which ended with a 1-0 victory to the representative team of Spain was broadcast worldwide and the official number of spectators at the stadium was set at 75,784.
7. Subsequently to the conclusion of the Match, a series of “incidents” (the “Incidents”) occurred, and the Appellant was observed:
  - Celebrating the Spanish victory by grabbing his crotch/genitals in the VVIP area (the “Genitals Incident”);
  - During the award ceremony on the podium where the players were given their medals and greeted by officials, including the Appellant, hugging the Spanish player

Jennifer Hermoso (the “Player”), speaking to her briefly, putting his hands on the back of her head and kissing her on the lips (the “Kiss Incident”);

- Carrying the Spanish player Athenea del Castillo over his shoulder during the post-Match celebrations on the field of play (the “Carrying Incident”); and
- Giving the Spanish player Olga Carmona a peck on the cheek during the post-Match celebrations on the field of play (the “Peck Incident”).

8. The Incidents were broadcast on live TV and/or reproduced in media outlets worldwide. In particular, the Kiss Incident was condemned by e.g. several national and international persons, including Spanish and foreign politicians, and representatives of FIFPro and other player unions.

9. Following the Match, and following the immediate media coverage of the Kiss Incident, in particular, the Appellant made several statements in interviews and individually commenting on the matter, and stated, *inter alia* (translated from Spanish):

*“Let's not pay attention to idiots and stupid people, really. [...] We are not here for bullshit, really Juanma. With everything I've been through, no more bullshit and no more assholes. Really, let's enjoy the good things, and don't even talk to me about things of suckers who don't know how to see the positive.”*

10. Following further massive media attention, and in a video published by the RFEF during the Spanish team’s trip back to Spain, the Appellant stated, *inter alia*, as follows (translated from Spanish):

*“[...] But there is also a fact, then, that I have to regret, and it is all that has happened between a player and me, with a magnificent relationship between the two, as with others.*

*And where I have surely made a mistake, I have to admit it, because in a moment of maximum effusiveness without any bad intention, without any bad faith, well, what happened, happened, in a very spontaneous manner, I believe.*

*I repeat, without bad faith on either side.*

*From then on, well, it was not understood here, because we saw it as something natural, normal and not at all, I repeat, with any bad faith.*

*But outside it seems that a commotion has arisen and, of course, if there are people who have been hurt by this, I have to apologize, I have no other choice, right?*

*And also to learn from this, and to understand that when one is president of such an important institution as the Federation, one has to be more careful, especially in ceremonies and in this kind of matters.*

*Then, there are also some statements on my part where, within this context, when I said that this seems like an idiocy to me... That is why, because nobody here on the inside gave it the slightest importance, but outside it has been given such importance.*

*So, I also want to apologize to those people, because I understand that, if it has been seen in a different way from the outside, they will surely have their reasons.*

*And lastly, I am sorry because, in the face of the greatest success in our history in women's football and one of the greatest in general - this is the second World Cup we have won - this has tarnished the celebration to a certain extent.*

*I think we have to give credit to these women, to the team led by Jorge Vilda, and this has to be celebrated in style.”*

11. By letter of 24 August 2023 from FIFA, the Appellant and the RFEF were informed, *inter alia*, as follows:

*“We are contacting you in connection to the incidents occurred during the the [sic]FIFA Women’s World Cup Final played on 20 August 2023 between Spain and England in Sydney.*

*In particular, it is alleged that the president of the Spanish Football Federation, Mr Luis Rubiales Bejar, might have misbehaved in violation of the basic rules of decent conduct and in a way that brings football and/or FIFA into disrupt in accordance with Article 13 of the FIFA Disciplinary Code (FDC).*

*[...]*

*Based on the foregoing and accordance with art. 55 of the FIFA Disciplinary Code, we are herewith opening disciplinary proceedings against Mr Luis Rubiales Bejar (the Respondent) for the potential breach of the following provision(s):*

*Art. 13.1 FDC – Offensive behaviour and violations of the principles of fair play*

*Art. 13.2 a. FDC – Offensive behaviour and violations of the principles of fair play*

*Art. 13.2 d. FDC – Offensive behaviour and violations of the principles of fair play*

*In this respect, the Respondent is invited to provide the secretariat of the FIFA Disciplinary Committee with its position, within ten (10) days of the notification of this communication at the latest (cf. art. 38 FDC). [...]*”

12. On 25 August 2024, Ms Hermoso published the following statement on the social media platform X:

*“After achieving one of the most important objectives of my sports career and after a few days of reflection, I want to sincerely thank my teammates, fans, followers, media and everyone who have made this dream come true; your work and unconditional support were a fundamental part of winning the World Cup.*

*Sadly, the ability to celebrate that has been cut short. While it is true that I do not want to interfere with the multiple ongoing legal processes, I feel obliged to report that Mr. Luis Rubiales' words explaining the unfortunate incident are categorically false and part of the manipulative culture that he himself has generated.*

*I want to make it clear that at no time did the conversation to which Mr. Luis Rubiales refers to in his address take place, and, above all, was his kiss ever consensual. I want to reiterate as I did before that I did not like this incident.*

*The situation shocked me given the celebrations that were taking place at the moment, and with the passage of time and after delving a little deeper into those initial feelings, I feel the need to report this incident because I believe that no person, in any work, sports or social setting, should be a victim of these types of non-consensual behaviors. I felt vulnerable and a victim of an impulse-driven, sexist, out of place act without any consent on my part. Simply put, I was not respected.*

*I was asked to make a joint statement to alleviate the pressure on the President, but at that moment all I had in my mind was to enjoy the historic milestone achieved with my teammates. For this reason, I always conveyed to the RFEF and its various interlocutors, as well as to media and people I trust, that I would not make any individual or joint statements on this matter, as I understood that doing so would take even more prominence away from such a special moment for my teammates and me.*

*Despite my decision, I must state that I have been under continuous pressure to make a statement that could justify Mr. Luis Rubiales' actions. Not only that, but in different ways and through different people, the RFEF has pressured my surroundings (family, friends, teammates, etc.) to give a testimony that had little or nothing to do with my feelings.*

*It is not up to me to evaluate communication and integrity practices but I am sure that as the World Champion, we as a team do not deserve such a manipulative, hostile and controlling culture. These types of incidents add to a long list of situations that the players have been denouncing in recent years. This incident, one in which I have been involved, is just the final straw and what everyone has been able to witness on live television during the celebration also comes with attitudes like the one we saw this morning and have been part of our team's daily life for years.*

*For all these reasons, I want to reinforce the position I took from the beginning, considering that I do not have to support the person who has committed this action against my will, without respecting me, at a historic moment for me and for women's sport in this country. Under no circumstances can it be my responsibility to bear the consequences of conveying something I do not believe in, which is why I have refused the pressures received.*

*I have ZERO TOLERANCE for these behaviors.*

*I want to conclude by making it very clear that while it is I who is expressing these words, it is all the players from Spain and around the world who have given me the strength to come out with this statement. In the face of such a display of disrespect and inability to recognise one's own mistakes and take responsibility, I state here and now to everyone of my decision not to play for the National Team again while the current leaders remain.*

*Thank you all for the messages of support and encouraging words received. I know I am not alone, and thanks to all of you, we will push forward more united than ever. I leave this matter in the hands of TMJ and FUTPRO, and the people I trust. They will continue working on the next necessary steps."*

13. On 25 August 2023, the RFEF held an extraordinary general assembly (the "RFEF Extraordinary Assembly"), during which Mr Rubiales addressed the RFEF membership in a 30-minute speech covering the Incidents. The RFEF Extraordinary Assembly was livestreamed. During the same, when addressing the Incidents, Mr Rubiales stated *inter alia*:

*"Even people outside of football have shown their support for me. There are many people who are supporting me, even though they may be silent. I'd say there are more people on my side than against me. I want to apologise unreservedly for something that happened in the box (and I'm going to explain that now because I'm here to explain myself), when, in the heat of the moment, I grabbed that part of my body, as you've already seen. I'm going to explain it. I'm looking at Jorge Vilda. We've been through a lot over this last year, Jorge. To a lesser degree, they've wanted to do to you what they're now doing to me: trying to turn a false narrative into the truth. (...) Of course, I must apologise to Her Majesty the Queen, to the Infanta, to the Royal Family and anyone who was offended because I understand that it was a rather unedifying gesture. So, for that, I would like to reiterate my sincerest apologies. You know me and I've been at countless ceremonies and in countless boxes and I've never behaved like that before. Emotions were high given everything that had happened... We'd been through a lot. I make no excuses. I apologise."*

(...)

*Onto the second question: the kiss. The peck, because it was more of a peck than a kiss. I also want to explain and say that, of course, anyone watching the video will understand that, in front of 80,000 people in the moment, in front of millions of TV spectators, in front of everyone there, including some of my family (my daughters), the desire that I could have felt from that kiss could only have been exactly the same as giving one of my daughters a kiss. No more, no less. So, there was no desire and there was no dominant position. And that's also something everyone understands, although they're selling another story in much of the media, both those that are controlled by or doing the bidding of Mr Tebas and those that are doing the bidding of false feminism, which is a great scourge on this country.*

(...)

*It was spontaneous, mutual, ecstatic and consensual. And that's key. That's the key to all the criticism, to all the brouhaha that has been generated in this country about it being non-consensual. No – it was consensual. See for yourselves. That player missed*

*a penalty. I have a great relationship with all the players and members of staff. We've been like family for more than a month. And we had very affectionate moments in that camp. And when Jenni came along, she lifted me up off the ground. She picked me up by the hips or the legs – I can't remember – and she lifted me off the ground. We almost fell. And when she put me back down, we embraced. She was the one who put her arms around me and pulled me towards her. We embraced and I said to her: "Forget about the penalty. You've been fantastic and we wouldn't have won this World Cup without you." She responded: "You're a star." And I said: "How about a peck?" And she said: "OK." After the peck, with several slaps on my back throughout, she left with a final back slap and walked away laughing. That was the sequence of events. Everyone understood, nobody thought anything of it and, above all, the most important thing was that she said it was nothing serious. (...)*

14. On 26 August 2023, the RFEF published an official media release, which was subsequently deleted from its website, stating, *inter alia*, as follows (translated from Spanish):

*"Once accredited by the RFEF that the player Ms. Jennifer Hermoso lied in the statements she made, through the FutPro Union, we have learned of a new statement - now yes, from the player - where, in a text clearly prepared by third parties, to have the necessary elements for the suspension of the functions of the President of the Federation, we have to state that Ms. Jennifer Hermoso lies in every statement she makes against the President, as we will have the opportunity to prove at the appropriate time.*

*That we have all the reports and expert opinions that prove what the president has stated and we are going to take the corresponding legal actions against all those people who are falsifying reality and committing very serious crimes.*

*It is extraordinarily incomprehensible that Ms. Hermoso, despite describing the superficial kiss as "a mere anecdote without transcendence" in her statements to the FIFA welfare officer - immediately after the events occurred -; or to declare to the media that "I can only say that it was the moment, the effusion and the moment, that there is nothing beyond that, and that it will remain an anecdote and that's it, that... people... if they want to give it hype, they will give it to her and if they don't, they won't"; and that she also posted on social networks a video in which she indicates that she had authorized that kiss. if they want to give it hype, they will give it to them and those who don't will not"; and who also posted on social networks a video in which she points out that she had authorized that kiss as a sign of effusiveness with an "okay"; adding now in that elaborate statement that she considers the referred anecdotes as an "abuse in which there was no consent", feeling "vulnerable and victim of an aggression, an impulsive and sexist act out of place and without any consent on my part".*

*The serious contradictions in the initial account of what happened - which are highlighted in the integrity report - and the serious accusations made by Ms. Hermoso since she has been abducted by the FutPro Syndicate lead us to wonder what interests are behind the surprising change in the initial version and qualification of the facts.*

*The facts are what they are; and, no matter how many statements are made to distort reality, it is impossible to change what happened. The kiss was consensual. The consent was given in the moment with the conditions of the moment. Later you can think that you have made a mistake, but you cannot change reality.”*

15. Later the same day, the RFEF released its second statement in response to a media release from the Spanish women players’ union Futpro, which statement was also subsequently deleted from the website, stating, *inter alia*, (translated from Spanish):

*“The RFEF and the President will demonstrate each falsehood that is spread, whether by someone on behalf of the player or, if necessary, by the player herself. Given the gravity of the content in the press release by the Futpro union, the RFEF and the President will initiate the appropriate legal actions. The RFEF laments that after such an extraordinary sporting success as witnessed in the World Football Championship, the situation cannot be celebrated as it deserves due to entirely non-sporting reasons. In any case, and as it should be, the RFEF respects, as it has always respected, the decisions of the players to participate or not with the Spanish national team in international matches. Nevertheless, it is noted that participation in the national team is an obligation for all federated individuals if called upon to do so” (free translation from original in Spanish)*

16. Finally, on 26 August 2023, by decision of the Chairperson of the FIFA Disciplinary Committee (the “FIFA DC”) (the “Provisional Suspension”), the Appellant was provisionally suspended from exercising any football-related activity for 90 days in accordance with Article 51 of the FIFA Disciplinary Code (the “FDC”). Furthermore, and in accordance with Article 7 of the FDC, the following was decided:

*“- Mr. Luis Rubiales Bejar shall refrain, through himself or third parties, from contacting or attempting to contact the player Jennifer Hermoso or her close environment.  
- The Spanish Football Federation (RFEF) and its officials or employees, directly or through third parties, are ordered to refrain from contacting the player Jennifer Hermoso or her close environment.”*

17. On 29 August 2023, Ms Hermoso filed a formal complaint against the Appellant, prompting Spanish prosecutors to launch an official investigation. And after having formally investigated the case and collected evidence, on 8 May 2024, the Spanish prosecutors decided that the Appellant should stand trial for a possible criminal offence in connection with the Kiss Incident.
18. On 10 September 2023, Mr Rubiales formally resigned as president of the RFEF and vice-president of UEFA.
19. On 26 September 2023, Ms Hermoso provided her statement in response to the questions that were asked to her by the FIFA DC.



20. On 30 October 2023, the FIFA DC notified the decision it rendered on 26 October 2023 in relation to the Appellant's conduct within the scope of the Match (the "DC Decision"), thereby imposing a three-year suspension on him for "*having behaved in a manner contrary to the principles enshrined under art. 13 of the FIFA Disciplinary Code*".
21. The DC Decision stated as follows:
- "Mr. Luis Rubiales Bejar is banned from taking part in any football-related activity for a duration of three (3) years for having behaved in a manner contrary to the principles enshrined under art. 13 of the FIFA Disciplinary Code."*
22. On 6 December 2023, the grounds of the DC Decision were notified to the Appellant and on the same date, the Appellant informed FIFA of his intention to appeal the DC Decision to the Appeal Committee.

**B. Proceedings before the FIFA Appeal Committee**

23. In his appeal before the Appeal Committee, the Appellant requested for the Appeal Committee:
- *"Set the [DC Decision] aside as the grounds that allegedly justified its imposition have been all discredited";*
  - *"In the alternative, to set it partially aside and to amend the sanction imposed in accordance with the principle of proportionality";*
  - *"Finally, and in the further alternative, and in the improbable case that the Appeal Committee still considers that the Genitals Incident, the Carrying Incident and the Peck Incident are subject to sanction, to amend the [DC Decision] by applying any of the other disciplinary measures provided for in Article 6.1 of the FDC in accordance with the principle of proportionality of sanctions".*
24. On 16 January 2024, a hearing was held by the Appeal Committee with the attendance of, *inter alia*, the Appellant and his legal representative.
25. The Appellant's position before the Appeal Committee is summarised, *inter alia*, as follows in the Appealed Decision:
26. On the one hand, the Appellant considered that the DC Decision is contrary to the law as it derives its grounds in a completely biased and distorted assessment of the facts, and without properly considering the evidence presented by the Appellant.
27. On the other hand, the DC Decision sanctions separate and independent actions by considering them jointly, which leads to a more severe sanction than should have been imposed, if any.
28. The Appellant expressed once again his deepest regret at everything that had happened and is aware that independently of the context, and the reasons that led him to do what

he did, he should not have celebrated the Spanish victory the way he did nor kissed Ms Hermoso during the award ceremony.

#### The “Genitals Incident”

29. It is essential to place in context the circumstances that led the Appellant to make the gesture subject to sanction, since it was a gesture directed directly at the coach of the Spanish team, Mr Vilda, to signify “*well done*”, not least based on the past.
30. The gesture was “unfortunate”; however, the “*highly biased media judgment*” completely disregarded the context in which it occurred.
31. Until now, this gesture has never been considered ground for such a serious penalty when others have done it (including Diego Simeone, Cristiano Ronaldo or Emiliano Martinez).
32. The Appellant has been the only one sanctioned, and the consideration made by the first instance body (that the crotch-grab “*is a taunting gesture almost exclusively done by males, and, as such, widely perceived as misogynist and sexist (literal)*” is a harsh statement that would be a violation of the principle of *venire contra factum proprium*, as FIFA has never sanctioned anyone in a hostile context in this regard.
33. In sum, there have been similar situations in the past (in terms of gestures, not the meaning) that did not reach the severity of disciplinary consequences seen in this case. Therefore, not only from the perspective of a reasonable and objective observer, but also due to a comparative injustice, the sanction (if any) to be imposed on the Appellant should, at most, be a fine.

#### The “Carrying Incident”

34. This incident took place 45 minutes after the end of the game, when the stadium was empty.
35. The Appellant was overcome by joy and happiness and while they were all celebrating, hugging and jumping, he took Ms Castillo on his shoulders, and at no point did she try to request the Appellant to put her down, nor did she appear to feel threatened or uncomfortable with the act.
36. The gesture was an affectionate behaviour towards one of the players of the national team, much in the same way as when the players tossed the Appellant in the air, and thus there should be no disciplinary reproach arising from it. In this respect, the Appellant pointed out that he had done the same with the former male head coach, Luis Enrique Martinez, when Spain eliminated Croatia in the Euro 2020, and such action had had no consequences whatsoever.

#### The “Peck Incident”

37. It is entirely surprising that (serious) disciplinary consequences arise from a peck on the cheek, since not only it is a worldwide show of appreciation, but also a way of greeting in Spanish culture between men and women.

The “Kiss Incident”

38. The Appellant reiterates that he acknowledges and recognises that it should not have happened, and that he should have maintained the highest level of composure.
39. The exchange was quick, but the player hugged him in the air, they expressed their admiration for each other, and the Appellant told her to forget about the penalty she had missed.
40. Ms Hermoso replied, saying “*you are the best*”, then the Appellant asked: “*can I kiss you?*” and Ms Hermoso said “*pues vale*” (“ok then”), and then the kiss occurred, very quickly, after which she left with a pat on his ribs.
41. A TV news programme conducted a lip-reading analysis which confirmed that the Appellant requested permission to kiss Ms Hermoso and, despite not being able to confirm Ms Hermoso’s response, the available evidence also confirms that she answered in the affirmative.
42. Two videos were recorded in the dressing room after the Match. They provide context to the incident and are “crucial” insofar that (i) “it confirms precisely the fact that the Appellant asked for permission to give the kiss and confirms that she granted such permission” and (ii) it can be seen from the reaction of Ms Hermoso and the other players (they are laughing) that they made fun of the situation, thus not being uncomfortable or upset.
43. The Integrity Department of the RFEF activated its “sexual harassment protocol” and investigated the matter.
44. On 23 August 2023, the psychologist of the National Team and safeguarding and welfare officer of FIFA for the World Cup provided a report confirming that (i) “Ms. Hermoso considered it something anecdotal and consequence of celebration”, (ii) “Mr. Rubiales confirmed the same interpretation”; and (iii) “there was no concerning attitude from any of them, neither from Mr. Rubiales nor from Ms. Hermoso”.
45. Two forensic criminal experts “confirmed the brevity of the kiss”, and concluded that (i) there was “no violent behavior, abuse of power or sexual connotation in the behavior of Mr. Rubiales, as well as behaviors of rejection or disapproval by the player Mrs. Jenni Hermoso, specifically during the kiss at the awards ceremony to the Spanish Women’s Football Team in Australia”, (ii) “no signs or symptoms of victimization have been observed in the player Ms. Jenni Hermoso directly linked to the kiss of Mr. Rubiales that occurred at the awards ceremony for the Spanish Women’s Football Team, in Australia, reactions that are not compatible with the manifesto of the players days later”, and (iii) “no objective evidence associated with denouncing elements or expressive signs linked

to manipulations in vestige No. 16 has been observed, beyond the editing of the recording and the tuts indicated in the body of this report”.

46. No matter how unacceptable the act was (an aspect that the Appellant has never questioned), the first instance body should have conducted a more thorough analysis of the context and not relied solely on an investigation that, from the moment Mr Rubiales was provisionally suspended, considered only evidence that was prejudicial to the Appellant.
47. The Appellant does not seek to justify the Kiss Incident, but simply to ensure that the sanction imposed for it be appropriate and proportionate, and not the result of a value judgement that was passed even before the opening of this disciplinary proceeding.
48. Moreover, the Appellant has not only been sanctioned for the Kiss Incident (along with the other three Incidents), but also for his attitude after that incident, despite there not being any charges for those behaviours. To that end, and since the Appellant had no opportunity to comment on these facts (being unaware that they were also the subject of this procedure), the Appeal Committee can only reject them and consequently review the sanction to be imposed without taking them into account.
49. Standard of proof – Article 13 FDC and the “reasonable and objective observer”  
  
The DC Decision is contrary to the law since it has been adopted not only based on an entirely biased interpretation that lacks even the slightest evidential support, but, and more seriously, by ignoring the evidence presented by the Appellant.
50. The first instance body has succumbed to the media judgement that had already condemned the Appellant even before he could provide his version and, more importantly, disregarding the evidence submitted to this disciplinary proceeding.
51. Instead of adhering to the applicable standard of proof which requires a higher level of evidence for more severe actions, the [first instance body] has deemed a set of assessments (not evidence) sufficient to sanction the Appellant, each of which has been refuted one by one by the Appellant.
52. As expressly stated in the DC Decision, the behaviour should be analysed from the perspective of a “reasonable and objective observer”, but also it is equally important to take into account the context in which those incidents occurred when assessing them.
53. Notwithstanding the above, the first instance body considered a biased context of what occurred, accepting all the explanations provided in the case file as valid with the clear exception, of course, of those provided by the Appellant.

#### Proportionality of the sanctions

54. The Appellant cannot agree with the first instance body when it is established that the four incidents should result in the same sanction (i.e. a ban), when the FDC provides for

a wide range of sanctions to be imposed on natural persons. In fact, each violation of the FDC should entail its own specific sanction since, as the Appealed Decision itself asserts, not all the incidents are equally serious or severe.

55. From a disciplinary standpoint, it is disproportionate to compare the Carrying Incident, the Genitals Incident and the Peck Incident to the Kiss Incident.
56. The truth is that the only reason the four incidents are being considered together is to justify a longer suspension, as if only the Kiss Incident had occurred, undoubtedly the ban sanction would not have been for three years, but less.
57. In accordance with the principle of proportionality, there is no other interpretation but to:  
(i) Consider each of the incidents as individual infractions; and (ii) If applicable, sanction each of them separately, considering their specific context and gravity while considering them individually.

#### Previous cases under the FDC and the FIFA Code of Ethics

58. When comparing decisions imposed for the violation of the FDC and the Code of Ethics by FIFA officials, the Appellant found that the sanction imposed on him does not relate to those imposed on other officials having engaged in corruption, bribery and requesting of personal benefits, even the highest officials.
59. Having confirmed its competence and the admissibility of the appeal of the DC Decision, the Appeal Committee considered that the merits of the appeal should be analysed in light of the provisions of the 2023 edition of the FDC, giving particular attention to Article 13 FDC.
60. Regarding the merits of the dispute, the Appeal Committee acknowledged that the Appellant did not dispute the occurrence of the Incidents. Therefore, the questions to be decided on appeal were as follows:
  - a) Did the Appellant breach Article 13 FDC? and, in the affirmative,
  - b) Are the sanctions imposed on the Appellant by the first instance body proportionate?
- a) Did the Appellant breach Article 13 FDC?
61. The Appeal Committee first noted that the Appellant's submissions seek to provide the "real" context of each of the Incidents with the aim to demonstrate that the first instance body assessed them in a "*biased and distorted*" manner. While accepting that the Incidents were widely reported worldwide and the Appellant's behaviour during and after the Match was considered improper, indecent and/or offensive by most (if not all) objective observers, the Appeal Committee assessed each of the Incidents separately,

analysing the context in which each occurred, as perceived respectively by the FIFA DC and by the Appellant.

The “Kiss Incident”

62. As a starting point, the first instance body concluded that (i) “kissing a player, more importantly without her consent, undoubtedly constituted a behaviour contrary to the very basic principles contained under Article 13 FDC”, particularly “when taking into account the hierarchical link between the Appellant and the Player”, (ii) the events that followed the Kiss, when taken together, undoubtedly denoted a behaviour incompatible with the general principles of fair play, loyalty and integrity enshrined under Article 13 FDC and (iii) the Appellant’s attitude in relation to the Kiss Incident undoubtedly tarnished the image of football and/or FIFA, bringing both into disrepute. As such, the first instance body held that from the very first moment he initiated the Kiss to the moment its decision was rendered, the Appellant repeatedly and continuously violated the basic rules of decent conduct, thereby infringing Article 13 FDC.
63. In turn, in his submission, the Appellant essentially noted that (i) the first instance body should have conducted a more thorough analysis of the context and not relied solely on an investigation that, from the moment the Appellant was provisionally suspended, had taken into account exclusively evidence that might be considered to go against him , and (ii) the conclusions of the first instance body are categorically false, and this can only be the result of not having carefully considered the Appellant’s submissions or, worse still, having completely ignored the evidence he presented.
64. In its findings, the Appeal Committee was comfortably satisfied that the Appellant kissed the Player without her consent. To that end, the Appeal Committee emphasised that, not only was this its firm opinion, but that it was also precisely how this incident had widely been perceived from the perspective of reasonable and objective observers (as found by the first instance body).
65. In any event, as held by the first instance body, if one was to follow the Appellant’s submissions (i.e. that the Kiss was consensual), it remained that, such a behaviour would not be the one expected from the president of an association having won the World Cup and would still be seen as contrary to the basic rules of decent conduct. Indeed, the image of a man, president of a football association, grabbing the head of a female player and kissing her during the Women’s World Cup Final cannot be tolerated. It was in total contradiction with the tournament’s aim to unite and inspire people around the world through the power of the FIFA Women’s World Cup and women’s football.
66. By way of consequence, and regardless of the explanations and/or evidence provided by the Appellant, the Appeal Committee saw no reason to deviate from the first instance body’s conclusions that kissing a player, and more importantly without her consent, undoubtedly constituted a behaviour contrary to the very basic principles contained under Article 13 FDC. In other words, the Appeal Committee found that the Kiss was inappropriate and unacceptable – whether consented to or not.

The “Genitals Incident”

67. The first instance body concluded that the Genitals Incident constituted a breach of Article 13 FDC because it was contrary to the very basic rules of decent conduct. In addition, and while putting in perspective the media coverage of such a gesture, the first instance body also found that, by grabbing his crotch in one of the most exclusive areas of the stadium, in the presence of the most prominent dignitaries and during the most important match of the competition at stake, the Appellant clearly behaved in a way that brought the sport of football and/or FIFA into disrepute.
68. In reply thereto, the Appellant argued that the analysis made by the first instance body completely disregarded the context in which it occurred. While conceding that it was an ugly gesture, the Appellant insisted on the fact that (i) it “means nothing more than ‘*olé tus huevos*’”, a typical and widespread expression in Spain to tell someone that they have done something well and (ii) it was not aimed at offending anyone but directed solely and exclusively at Mr Vilda. Furthermore, the true context of the gesture should have been taken into account, rather than discrediting the Appellant by portraying him as sexist and macho.
69. In its findings, and despite the Appellant’s allegations, the Appeal Committee observed that these explanations had in fact already been considered by the first instance body. It had (i) conceded that one explanation for the gesture could be that the Appellant was touching his genitals to show his support to the coach, as an expression of a Spanish cultural gesture, but (ii) emphasised that regardless of the justification behind it, it remained that, from the perspective of any reasonable and objective observer, the gesture performed by the Appellant could only be seen as an insulting and/or offensive gesture contrary to the basic rules of decent conduct.
70. The Appeal Committee underscored that gesture(s) or word(s) which could be considered insulting or offensive (as *in casu*) must be determined by how they could be perceived by a reasonable and objective observer (as emphasised in the DC Decision) and not by the intention with which they were made (as erroneously submitted by the Appellant).
71. The Appeal Committee finally held, rejecting the Appellant’s submission in this regard, that the fact that other individuals may have made a similar gesture in the past, was irrelevant to the analysis of whether it was contradictory to Article 13 FDC in this case.
72. The Appeal Committee was thus satisfied that the assessment made by the first instance body in relation the genital grabbing incident should be confirmed given that – from the perspective of a reasonable and objective observer – the gesture is undoubtedly contrary to the basic rules of decent conduct, and, as such, contrary to Article 13 FDC.

The “Carrying and the Peck Incidents”

73. While conceding that these incidents did not bear the same seriousness as the first two incidents, the first instance body nevertheless found that they were incompatible with the principles of Article 13 FDC, emphasizing that they did not constitute behaviour expected from the highest-ranking official in Spanish football. The Appellant's conduct towards women and/or female players was completely unacceptable.
74. Conversely, the Appellant argued that it was completely unrealistic to allege that giving a player a peck on the cheek and carrying another one was inappropriate behaviour.
75. In its findings on this point, the Appeal Committee stressed that those incidents (and specifically the behaviour of the Appellant) must be assessed from the perspective of a reasonable and objective observer within the context in which they occurred.
76. The Appeal Committee then found, as did the first instance body, that at the time of those incidents, the Appellant was –the highest-ranking official in Spanish football and held prominent positions within European football. He was thus fully acquainted with celebration protocols and aware of the exemplary behaviour expected from him in a context as unique as a World Cup final.
77. On that basis, the Appeal Committee deemed that the first instance body findings in relation to those incidents should be confirmed as the Appellant clearly and undoubtedly appeared to have abused his position as president of the RFEF to approach and/or treat players in a completely intolerable and outrageous manner by carrying and/or kissing them in a controversial manner. The fact that these players may not have protested and/or objected to those physical contacts at the time is completely irrelevant in the assessment of whether the Appellant's behaviour was contrary to Article 13 FDC, particularly considering that the players were all under a *de facto* hierarchical link with the Appellant.
- b) Are the sanctions imposed on the Appellant by the first instance body proportionate?
78. Regarding the proportionality of the sanctions, the Appeal Committee recalled, *inter alia*, that:
- In the exercise of its regulatory discretion, the measure of a sanction imposed by a disciplinary body can only be reviewed when such sanction is evidently and grossly disproportionate to the offence.
  - According to CAS, a decision-making body fixing the level of pecuniary sanctions should, amongst others, take into consideration the following elements: (a) the nature of the offence; (b) the seriousness of the loss or damage caused; (c) the level of culpability; (d) the offender's previous and subsequent conduct in terms of rectifying and/or preventing similar situations; (f) the applicable case law; and (g) other relevant circumstances.
  - Disciplinary measures serve different purposes: On the one hand, a sanction is intended to help to undo harm that has been inflicted by the offender. On the



other hand. and more importantly, a disciplinary sanction is intended to prevent re-offending by the offender. Consequently, harsher sanctions are warranted in case of serious infringements, structural non-compliance with the various obligations and in case of recidivism.

79. Therefore, as far as the proportionality of the sanctions is concerned, the FIFA DC, and then the Appeal Committee hold a responsibility to determine the type and extent of the disciplinary measures to be imposed (i) in accordance with the objective and subjective elements of the offence, taking into account both aggravating and mitigating circumstances (cf. Article 25.1 FDC) and (ii) taking into account all relevant factors of the case, including the circumstances and the degree of the offender's guilt and any other relevant circumstances (cf. Article 25.3 FDC). Both these determinations must consider the seriousness of the facts and other related circumstances as well as the damage that the penalised conduct may entail for the parties involved, for the federation in question and for its sport.
80. After having discussed both the aggravating and mitigating circumstances of the case, the Appeal Committee pointed out that Article 13 FDC does not provide for specific and/or minimum sanctions. In other words, anyone who contravenes in any way Article 13 FDC may be subject to disciplinary measures, such measures being listed under Article 6 FDC. The first instance body – and now the Appeal Committee – is therefore at liberty to determine the most appropriate sanction from among these measures.
81. In such circumstances, and in the absence of any directly applicable sanction in case of related breach of said provision, FIFA's judicial bodies (the Appeal Committee *in casu*) found that it needed to impose a sanction which, in light of the facts of the case as established, was relevant to the type of misconduct, proportionate, reasonable, just and fair.
82. The president of a member association holds a responsibility to always behave in an exemplary and irreproachable manner, and even more so when carrying out his duties. The Appellant's behaviour during (and after) the Match was completely unacceptable, inappropriate, intolerable and, even more deplorable given his position. Severe sanctions commensurate with the impact that the said behaviour may have had on the player(s) concerned, on FIFA, and on the world of football and women's football in particular were thus justified.
83. The Appeal Committee found that mild sanctions such as a warning, a reprimand or a fine were insufficient consequences to the seriousness of Appellant's breaches of Article 13 FDC. The only appropriate discipline was the imposition of a ban from taking part in any football-related activity.
84. As to the length of such ban, the comparison made by the Appellant between the one imposed on him and the ones imposed on other individuals (relating to on-pitch incidents or ethics-related abuses related to financial infringements) was irrelevant given that those infringements were of a different nature.

85. Consequently, mindful that it had to defer to the first instance body's decision, the Appeal Committee found that the imposition of a three-year ban from all football-related activities was appropriate and further noted that in light of the Appellant's serious infringements of Article 13 FDC, a harsher sanction could have been imposed.
86. Finally, and with reference to the Appellant's submission that a suspension would represent the "*end of his career*", the Appeal Committee recalled that, in accordance with the pertinent CAS jurisprudence, a ban from taking part in any kind of football-related activity does not violate the applicable international standards of human rights, specifically the fundamental right to freely exercise a profession, i.e. their economic freedom. As a matter of fact, as emphasised by CAS, the sanction imposed on the Appellant simply limits his capability of performing any football activity during a temporary and limited period of time.
87. As such, the Appeal Committee was comfortably satisfied that the sanction imposed by the first instance body was proportionate to the offences committed and should be confirmed.
88. Following its deliberations, on 16 January 2024, the Appeal Committee rendered the Appealed Decision and decided that:
- "1. The appeal lodged by Mr. Luis Rubiales Bejar against the decision passed by the FIFA Disciplinary Committee on 26 October 2023 is dismissed. Consequently, said decision is confirmed in its entirety.*
- 2. The costs and expenses of the proceedings (in the amount of CHF 1,000) are to be borne by Mr. Luis Rubiales Bejar. This amount is offset against the appeal fee of CHF 1,000 already paid."*
89. On 12 February 2024, the grounds of the Appealed Decision were communicated to the Appellant.

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

90. On 3 March 2024, the Appellant filed his Statement of Appeal against FIFA, in accordance with Articles R47 and R48 of the CAS Code of Sports-related Arbitration (the "CAS Code") against the Appealed Decision.
91. On 29 March 2024, and following a granted extension of the time-limit, the Appellant filed his Appeal Brief in accordance with Article R51 of the CAS Code.
92. By letter of 18 April 2024, and in accordance with Article R54 of the CAS Code, the Parties were informed by the CAS Court Office that the Panel had been constituted as follows: Mr Lars Hilliger, Attorney-at-Law, Copenhagen, Denmark (President of the Panel), Prof Dr Martin Schimke, Attorney-at-law, Düsseldorf, Germany (nominated by the Appellant) and Ms Janie Soublière, Attorney-at-law, Beaconsfield, Canada (nominated by the Respondent).

93. By letter of 13 May 2024 from the CAS Court Office, the Appellant was “*invited to submit an English translation of all the exhibits to his written submission which are in Spanish [...]*”, which the Appellant did on 20 May 2024.
94. On 28 May 2024, and following a granted extension of the time-limit, the Respondent filed its Answer in accordance with Article R55 of the CAS Code.
95. On 25 June 2024, a Case Management Conference was held by videoconference.
96. By letter of 3 July 2024 from the CAS Court Office, and in line with the preference of the Parties, the Parties were informed that the Panel had decided to hold a hearing in this matter.
97. Both Parties duly signed and returned the Order of Procedure, confirming, *inter alia*, the jurisdiction of the CAS to hear this dispute.
98. On 8 November 2024, a hearing was held in Miami, Florida, USA.
99. In addition to the Panel and Mr Antonio de Quesada, Head of Arbitration, the following persons attended the hearing:
- For the Appellant:
    - Mr Luis Rubiales
    - Mr Enric Ripoll, Counsel
    - Ms Sophia Burke, Counsel
  
    - Mr Tomas Alonso de Corcuera, via videoconference
    - Mr Oscar Francisco Díaz Santana, via videoconference
    - An Interpreter
  
  - For the Respondent:
    - Mr Miguel Liétard Fernández-Palacios
    - Mr Carlos Schneider
  
    - Mr Francisco Mendoza, Expert witness, via videoconference
    - An Interpreter
100. At the outset of the hearing, the Parties confirmed that they had no objections to the constitution of the Panel.
101. The Panel heard the evidence of Mr Luis Rubiales, Mr Tomas Alonso de Corcuera, Mr Oscar Francisco Diaz Santana and Mr Francisco Mendoza. The witnesses were invited by the President of the Panel to tell the truth subject to the sanctions of perjury under Swiss law. The Parties and the Panel had the opportunity to examine and cross-examine the witnesses and Mr Luis Rubiales.

102. The Parties and their witnesses were afforded ample opportunity to present their case, submit their arguments and answer the questions posed by the Panel.
103. After the Parties' final submissions, the Panel closed the hearing and reserved its final award. The Panel considered in its subsequent deliberations all the evidence and arguments presented by the Parties although they may not have been expressly summarised in the present Award.
104. Upon the closure of the hearing, the Parties expressly stated that they had no objections in respect of their right to be heard and to have been treated equally and fairly in these arbitration proceedings.

#### **IV. SUBMISSIONS OF THE PARTIES**

##### **A. THE APPELLANT**

105. In his Appeal Brief, the Appellant requested the CAS to:

*“1) Set the Appealed Decision aside.*

*2) In the alternative, to set it partially aside and to amend the sanction imposed in accordance with the principle of proportionality.*

*3) Finally, in the further alternative, and in the improbable case that the Panel still considers that the incidents are subject to sanctions, to amend the Appealed Decision by applying any of the other disciplinary measures provided for in article 6.1 of the FIFA DC in accordance with the principle of proportionality of sanctions.”*

106. The Appellant's submissions, in essence, may be summarised as follows:

##### Standard of proof and burden of proof

- As stressed in the Appealed Decision and in accordance with Article 39.3 FDC, *“The standard of proof to be applied in FIFA disciplinary proceedings is the comfortable satisfaction of the competent judicial body”.*
- As set out in, among others, CAS 2021/A/7840, *“The standard of proof of comfortable satisfaction is greater than a mere balance of probability, but less than a proof beyond a reasonable doubt. The more serious the allegation, the more cogent the supporting evidence must be in order for the allegation to be found proven.”*
- The Appealed Decision is contrary to the law since it has been adopted not only based on an entirely biased interpretation that lacks even the slightest evidential support, but, and more seriously, by ignoring the evidence presented by the Appellant, leading to conclusions and sanctions that are based on a misunderstanding of

the facts and a clear lack of understanding of the context in which they really happened and the cultural relevance of them.

- Instead of adhering to the applicable standard of proof, which requires a higher level of evidence for more severe actions, the Appeal Committee has deemed a set of circumstantial indications (not evidence) sufficient to sanction the Appellant, each of which has been refuted one by one by the latter.
- The burden of proof lies on FIFA regarding any alleged violation of Article 13 FDC.

#### Article 13 of the FDC

- Article 13 FDC contains a general obligation for players, officials and any other person carrying out a function on behalf of associations and clubs to behave properly in accordance with the principles of fair play, loyalty and integrity.
- As expressly stated in the Appealed Decision, the particular behaviour should be analysed from the perspective of a “*reasonable and objective observer*” but also, quoting the Appealed Decision, “*(...) it was equally important to take into account the context in which those incidents occurred when assessing them*”.
- The context considered by the Appeal Committee is entirely biased compared to what occurred and is by no means a true reflection of the reality and context in which the events subject to this disciplinary proceeding occurred.
- FIFA never proved that any of the Incidents constituted a violation of Article 13 FDC.

#### Procedural issues

- The FIFA proceedings against the Appellant have been a series of procedural violations, and instead of acting as the world governing body, FIFA bodies have acted as a party to a dispute.
- For example, on 26 August 2023, when the President of the Disciplinary Committee imposed a provisional suspension of 90 days, just 2 days after granting a 10-day deadline to the Appellant to explain himself (i.e. without having even heard his position), and without allowing the Appellant to file an appeal against the decision until 19 September 2023 as the latter had to await the grounds of the decision.
- Furthermore, the lack of efforts during the investigation, the non-examination of not only witnesses, but also affected individuals, the non-disclosure of evidence and the denial of their existence are examples of corrupt prosecution practices.
- The job of a public prosecutor is to investigate all the relevant facts and consider all the evidence available, not only the evidence that supports its case. In the

disciplinary proceedings that were conducted under their umbrella, FIFA acted as judge and prosecutor, which grants them an extraordinary amount of power and discretion but also imposes on them an extra duty to respect the obligations of impartiality and due process.

- Maybe one of the worst violations happened right at the end of the appeals procedure before the Appeal Committee, when FIFA did not respond to the Appellant's request to postpone the hearing, which was announced less than 2 weeks in advance, and changed the composition of the Panel with an individual that never showed his face, let alone his credentials, which, combined with all the other procedural violations, in our opinion may contradict Article 6 of the European Convention of Human Rights.

#### "The Kiss Incident"

- Firstly, the Appellant has recognised that it should not have happened and acknowledged that because of his position as President of the RFEF, he should have maintained the highest level of composure.
- However, before the incident occurred, the Appellant asked the Player (in Spanish): "can I kiss you?", to which the Player replied: "ok then". The whole exchange including the kiss lasted around 3 seconds.
- Considering all this, it seemed clear that when Ms Hermoso left the stage, happy and smiling, she was not concerned about anything and the version of the Appellant is sustained not only by the images but also supported by video footage, where during a TV news programme, it is affirmed having conducted a lip-reading analysis, confirming that the Appellant requested permission from the Player.
- This version of events is the same maintained by the Appellant on radio and television and in public statements both written and oral, as can be seen in the file provided by FIFA, on Friday, 25 August 2023, and on Twitter on Friday, 1 September 2023.
- During a radio interview given by the Player minutes after the final, the Player ("JH") stated, *inter alia*, as follows (translated from Spanish):  
*JC: You know the mess we have in Spain with the kiss that Rubiales has given you.*  
*JH: My goodness I don't want to imagine it because ehhe I didn't even expect it but well.*  
*JC: Man, of course, a kiss has to be given...*  
*JH: Let others drop them because I don't care, I mean, I'm the world champion and that's what I'm going to take with me tonight.*  
*JC: I know.*  
*JH: I didn't like it.*  
*JC: But there are people who are offended, are offended.*

*JH: Let's see today everything is going to be frowned upon by the eyes of those who look at it and I can only say that it has been the moment, the excitement and of the moment, that there is nothing further and that it will stay in an anecdote and that's it, there will be people that will want to make a fuzz of it and others that won't, but well..."*

- Minutes later, while celebrating the victory in the locker room, the Player appeared to be happy and joking with the Appellant and actually stated to a teammate that she had answered: “*sure, why not*”, when asked by the Appellant if he could kiss her, thereby confirming that the Appellant had in fact asked for permission before the kiss.
- Later, the Player and other members of the team joked about the kiss in the bus when leaving the stadium.
- The Appellant admits that he should never have asked for permission and should never have kissed the Player; however, the kiss was consensual, and the Appellant cannot be accused of sexual aggression or of having kissed Ms Hermoso without her consent.
- The RFEF was aware of everything that happened, which is why the sexual harassment protocol was activated by its Integrity Department. In the report provided on 23 August 2023 by Mr Javier Lopez Vallejo, National Team Psychologist and FIFA Safeguarding and Welfare Officer, found, *inter alia*, that the players and the entire delegation gave very little importance to the kiss and that, subsequently, neither the Player nor the Appellant showed a concerned attitude.
- Furthermore, in the Expert Criminological Report of 25 August 2023, also requested by the Integrity Department of the RFEF, the two experts, Dr Oscar Francisco Díaz Santana and Mr Tomas Alonso de Corcuera, concluded that (freely translated from Spanish):

*“The technical and compositional analysis of the digital evidence analyzed, allow to extract the following considerations:*

**FIRST.** – *we found no violent behavior, abuse of power or sexual connotation in the behavior of Mr. Rubiales, as well as behaviors of rejection or disapproval by the player Mrs. Jenni Hermoso, specifically during the kiss at the awards ceremony to the Spanish Women's Football Team in Australia.*

**SECOND.** – *no signs or symptoms of victimization have been observed in the player Mrs. Jenni Hermoso directly linked to the kiss of Mr. Rubiales that occurred at the awards ceremony for the Spanish Women's Football Team, in Australia, reactions that are not compatible with the manifesto of the players days later.*

**THIRD.** - *No objective evidence associated with denouncing elements or expressive signs linked to manipulations in vestige No. 16 has been observed, beyond the editing of the recording and the cuts indicated in the body of this report.”*

- It was only in her later declaration to FIFA that the Player switched to a version of the incident in which she had never consented to the kiss.
- FIFA should have conducted a more thorough analysis of the context and not relied solely on an investigation that, from the moment the Appellant was provisionally suspended, had considered exclusively evidence that was prejudicial to him.
- The FIFA DC and then the Appeals Committee decided to consider the “absolutely prepared questionnaire of the Player, biased media images, various statements and, worse still, the testimonies of the Presidents of the NZF and the FA”, without that evidence having been tendered to them in the course of the proceedings. All this so-called evidence was given more weight than a video in which the Player explicitly explains to her teammates not only that the Appellant asked her for permission before kissing her, but also that she said “*pues vale*” (“ok then”).
- In conclusion, and without delving into whether the Kiss Incident deserves disciplinary reproach or not, what matters is the real context of the incident and, above all, the fact that the Player consented to the kiss, which should have a direct impact on the term of the sanction imposed (if any) on the Appellant.
- The Appellant submits that he is being sanctioned for the Kiss Incident (along with the other three incidents) and being judged for his attitude after the incident, despite there being no charges for those behaviours.
- Finally, the Appellant apologises for letting his emotions control his acts, but none of them was done with the intention of harming the Player, FIFA, the football family or anyone that might have felt offended by his acts.
- The Appellant does not seek to justify the Kiss Incident, but simply to ensure that the sanction imposed as a result be appropriate and proportionate rather than the result of a value judgement that was resolved even before the opening of this disciplinary proceeding.

#### “The Genitals Incident”

- Prior to any further analysis, the Appellant points out once again the importance of reading and understanding the context of his actions, to be able to keep them inside the natural limits that should contain them.
- The Appellant’s action catalogued as the “Genitals Incident” is nothing else and nothing more than a cultural expression in Spain, typically made by men but also women to communicate in a non-verbal way how, through effort and hard work, an endeavour has been successfully performed. (“*Ole tus huevos*”, “*Way to go*” or “*You are the best*”).



- The gesture performed by Mr Rubiales was not and can never be deemed an insult, as culturally it is not considered as such, particularly when made in a friendly exchange between friends.
- It is also unclear to the Appellant why FIFA would decide to create an issue in relation to this gesture when multiple personalities of the football world have made very similar gestures in competition-like contexts without suffering any repercussions.
- In the context of the Appellant's gesture, it was clearly directed solely and exclusively at Mr Vilda, a fact that FIFA did not deny in any of the two prior instances, and with the sole intention of congratulating him, in a way that they both would understand and correlate, for his outstanding work. It is also crucial to understand that this was made "*inter amicus*" and in a non-verbal conversation highly influenced by Spanish tradition and culture.
- At no point did the Appellant try to disrespect anyone or to bring any disrepute to football and/or FIFA.
- If, in a completely different context such as the celebration of goals or titles against the opponent fans (like Diego Simeone, Cristiano Ronaldo and Emiliano Martínez) or insulting them (like Diego Armando Maradona), this behaviour warranted at most a fine, there is no reason to impose such a serious sanction on the Appellant where the context was one of celebration with Mr Vilda. In other words, there have been similar situations in the past (in terms of the gesture, not the meaning) that did not reach the severity of disciplinary consequences seen in this case. Therefore, not only from the perspective of a reasonable and objective observer, but also due to a comparative injustice, the sanction (if any) to be imposed on the Appellant should, at most, be a fine.

#### "The Carrying Incident"

- The Appellant acknowledges that he should not have carried Ms Castillo over his shoulder during the post-match celebration.
- However, at that point the stadium was empty, and the medal ceremony was over. And Ms Castillo never appeared to feel threatened or uncomfortable with the act and as FIFA never sought out a witness statement from Ms. Castillo they cannot assume or allege otherwise.
- This behaviour was nothing but an expression of happiness, comparable to what Mr Rubiales did with the then Head Coach of the Men National Team, Luis Enrique Martinez, on another occasion when Spain eliminated Croatia during the Euro 2020.
- It is unacceptable that FIFA, in a lack of any seriousness while determining the precedents available to qualify an action as an "incident" or a "behaviour

incompatible with the principles of Art. 13 FDC”, enlarges the extent of an action to something that should not even be considered more than a natural act within the context of a celebration.

- Also, it must be noted that the players of the national team celebrated their victory, *inter alia*, by tossing the Appellant up in the air.

#### “The Peck Incident”

- Even though, initially, this “incident” was not reported, for whatever reason FIFA considered the Peck Incident to be an issue, too.
- That serious disciplinary consequences can arise from a peck on the cheek is surprising since not only is it a worldwide sign of appreciation, but also a greeting between men and women in Spanish culture.
- Curiously, nobody had a problem with the Appellant when he effusively kissed male players after the Spanish National Team victory against Croatia in the UEFA Nations League.
- To allege that giving a player a peck on the cheek and carrying another is inappropriate behaviour is unrealistic given the scenario.

#### “Proportionality of sanctions”

- The proportionality of sanctions is a well-established principle within *lex sportiva*. As a general proposition, the principle of proportionality dictates that the most extreme sanction must not be imposed before other less onerous sanctions have been exhausted (CAS 2011/A/2670).
- “*The steady line of CAS jurisprudence provides that the sanctions imposed must not be evidently and grossly disproportionate to the offence*” (CAS 2013/A/3139).
- The Appealed Decision sanctions the Appellant for the occurrence of four different incidents that “*undoubtedly constituted individual breaches of art. 13 FDC*”, but then also states that “*the sequence of incidents also seems to indicate that they were all inextricably linked, one leading to the other*”.
- This led the FIFA DC to impose a sort of general sanction consisting of a three-year ban the Appellant’s disagrees with. The four incidents should not result in the same sanction (i.e. a ban), given the wide range of sanctions available for imposition on natural persons under the FDC.
- Unlike what is ruled in the Appealed Decision, each violation of the FDC should entail its own specific sanction since, as the Appealed Decision itself asserts, not all the incidents are equally serious or severe.

- In other words, it is disproportionate from a disciplinary standpoint to compare the Carrying Incident, the Genitals Incident and the Peck Incident to the Kiss Incident. There is no other option but to consider each of the incidents as individual infractions and to sanction each of them separately, considering their specific context and gravity
- Based on the circumstances of the case and given the existence of other punitive measures in the FDC, there is no reason to apply a ban, the most severe of punitive measures, to these four incidents, especially when previous similar cases have either not been pursued by FIFA or been resolved with the imposition of a fine.
- There are only three cases in which the FIFA DC has applied Article 13 FDC, and the Appellant's is one of them.
- Indeed, the only two previous cases under Article 13 FDC (FDD-12714 and FDD 12712) involved players investigated for assaulting members of the referee team during the World Cup in Qatar. The sanctions imposed on them was a "*suspension for a specific number of matches or for a specific period*", specifically, four matches.
- Because FIFA applies Article 13 FDC to discipline an assault on referees after a match during the World Cup, and to a consensual kiss after the Spanish team's victory in the FIFA Women's World Cup, a comparison must be made between those cases and the Appellant's. Additionally, compared to sanctions FIFA has previously imposed in cases which involved officials having engaged in corruption, bribery, requesting of personal benefits, sexual harassment and rape, the sanction imposed on the Appellant is grossly disproportionate.
- Therefore, when comparing this case to previous cases decided under the FDC and the Code of Ethics, the sanction imposed on the Appellant is clearly disproportionate. This is the only case in which the FIFA DC has applied the most severe of sanctions to a natural person, namely, a ban on taking part in football-related activity for three years.
- In conclusion:
  - (i) The Appellant profoundly regrets all the Incidents that occurred.
  - (ii) The FIFA DC have analysed the Incidents from an improper context and ignored a great amount of the Appellant's evidence.
  - (iii) The FIFA DC have wrongly analysed all the Incidents jointly. This led to the imposition of a sanction more severe than the one that should be applied if the Incidents had been considered and sanctioned separately.

**B. FIFA**

107. In its Answer, FIFA requested the CAS to:

*“a. Reject the relief sought by the Appellant.*

*b. Confirm the Appealed Decision in full.*

*c. Order the Appellant to pay a contribution to FIFA’s legal costs and expenses. FIFA hereby asks to be allowed to make specific submissions on cost at or following the hearing.”*

108. FIFA’s submissions, *in essence*, may be summarised as follows:

Standard of proof and burden of proof

- The burden of proof in the present matter lies initially on the accuser, i.e. FIFA, and is established in Article 41(1) FDC, which states: *“The burden of proof regarding disciplinary infringements rests on the FIFA judicial bodies.”*
- Despite FIFA bearing the burden of proof, Article 41(2) FDC foresees that *“[a]ny claiming a right on the basis of an alleged fact shall carry the burden of proof of this fact.”*
- This is a mere replication of the consistent application of Article 8 of the Swiss Civil Code (“SCC”) in CAS jurisprudence which has found that *“if a party wishes to establish some facts and persuade the deciding body, it must actively substantiate its allegations with convincing evidence”*.
- Even when FIFA bears the initial burden of proving the facts that it alleges, the Appellant has the duty to prove all the facts and assertions on which he intends to rely in these proceedings, and the Appellant has not made substantiated rebuttals to the facts or evidence established by the Disciplinary or Appeal Committees.
- As Article 39(3) FDC provides, it is not disputed that the standard of proof here is *“comfortable satisfaction”*, however, that there would be a sort of *“sliding scale, based on the allegations at stake”* is disputed.
- FIFA relies on CAS 2018/A/5920 in this regard which reads: *“84. In the view of the Panel, this does not mean that there is some sort of “sliding scale” within the standard of “comfortable satisfaction” depending on the seriousness of the charge, but that in case of serious allegations, the adjudicatory body should have a high degree of confidence in the quality of the evidence.”*
- In any case, the Appellant does not dispute the occurrence of the facts of which the Appellant is accused (i.e. the Incidents).

- In view of the above, after a cumulative evaluation of all the evidence, FIFA's standard of proof in the present matter must be to convince the Panel to its comfortable satisfaction that the Appellant breached Article 13 FDC.

#### Article 13 of the FDC

- The Appellant does not appear to seriously contest that the Incidents occurred or that these constitute breaches of the FDC. He concedes that he should not have behaved the way he did.
- The FDC serves as a critical foundation for maintaining high ethical standards in football, requiring all participants – players, officials, clubs and national associations – to exhibit behaviours that uphold the sport's core values. This means not only adhering to the rules of the game, but also demonstrating profound respect for opponents, officials and the ethos of fair play.
- The FDC pays particular attention to the conduct of football officials, who are held to the highest standards due to their influential roles and the significant impact they have on the integrity of the sport. Their behaviour, both on and off the field, must exemplify dignity, impartiality and integrity.
- The impact of these behaviours extends beyond the immediate victims. They tarnish FIFA's image and damage the reputation of football as an inclusive and respectful sport. This is detrimental not only in the eyes of the global community but also impacts the grassroots level where the future of the sport is nurtured. Young players look to officials for guidance and emulate their behaviour, making it crucial that officials always demonstrate integrity and respect.
- Sexist behaviours, which include any actions or language that discriminate or demean individuals based on gender, are particularly damaging. Examples might include an official making derogatory comments towards female players or staff or using gestures that perpetuate gender stereotypes. Such behaviour is not only offensive, but also undermines the inclusive environment that football strives to promote.
- The FDC outlines a rigorous and comprehensive approach to managing incidents involving indecent gestures as well as sexist and sexual behaviours, especially when perpetrated by officials, who are expected to uphold the highest standards of conduct.
  - o An evaluation of the immediate setting of the incident is crucial. The location – whether on the field, in the locker room or during a team event – and the timing, particularly -whether it occurred during a high-pressure moment of a match or in a relaxed setting - can significantly influence how the actions are perceived as well as their subsequent impact on the sport.

- The history of the perpetrator is also examined – whether they have previously been involved in similar incidents can affect the stringency of the sanctions imposed.
- FIFA also conducts an in-depth evaluation of the perpetrator’s behaviour following the incident. An acknowledgment of wrongdoing and any signs of genuine remorse or apology to the affected parties can also play a mitigating role in the disciplinary process. These actions suggest a willingness to acknowledge and understand the misconduct’s impact and an openness to correction and learning.

### Procedural issues

- All the Appellant’s allegations regarding procedural breaches that may have occurred in the previous proceedings must be rejected.
- Even if such alleged procedural issues had occurred, and if not already moot, those would be cured by the Panel’s *de novo power of review* pursuant to Article R57 of the CAS Code. Therefore, they are irrelevant.
- This is confirmed by CAS jurisprudence that has consistently held that: “*the virtue of an appeal system which allows for a full rehearing before an appellate body is that issues relating to the fairness of the proceedings before the authority of first instance fade to the periphery*”(see *MAVROMATI/REEB, The Code of the Court of Arbitration for Sport: Commentary, cases and materials, 2015, p. 513, paras.29-30*)

### “The Genitals Incident”

- For Mr Rubiales to have grabbed his genitals right after the end of the Match, in the presence of public authorities, is a stark example of indecency and seriously puts the image of football and FIFA into disrepute (cf. Article 13 FDC).
- Such gesture reflects the deeply ingrained symbolic association of the male genitals with power, dominance and masculinity. This action is emblematic of how these gestures, and associated symbols, have historically been used to assert male authority and control, often reinforcing patriarchal systems.
- The action of grabbing one’s genitals can be interpreted as an assertion of dominance and power. This behaviour, especially in a public and formal setting like the Women’s World Cup, serves to reinforce traditional gender roles where men are seen as dominant figures. It perpetuates the notion of male authority and control, relegating women to subordinate positions.

- In their decisions, the FIFA judicial bodies conclude that the Genitals Incident undoubtedly constitutes a breach of Article 13 FDC, insofar that it is contrary to the very basic rules of decent conduct. In addition, while putting in perspective the media coverage of such a gesture, the FIFA judicial bodies also deem that, by grabbing his crotch in one of the most exclusive areas of the stadium, in the presence of the most prominent dignitaries and during the most important match of the competition at stake, the Appellant clearly behaved in a way that brings the sport of football and/or FIFA into disrepute.
- The Appellant argues that the analysis made by the FIFA judicial bodies completely disregards the context in which it occurred. While conceding that it is an ugly gesture, he insists that it means nothing more than “*olé tus huevos*,” (“bravo to your balls”), a typical and widespread expression in Spain to tell someone that they have done something well, and that it was not aimed at offending anyone, but was directed solely and exclusively at national team coach Mr Vilda. Thus, the true context of the gesture should be considered, and not biased speculations to discredit him as sexist and macho.
- However, these explanations had already been taken into account by the FIFA judicial bodies, which agreed that one explanation for the gesture could be that the Appellant grabbed his genitals to show his support to the coach as an expression of a Spanish cultural gesture, but emphasised that regardless of the justification behind it, it remains that the gesture performed by the Appellant can only be seen as an indecent, sexist and offensive gesture contrary to the basic rules of decent conduct, especially when seen by an objective observer (which were in the millions). In its oral submissions, FIFA also alleged that in their experience, the gesture is not in fact widely accepted in Spain but rather would be considered indecent to most.
- To provide legal context to discriminatory chants/words, FIFA refers by analogy to the reasoning adopted in CAS 2016/A/4788 para 124:

*“even if in many of the cases this kind of words or expressions are not used with the intention of offending a specific person but, in any case, they are however deeply offensive and harmful to third parties and groups of people. Therefore, in the Panel’s view, even if those expressions and words are not used with the intention to discriminate or offend the specific player or players to which they are addressed, they still can be considered discriminatory or insulting in nature.*

*In particular, the fact that the meaning and the use of a word could have been trivialized by part of the society and that in some contexts or moments such word is being used without intending to insult, disrespect or humiliate to whom it is addressed does not mean that the word itself has lost its discriminatory, insulting and harmful connotation, or that the expression is harmless and legitimate. (...) In this regard, the Panel agrees with the opinion of CONAPRED and considers that an insulting word like "Puto" does not lose its negative or insulting nature and harmful*

*effect just because at a given time the use of such word becomes a custom, a habit or even a tradition.”*

- That other individuals involved in football may have made a similar gesture in the past is irrelevant to the Panel’s analysis of whether, the gesture and the context in which it was made by the Appellant was contrary to Article 13 FDC.
- As such, FIFA seeks a confirmation of the FIFA judicial bodies assessment and findings: From the perspective of a reasonable and objective observer, the gesture is undoubtedly contrary to the basic rules of decent conduct, and contrary to Article 13 FDC.

#### “The Kiss Incident”

- Lack of consent and non-full consent in sexual aggressions are critical issues that require a comprehensive understanding of consent, power dynamics and the impact on victims. Consent must be clear, voluntary and enthusiastic, and any deviation from this standard constitutes a violation of an individual’s autonomy and bodily integrity.
- Consent is the cornerstone of any sexual interaction. It must be given freely, without coercion, pressure or manipulation. True consent is an active, ongoing process that can be revoked at any time.
- Non-full consent, on the other hand, involves situations where consent is obtained through manipulation, pressure or coercion. This can include verbal threats, emotional blackmail or the exploitation of a power imbalance. Partial consent, especially in the context of power imbalances, further complicates the issue. Power imbalances can exist in various forms, such as between an employer and an employee, a teacher and a student or a coach and an athlete.
- The Kiss Incident involving the Appellant and Ms Hermoso after the Match is a notable example of such a power imbalance. The Appellant was clearly seen grabbing Ms Hermoso’s head with two hands and kissing her on the lips without her explicit consent.
- Ms Hermoso later stated that she did not consent to the Kiss and felt uncomfortable with the gesture. This incident underscores the impact of power imbalances on consent, as Ms Hermoso, a player under Mr Rubiales’s authority in the Spanish national team and UEFA, might have felt pressured or unable to react against the unsolicited Kiss due to his powerful position.
- Video evidence clearly shows that the way Mr Rubiales forcibly grabbed Ms Hermoso’s head did not allow her to free herself from his grasp or physically deny the action. Indeed, Mr Rubiales did not ask her whether he could give her the Kiss;



rather, there was an affirmation, as evidenced by a forensic lip-reading report which concluded that Mr. Rubiales said, “*Give me a kiss*” (“*dame un beso*”). Mr Rubiales was not seeking consent. He was advising Ms Hermoso, without giving her a choice, of his impending actions.

- Even if Ms Hermoso had given her clear, voluntary and enthusiastic consent to being kissed, which FIFA submits cannot be ascertained from the Appellant’s expert, given the significant power imbalance between her and Mr Rubiales. the sequence of events was so rapid that it is highly unlikely Ms Hermoso could properly evaluate the situation or react. Even if her consent could be perceived as partial, it would only have been driven by fear of repercussions or implicit pressure due to a power disparity. In such a context, partial consent is insufficient and invalid.
- That Ms Hermoso’s did not consent to the kiss is reinforced by the fact that she has consistently defended her stance, even when pressured to do otherwise by her own federation. She pressed charges before the criminal courts, gave testimony to public prosecutors and judges and always stood firm in her description of what happened. This unwavering consistency in her statements and actions underscores the lack of consent and highlights the profound impact of the power imbalance in this situation.
- FIFA submits that the Panel should be comfortably satisfied that, from the Player’s perspective, the Kiss had, at no point, been consented to. This is not only FIFA’s submission, but as found by the FIFA judicial bodies, it is also precisely how the Kiss would be and has been perceived by reasonable and objective observers.
- FIFA argues that two critical aspects are central to Mr Rubiales’s appeal fall well short of their objective: the forensic analysis of the alleged consent provided by the Appellant and the credibility of the so-called psychological report.
- The forensic analysis purportedly determining the presence of consent has numerous shortcomings that undermine its conclusions. The vague assertions, incomplete references and lack of concrete evidence call into question the reliability of this analysis. The forensic analysis concludes that no violent, abusive or sexually connotative behaviours were observed in Mr Rubiales’s actions and that Ms Hermoso did not exhibit signs of victimisation. Such conclusion is surprising, given the evidence and Ms Hermoso’s consistent statements about her discomfort and lack of consent. Furthermore, the superficial nature of the examination fails to consider key aspects such as power dynamics and the immediate context of the incident, which are essential in assessing true consent.
- Overall, the forensic analysis filed by the Appellant is incomplete and lacks a rigorous analysis of the available evidence. The conclusion that the Appellant’s actions were spontaneous and consensual is not supported by the evidence and contradicts Ms Hermoso’s consistent accounts of the event.

- As to the so-called psychological report, it is unreliable on the sole basis that it was prepared by an employee of RFEF, i.e. a person falling under the Appellant's professional authority as president of RFEF at the time the report was prepared, it is also deeply flawed due to the inadequate qualifications and expertise of the individual who conducted it.
- The evaluation process for potential trauma resulting from sexual abuse is inherently complex and cannot be adequately addressed through a brief, superficial interview. A comprehensive assessment is essential to gain a full understanding of the victim's experiences, symptoms and needs.
- Yet, Mr Javier Lopez Vallejo, the head of the RFEF psychological department who prepared the report, did not even speak to Ms Hermoso other than a short conversation after the match (no evidence of which has even been provided), did not truly evaluate her state, lacks specific training in handling sexual abuse cases and provides a fundamentally unreliable assessment. Without professional communication with the victim in an environment that allows for such evaluation, any assessment or conclusion about her psychological state is fundamentally flawed.
- Moreover, the author's qualifications and expertise in dealing with sexual abuse cases are questionable. The document he signed does not include any reference to his experience and training in handling sexual abuse cases. His knowledge of psychology appears to be limited to a master's degree in Sports Psychology, and his primary experience has been as a goalkeeper coach. This background is clearly inadequate for addressing the complexities of trauma resulting from sexual abuse. In its oral submissions, FIFA also clarified that at no time was this individual a FIFA safeguarding Officer –unlike the Appellant wrongly claimed in its submissions.
- As such, the evidence provided by the Appellant is not reliable as he claims.
- FIFA also argues that Mr Rubiales has failed to submit any evidence that could undermine Ms Hermoso's credibility. He has failed to present any tangible proof, such as communications, witnesses or documents that would substantiate his claims. Furthermore, there is no plausible explanation from him as to why Ms Hermoso would persistently assert her version of events, willingly subject herself to intense media scrutiny and public attacks or go through the significant personal and legal burden of filing and maintaining a criminal complaint against him. Her consistent actions and statements suggest a genuine pursuit of justice rather than any deceitful motive.
- FIFA relies on the FIFA judicial bodies' lengthy and developed reasoning which concluded that kissing a player, and more importantly without her consent, undoubtedly constitutes behaviour contrary to the basic principles contained in Article 13 FDC, particularly when considering the hierarchical link between Mr Rubiales and the Player.

- The events that followed the Kiss further denote behaviour incompatible with the general principles of fair play, loyalty and integrity enshrined under Article 13 FDC, and Mr Rubiales's attitude in relation to the Kiss Incident undoubtedly tarnishes the image of football and FIFA, bringing both into disrepute. As such, the FIFA judicial bodies held that, from the very first moment he initiated the Kiss to the moment its decision was rendered, Mr Rubiales repeatedly and continuously violated the basic rules of decent conduct, thereby infringing Article 13 FDC.
- In any event, and if one were to follow the argumentation of Mr Rubiales that the Kiss was consensual (*quod non*), it remains that, as emphasised by the FIFA judicial bodies, such behaviour would never be the one expected from the president of an association having won the FIFA Women's World Cup and would still be seen as a very serious incident contrary to the basic rules of decent conduct. Indeed, the image of a man, the president of a football association, grabbing the head of a female player with both hands, pulling her head towards his and kissing her during an internationally televised and streamed medal ceremony cannot be tolerated and is in total contradiction with the tournament's aim to unite and inspire people around the world through the power of the FIFA Women's World Cup and women's football in general.
- FIFA submits that no evidence in the case file, not even the Appellant's, indicates that Ms Hermoso consented to the Kiss in any way.
- A kiss – emanating from the president of an association towards a player of the opposite sex of one of the national teams under his leadership and responsibility – is completely unacceptable.
- FIFA seeks a confirmation of the conclusions of the FIFA judicial bodies and submits that kissing a player, especially without their consent, undoubtedly constituted behaviour contrary to the basic principles set out in Article 13 FDC.

#### “The Carrying Incident” and “the Peck Incident”

- Gender microaggressions are small, seemingly innocuous comments and actions that can accumulate over time, impacting a person's sense of self and identity. These microaggressions are often so pervasive and normalised that they go unnoticed by many. Yet, they contribute significantly to a culture of inequality and disrespect. The actions of Mr Rubiales, particularly the incidents of carrying a female player on his shoulders and giving another female player an unsolicited peck on the cheek, are plain examples of such microaggressions and illustrate their damaging effects.
- As the highest-ranking official in Spanish football and a prominent figure within European football, Mr Rubiales held a significant position of authority over the female players. Carrying a woman on his shoulders, regardless of her immediate reaction, reduces her to an object or trophy, stripping away her dignity and reinforcing a power imbalance. It conveys a message that her value is tied to being an object of

display rather than as an autonomous individual with equal rights and deserving of respect.

- It is not unsurprising that the Appellant himself now “*acknowledges he should not have done it.*” Such a candid admission that his behaviour in connection to the Carrying Incident was inappropriate – despite trying to justify his conduct and avoid accepting full responsibility for his actions – also supports the conclusions that he breached of the general principles of decent conduct set out in Article 13 FDC.
- Mr Rubiales insists that this gesture of giving an unsolicited peck on the cheek of a female player is a worldwide show of appreciation and a common greeting in Spanish culture between men and women. But the lack of consent makes it problematic. That there is no evidence suggesting that any of the players were uncomfortable about the situation during or after the Peck Incident does not negate the inappropriate nature of the act. Kissing someone without their consent blatantly disregards their personal boundaries and autonomy, reducing the individual to a mere object of male gratification.
- FIFA submits that all the Incidents and the Appellant’s behaviour, must be assessed within the context in which they occurred. To FIFA, they are all manifestations of gender microaggressions.
- FIFA recalls that at the time of those Incidents Mr Rubiales was well acquainted with celebration protocols and aware of the exemplary behaviour expected from him as president of one of teams playing in the final of such an important competition as the Women’s World Cup. To the contrary, Mr Rubiales adopted a deplorable attitude with unacceptable sexist connotations by engaging in improper physical contact with female players under his leadership by either carrying or kissing them. The fact that these players may not have protested or objected to those physical contacts is completely irrelevant in assessing whether Mr Rubiales’s behaviour is contrary to Article 13 FDC, particularly considering that the players were all under a *de facto* hierarchical link with Mr Rubiales, thereby limiting their possibility to protest or call him out for his actions
- FIFA thus submits that the conclusions reached by the FIFA judicial bodies in relation to these incidents should also be confirmed.

#### Concluding submissions regarding the Incidents

- FIFA concludes by submitting that on its assessment of all the facts, evidence and circumstances in this case, Mr Rubiales blatantly and very seriously violated Article 13 FDC through his indecent conduct and by putting FIFA’s and football’s image into disrepute.
- Mr Rubiales’s actions were not only indecent but also deeply damaging to the image of football and FIFA. The indecent Genitals incident, the Kiss, given without

consent, and his other inappropriate physical interactions with female players, highlight a gross abuse of power and a failure to uphold the principles of respect and integrity.

- Mr Rubiales's persistently defiant behaviour after the incidents, and paradigmatically at the RFEF assembly, as well as his use of the organisation's platform to defend his actions reveal a troubling misuse of institutional power. His initial dismissive response and subsequent attempts to manipulate the narrative only further underscored his lack of accountability and understanding of the gravity of his actions. His derogatory remarks about feminism and attempts to portray himself as a victim of a political conspiracy demonstrate a deeply ingrained patriarchal attitude and a refusal to accept responsibility.
- Mr. Rubiales' conduct is in direct contradiction to the values FIFA aims to promote, including fairness, respect and equality. The holistic review of the incidents, from the initial inappropriate conduct to the escalating coercive behaviour, paints a comprehensive picture of a severe breach that has rightly drawn widespread condemnation.
- FIFA finally submits that any sanction imposed by the Panel because of these Article 13 FDC breaches must be determined in accordance with Article 25 FDC.

*“in accordance with the objective and subjective elements of the offence, taking into account both aggravating and mitigating circumstances” and “[taking] into account all relevant factors of the case, including any assistance of and substantial cooperation by the offender in uncovering or establishing a breach of any FIFA rule, the circumstances and the degree of the offender's guilt and any other relevant circumstances.”* This principle was confirmed by CAS in CAS 2014/A/3665, 3666 & 3667.

#### The proportionality of sanctions

- CAS has held that *“the principle of proportionality under Swiss law implies that there must be a reasonable balance between the misconduct of the actor and the applicable sanction. More specifically, the principle of proportionality requires that: “(i) the measure taken by the disciplinary body is capable of achieving the envisaged goal; (ii) the measure is necessary to reach the envisaged goal; and (iii) the constraints which the affected person will suffer as a consequence of the measure are justified by the overall interest to achieve the envisaged goal”* (CAS 2019/A/6219).
- In the same case, CAS established several criteria to consider when evaluating the proportionality of a sanction in disciplinary matters, namely:
  - “a. the nature and circumstances of the violation;*
  - b. the impact of the violation on the public opinion;*

- c. *the importance of the competition affected by the violation;*
  - d. *the damage caused to the image of FIFA and/or other football organizations;*
  - e. *the substantial interest of FIFA, or of the sporting system in general, in deterring similar misconduct;*
  - f. *the offender's assistance to and cooperation with the investigation;*
  - g. *whether the violation consisted in an isolated or in repeated action(s);*
  - h. *the existence of any precedents;*
  - i. *whether the offender acted alone or involved other individuals in, or for the purposes of, his misconduct*
  - j. *the position of the offender within the sports organization;*
  - k. *the degree of the offender's guilt;*
  - l. *the education of the offender;*
  - m. *the personality of the offender and its evolution since the violation; and*
  - n. *the extent to which the offender accepts responsibility and/or expresses regret."*
- FIFA submits that the following circumstances, *inter alia*, clearly establish how the sanction imposed on Mr Rubiales is fully proportionate to the offences committed:
- Any sanction imposed in a matter such as the one under scrutiny must have not only a punitive effect on the individual charged, but also a deterrent effect for any official who would consider behaving in such manner in the future. The message must be clear: there is no place in football for offensive sexist gestures and there is no place in football for unconsented kissing or other touching of individuals of an intimate nature.
  - By addressing such breaches decisively, FIFA reaffirms its commitment to upholding the highest standards of conduct and fostering a culture of equality and respect within the sport. Such a measure is crucial in maintaining the sport's reputation and ensuring that all individuals, regardless of gender, are treated with respect and dignity.
  - Because the Incidents were broadcast live during the Match and the medal ceremony and therefore seen by the record-setting viewership worldwide, they were highly scrutinised by the media and public opinion. The Appellant's violations were so serious that millions of objective observers concluded that all his actions were unbecoming not only of a football official, but also of any citizen. The Genitals Incident and the Kiss Incident both caused public outrage at what are considered unacceptable actions in any scenario.
  - With the unacceptable Incidents occurring in the final of FIFA's flagship women's football competition, the damage caused to the image of FIFA and/or other football organisations above was immense. Such actions clearly damaged FIFA's and RFEF's image, to the point where the latter faced an unprecedented institutional crisis in the aftermath of the Match.

- The Incidents were not “*an isolated [...] action*”, but rather a series of continued misconducts (if not “*repeated action(s)*”) by Mr Rubiales, committing several disciplinary breaches in the fervour of his own sense of impunity from the moment the final whistle blew, continuing during the medal ceremony and post-Match celebrations, and even beyond that point through his behaviour in the aftermath.
  - At the time the disciplinary violations were committed, the Appellant was (i) president of RFEF (i.e. the highest-ranking official in Spanish football) and (ii) vice-president of UEFA (i.e. one of the highest-ranking officials in European football).
  - The fact that Mr Rubiales has not been sanctioned for prior disciplinary violations does not diminish the fact that, in the matter at hand, he consistently committed several Article 13 breaches from the final whistle of the Match. In any event, any previous sanctions would only be considered as aggravating factors justifying a harsher sanction.
  - The Appellant’s actions after the Match demonstrate an unacceptable pattern of obstruction and an absolute lack of remorse. Contrary to what the Appellant attempts to portray, he has at no time apologised to Ms Hermoso or shown sincere remorse for the Incidents.
- FIFA further argues in rebuttal to the Appellant’s submission that the regulations do not provide that a sanction should be determined on the basis of each specific violation, especially when the specific offences under scrutiny do not foresee any individual sanction.
  - Having said that, FIFA has already explained how each individual incident would warrant the sanction imposed, and if one were to consider all the Incidents jointly (as foreseen in the applicable regulations), the sanction is actually lenient.
  - In any event, even if one were to accept the Appellant’s arguments that an individual assessment of the Incidents would lead to one of these not warranting a sanction (*quod non*), CAS jurisprudence (CAS 2017/A/5393, para 236) has confirmed otherwise:

“*The mere fact that the Panel has some doubts as to whether certain individual Allegations would legitimately justify the imposition of a suspension – such as for instance the TFM’s request to the IOC to “suspend membership of NOSC with IOC” (lit. h) – this does not in its view necessarily warrant a reduction of the period of suspension, particularly considering that other, in the Panel’s view more severe, allegations are considered proven.*”
  - Regarding the Appellant’s comparison of his situation to those of others, it must be stressed that CAS has consistently followed the principle that “*Similar cases must*

*be treated similarly, but dissimilar cases could be treated differently*". None of the cases referred to by the Appellant are like the present case. His desperate attempt to draw comparison to other cases which are unrelated to the Incidents under scrutiny from both a factual and a regulatory perspective does not serve his cause.

- Therefore, FIFA submits on the one hand that despite his attempts to minimise the scope of his actions (which he acknowledges having committed), the Appellant has failed to demonstrate how, under all the circumstances, the sanction that was imposed on him by FIFA's judicial bodies is disproportionate. On the other hand, FIFA argues that it has satisfied its burden of establishing that the Incidents committed by the Appellant amount to a pattern of serious breaches of Article 13 FDC and that the sanction imposed on Mr Rubiales by the FIFA Judicial Bodies is more than proportionate. Therefore, their imposition of a three-year suspension from football related activities should be confirmed.

## V. CAS JURISDICTION

109. 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."*

110. With respect to the Appealed Decision, the jurisdiction of the CAS derives from Article 56 and Article 57(1) of the FIFA Statutes.

111. Neither the Appellant nor the Respondent objected to the jurisdiction of the CAS, and both Parties confirmed the CAS jurisdiction when signing the Order of Procedure.

112. It follows that the CAS has jurisdiction to decide on the appeal of the Appealed Decision.

## VI. ADMISSIBILITY

113. Article R49 of the CAS Code provides, *inter alia*, 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. [...]"*

114. It follows from Article 57 of the FIFA Statutes that *"appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, members or leagues shall be lodged with CAS within 21 days of receipt of the decision in question"*.



115. The grounds of the Appealed Decision were notified to the Appellant on 12 February 2024, and the Appellant's Statement of Appeal was lodged on 3 March 2024, i.e. within the statutory time limit of 21 days set forth in Article R49 of the CAS Code and in Article 57 of the FIFA Statutes, which is not disputed. Furthermore, the Statement of Appeal and the Appeal Brief complied with all the requirements of Articles R48 and R51 of the CAS Code.
116. It follows that the appeal is admissible.

## VII. APPLICABLE LAW

117. Article 56(2) of the FIFA Statutes determines the following:

*“The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss Law.”*

118. Article R58 of the CAS Code provides as follows:

*“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.”*

119. Based on the above, and with reference to the Parties' submissions, the Panel is satisfied that the various regulations of FIFA are primarily applicable and, subsidiarily, Swiss law should the need arise to fill a possible gap in the various regulations of FIFA.

## VIII. PROCEDURAL ISSUES

120. The Panel notes that several procedural issues were raised by the Appellant in the course of the written and oral procedure in the present dispute.
121. The Appellant submits, *inter alia*, that he has been subjected to numerous due process violations in the previous FIFA proceedings, and that FIFA, instead of acting as the world governing body of football has acted via its bodies as a party to a dispute.
122. FIFA rejects such submissions and further submits that even if such alleged procedural issues or flaws occurred, if not already moot, those would in any case be cured by the Panel's *de novo power of review* pursuant to Article R57 of the CAS Code.
123. Without going into a thorough analysis of whether the alleged procedural violations actually occurred in the proceedings before the FIFA Disciplinary Committee and the

Appeal Committee, the Panel finds as argued by FIFA that any such procedural breaches would now be cured by the present CAS arbitration proceedings in light of Article R57 of the CAS Code which provides, *inter alia*, that: “*The Panel has full power to review the facts and the law.*” This has long been the position of CAS panels in application of Article R57, and this Panel sees no reason to deviate from the same. (see e.g. CAS 2019A/S6669, para 148).

124. Moreover, and to leave no stone unturned, the Panel further finds the Appellants has adduced insufficient evidence to support his allegations regarding a breach of Article 6 of the European Convention of Human Rights.

## IX. MERITS

125. At the outset, the Panel notes that the factual circumstances pertaining to this matter are for the most part undisputed. The following elements relevant to the Panel’s reasons are also undisputed:

- On 20 August 2023, the Match, which was played in Sydney, Australia, was broadcast worldwide and the official number of spectators at the stadium was set at 75,784.
- After the conclusion of the Match, a series of Incidents involving the Appellant occurred, which subsequently caused a media storm directed against the Appellant and FIFA.
- Initially, the Appellant publicly chose to deny any wrongdoing and several written statements were published by the RFEF in his defence.
- The media coverage of the Incidents for the most part condemned the Appellant and his behaviour.
- On 26 August 2023, by decision of the Chairperson of the FIFA DC, the Appellant was provisionally suspended from exercising any football-related activities for 90 days, and on 10 September 2023, the Appellant formally resigned as President of the RFEF and as Vice-president of UEFA.
- On 26 October 2023, the FIFA DC issued its Decision, sanctioning the Appellant with a three-year ban from taking part in any football-related activity for having behaved in a manner contrary to the principles enshrined under Article 13 FDC.
- On 16 January 2024, the FIFA Appeal Committee dismissed the Appellant’s appeal and confirmed the FIFA DC Decision in its entirety.

126. The Appellant submits that the Incidents, which he admits to for the most part, occurred in a state of euphoria and did not constitute any violation of Article 13 FDC; and if they

did, that a proportionate sanction for the same should be no more than a fine. FIFA argues that all the Incidents amount to severe violations of the principles set out in Article 13 FDC, that the Appellant's apology was tardy, insincere and lacking any true remorse, and that the three-year ban imposed on the Appellant should be confirmed.

127. In short, the Parties disagree on whether the Appellant's behaviour in connection with the Incidents constitutes a violation of Article 13 FDC and, in the affirmative, what consequences should arise as a result.

128. Thus, the main issues before the Panel are:

a) Did the Incidents constitute a violation of Article 13 FDC?

and in the affirmative,

b) Is the sanction imposed on the Appellant for violating Article 13 FDC proportionate?

#### Standard of proof and burden of proof

129. Lawfully, the Panel notes that the standard of proof is defined as the level of conviction that is necessary to conclude that a certain fact occurred (BGer 5C\_37/2004, 3.2.3). As the alleged violations and sanctions appealed by the Appellant are governed by the FIFA FDC, the standard of proof set out therein applies.

130. As established in Article 39(3) FDC, the Parties agree, that the applicable standard of proof in the present matter is that of a "*comfortable satisfaction*". This is lower than the standard of "*beyond a reasonable doubt*", but higher than the standard of "*balance of probabilities*".

131. On this, the Panel refers to and applies CAS 2018/A/5920 (para 84), which found that: "*In the view of the Panel, this does not mean that there is some sort of "sliding scale" within the standard of "comfortable satisfaction" depending on the seriousness of the charge, but that in case of serious allegations, the adjudicatory body should have a high degree of confidence in the quality of the evidence.*"

132. As established in Article 41(1) FDC, the Parties and Panel further agree that the burden of proof in the present matter lies initially on the accuser, FIFA. Article 41(1) FDC reads: "*The burden of proof regarding disciplinary infringements rests on the FIFA judicial bodies.*"

133. FIFA thus bears the burden of establishing that the Incidents, either individually or cumulatively, constitute a violation of Article 13 FDC.

134. Despite FIFA's initial burden of proof, the Appellant conversely holds a duty to prove all the facts and assertions on which he intends to rely in these proceedings, also to the

comfortable satisfaction of the Panel. Importantly, should an Article FDC violation be confirmed by the Panel, the Appellant bears the burden of persuading the Panel that the sanction imposed on him by FIFA is disproportionate to his impugned behaviour.

135. As additional legal basis for the foregoing, the Panel adheres to Article 8 of the Swiss Civil Code (“SCC”) which states that unless the law provides otherwise the burden of proving the existence of an alleged fact rests on the person who derives rights from that fact, as well and to CAS jurisprudence providing : *“in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them (.). The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some fact and persuade the deciding body, it must actively substantiate its allegations with convincing evidence”* (e.g. CAS 2003/A/506, para 54; CAS 2009/A/1810&1811, para 46; and CAS 2009/A/1975, paras 71ff).

a) **Did the Incidents constitute a violation of Article 13 FDC?**

136. Any decision rendered by a sports-related body, including a decision which imposes a sanction on somebody, must adhere to the principle of legality, and thus necessitates a distinct and unequivocal regulatory foundation.
137. Formally, neither Party disputes that a finding that an individual subject to the FIFA FDC has violated Article 13 FDC constitutes sufficient legal basis for imposing a sanction pursuant to Articles 6 and 25 FDC.
138. Article 13 FDC reads:

*“13. Offensive behaviour and violations of the principles of fair play*

*1. Associations and clubs, as well as their players, officials and any other member and/or person carrying out a function on their behalf, must respect the Laws of the Game, as well as the FIFA Statutes and FIFA’s regulations, directives, guidelines, circulars and decisions, and comply with the principles of fair play, loyalty and integrity.*

*2. For example, anyone who acts in any of the following ways may be subject to disciplinary measures:*

- a) violating the basic rules of decent conduct;*
- b) insulting a natural or legal person in any way, especially by using offensive gestures, signs or language;*
- c) using a sports event for demonstrations of a non-sporting nature;*
- d) behaving in a way that brings the sport of football and/or FIFA into disrepute;*
- e) actively altering the age of players shown on the identity cards they produce at competitions that are subject to age limits.”*

139. As already mentioned, the Parties do not, in general, dispute the factual occurrence of the Incidents.
140. In the Appealed Decision, the Appeal Committee confirmed that “*all Incidents constituted individual breaches of art. 13 FDC, and assessed collectively clearly damages the image of the FIFA and the sport of football more generally.*” Moreover, the Appeal Committee found itself “*comfortably satisfied that the Appellant had behaved in a manner contrary to the principles enshrined under art. 13 FDC, both during and after the Match, as rightly concluded by the first instance.*”
141. Based on the Appealed Decision and the Parties’ submissions, and as set out above, the first divisive issue to be decided by this Panel is whether the Incidents, either individually or collectively, “violated the basic rules of decent conduct” and/or whether the Incidents “brought the sport of football and/or FIFA into disrepute”, thereby violating Article 13 (2) a) and d) FDC respectively?
142. Article 13 FDC appears to be drafted in a wide and generic way to ensure that varying prohibited behaviours can be captured and disciplined under the same, including in a situation where the prohibition of unforeseeable behaviour is not captured by other FIFA rules. As regulations must generally be interpreted using their plain language, the Panel plainly interprets Article 13 FDC as purposely setting out a very wide range of possible breaches and behaviours in relation to integrity, safeguarding, ethics and rules of “basic decency” that are subject to discipline under article 13 (2) a) FDC.
143. The Panel further notes for the sake of good order and as set out in CAS 2007/A/1291 that the mere fact that behaviour can “potentially” bring football and/or FIFA into disrepute is not sufficient to constitute a violation of Article 13 (2) d) FDC. In other words, for the Appellant’s behaviour in the relation to the Incidents to constitute a violation of Article 13 (2) d) FDC, they must as a matter of fact have caused the public opinion of the sport and/or of FIFA be negatively affected. FIFA bears the burden of establishing the same.
144. Ultimately, a Panel must first determine if the conduct in question is captured or prohibited by Article 13 FDC, and once a violation is established, it is in the next phase of the legal assessment that a Panel may then determine what reasonable and proportional discipline may arise out of the violation.
145. As found by the FIFA Appeal Committee and the FIFA DC, which is undisputed by the Parties, in the first step of the Article 13 FDC assessment, the Appellant’s behaviour and role in the Incidents must be analysed from the perspective of a “reasonable and objective observer within the context in which they occurred” to determine if Article 13 FDC violations occurred.
146. The Panel appreciates that “*reasonable and objective*” observers might not all have the same view or the same understanding of basic decency or of how incidents and the context in which they occur may bring sport into disrepute. A “*reasonable and objective*”

observer of today might not have the same view as a “*reasonable and objective*” observer might have had years ago or, perhaps, will have in the future, The Panel also acknowledges that cultural, religious or geographical differences may play a significant role in the way incidents and context are assessed by a “*reasonable and objective*” observer. This is all the more evident for incidents which occur in connection with global sporting events.

147. The Panel refers to the reasoning of the panel in CAS 2016/A/4788, which to some extent can be relied upon in analogy to the Incidents, when it states (regarding discriminatory chants/words):

*“even if in many of the cases this kind of words or expressions are not used with the intention of offending a specific person but, in any case, they are however deeply offensive and harmful to third parties and groups of people. Therefore, in the Panel’s view, even if those expressions and words are not used with the intention to discriminate or offend the specific player or players to which they are addressed, they still can be considered discriminatory or insulting in nature.*

*In particular, the fact that the meaning and the use of a word could have been trivialized by part of the society and that in some contexts or moments such word is being used without intending to insult, disrespect or humiliate to whom it is addressed does not mean that the word itself has lost its discriminatory, insulting and harmful connotation, or that the expression is harmless and legitimate. (...) In this regard, the Panel agrees with the opinion of CONAPRED and considers that an insulting word like “Puto” does not lose its negative or insulting nature and harmful effect just because at a given time the use of such word becomes a custom, a habit or even a tradition.”*

148. Regardless of differing cultural perspectives and the dynamic ever-evolving concept of a “*reasonable and objective observer*”, the Panel finds that the Appellant’s behaviour and the Incidents that occurred must be analysed from the perspective of a reasonable and objective observer “of today” within the context in which they occurred.
149. The Panel is mindful of the impact that social media may have had in impacting how and to what extent a certain incident or statement is perceived by the public. In this regard, the Panel appreciates that the media coverage of the Incidents and the Appellant was very comprehensive and that similar incidents involving different persons at a different venue would likely not have occasioned the same media coverage and public discourse. This, to the Panel renders the contextual element of the assessment becomes even more important.
150. Indeed, the Incidents occurred in connection with the Match, which is the single most prestigious women’s football match in the world, on the biggest stage, with world-wide viewership and streaming numbers in the multi-millions. Additionally, the Appellant, as then President of the RFEF and Vice-president of UEFA, was already exceedingly familiar with garnering media attention.

151. As FIFA in no way controls or has significant influence over the media, the Panel finds that the media and public perception and reaction to the Incidents is, as FIFA argues, relevant to the Panel's assessment of the Incidents, notably in terms of the possible disrepute and negative impact they brought to FIFA and to football, and woman's football to be even more precise.
152. The Panel now turns its attention to each of the Incidents and assesses first individually, and if needed collectively, if they amount to breaches of Article 13 FDC.

#### The Kiss Incident

153. The Appellant has, albeit not in a timely manner, expressly acknowledged that the Kiss should not have happened and that under the circumstances he should have maintained a higher level of composure as President of the RFEF. He submits that he should never have kissed Ms Hermoso and that it was in no way a display of sexual aggression. But, to him, the kiss was consensual.
154. To FIFA, the Kiss was not consensual. In making this assertion, FIFA relies on Ms Hermoso's statement, among other evidence, including the testimony of its expert witness Mr Mendoza, a lip reader who rebutted the Appellant's version of what was said at the time notably refuting that the Appellant asked permission prior to kissing the Player. To FIFA the Kiss was a blatant example of patriarchal abuse of power and dominance which has no place in women's football and certainly not on the biggest stage possible.
155. The Panel found Mr Mendoza's lip-reading testimony to be compelling. However, whether the Appellant flatly affirmed he would kiss the Player without seeking consent ("*Dame un Besito- give me a kiss*"), as Mr Mendoza opines and the Player has explained occurred, or whether the Appellant asked permission to kiss her, and the Player consented ("*Pues Vale – ok then*"), as the Appellant submits she did, this is not seminal to the Panel's finding of whether or not a violation of Article 13 FDC occurred.
156. The Panel finds that because of the way the Kiss was given (holding the Player's head firmly with two hands with no possibility to say no or indeed consent) what was said matters little to the Panel. The Panel finds, on the evidence, that the Player was given no option and had no possibility not to consent to the Kiss given the factual circumstances in which it was given. Therefore, there is no need to assess the weight to be given or the extent of the probative value accorded to Mr Mendoza's testimony because in the end, it is not determinative to the Panel's findings vis-à-vis FIFA's standard of proof under Article 13 FDC.
157. Relying on Ms Hermoso's compelling and persuasive statement (reproduced in its entirety *supra*) and consistent stance, and the other evidence in the case file and expert evidence heard at the hearing, the Panel finds that the Kiss was not consensual.
158. The Appellant has neither discharged his burden of proving that he asked for permission before the Kiss nor his burden of proving that Ms Hermoso fully consented to the same

clearly and voluntarily. In any event, the Panel finds that the Player was in no position to clearly and fully voluntarily consent to such alleged request. Furthermore, and for the sake of good order, the Panel notes, that even the act of asking for permission could in the Panel's view constitute a breach of Article 13 FDC considering the context of the situation, the relation of hierarchy between the Parties and the position of the Appellant.

159. The Panel accepts FIFA's evidence, *inter alia*, that at the time and in the context in which the Kiss occurred, Ms. Hermoso was very exposed and vulnerable and in a very difficult situation. The Spanish team had just won the Women's World Cup, and the Appellant was the President of the RFEF. A hierarchical order/material power imbalance existed between them. He grabbed his head with two hands with the clear intention of kissing her during the medal ceremony in front of millions of spectators. He then effectively kissed her on the lips, which was impossible for her to avoid in that context. She was given no choice, and she had no choice.
160. While the Panel acknowledges that in the videos submitted by the Appellant, Ms Hermoso seems to be laughingly brushing off the Kiss incident in the locker room and on the team bus, the Panel accepts that the timing and context of those videos was not one when she wanted to bring attention to this issue, and also not one when she would have had the time to process what had occurred. As she stated, they had just won the World Cup, and it was a time for celebration. The Panel finds that Ms Hermoso has consistently defended her stance, has pressed criminal charges against the Appellant and has always stood firm in her description of what happened, expressing her lack of consent and discomfort. The Panel thus rejects the Appellant's submissions that Ms Hermoso's behaviour immediately after the Kiss supports his allegation that the Kiss was consensual and that it was not a big deal for her.
161. The Panel is comfortably satisfied that the Appellant kissed Ms Hermoso without her clear and voluntary consent. As the Panel sees it and on the perception of a reasonable and objective observer within the context in which it occurred, this constitutes offensive behaviour contrary to the principles of basic decency and integrity enshrined under Article 13 (1) and 13 (2) a) FDC.
162. Furthermore, taking into consideration the media coverage and the negative public opinion which followed as well as FIFA's submissions in this regard, the Panel is comfortably satisfied that the Appellant's behaviour towards Ms Hermoso tarnished the Match, the medal ceremony, FIFA and football in general, thus bringing them all into disrepute pursuant to Article 13 (2) d) FDC.
163. Based on the above, the Panel finds that the Appellant's behaviour in connection with the Kiss Incident does constitute a violation of Article 13 FDC.

#### The Genitals Incident

164. The Appellant acknowledges that it was an "*ugly gesture*" and that it should not have happened; but submits that for him to grab his genitals in the context of the Spanish



women's World Cup win was nothing more than a celebratory cultural expression in Spain to demonstrate that through effort and hard work, an endeavour has been successfully performed. Moreover, also contextually, the gesture was made "*inter amicus*" towards Mr Vilda and should never be perceived as insulting.

165. FIFA submits that the Appellant's repeated indecent and vulgar gesture, which FIFA argues is not a commonly accepted cultural celebration in Spain, and the context in which it was made – in front of millions of viewers, beside dignitaries, notably the Queen and Princess of Spain - can only be considered a violation of the rules of basic conduct and decency, and that the widespread attention it received undoubtedly brought FIFA and the sport of football into disrepute.

166. The Panel may accept that in certain limited circles, the expression "*Óle tus huevos*" might typically be used by people in Spain to express admiration for a job well done. However, and as set out in CAS 2016/A/4788 (cited at para 98 *supra*),

“[...]  
*the fact that the meaning and the use of a word could have been trivialized by part of the society and that in some contexts or moments such word is being used without intending to insult, disrespect or humiliate to whom it is addressed does not mean that the word itself has lost its discriminatory, insulting and harmful connotation, or that the expression is harmless and legitimate.*”

167. In this regard, the Panel agrees with FIFA that the gesture of grabbing one's genitals, besides being vulgar, can be perceived to a reasonable and objective observer at least as being offensive, but also as an assertion of dominance and power, serving to reinforce traditional gender roles in which men are seen as dominant figures.

168. The Panel finds that even if the Appellant grabbed his genitals only to show support and congratulate Mr Vilda, quite simply, the Appellant chose the wrong time and the wrong place to do so.

169. Based on the above, the Panel agrees with the Appeal Committee that by grabbing his genitals in one of the most exclusive areas of the stadium during the most important match of the World Cup and in the ultimate presence of the most prominent dignitaries, the Appellant must be considered, from the perspective of a reasonable and objective observer, to have contravened the basic rules of decency.

170. Moreover, taking into consideration the media coverage and the condemning public opinion which followed, and FIFA's ample submissions relating the same, the Panel finds that the Genitals Incident also brought football and/or FIFA into disrepute pursuant to Article 13 (2) d FDC.

171. To dispel the Appellant's allegations in this regard, the Panel notes that whether similar gestures have been sanctioned in the past was of no relevance to its assessment. Every case needs to be assessed on its merits and within its own context. Certainly, none of the

other examples relied upon by the Appellant can be compellingly compared to the context in which he made the gesture in this case.

172. Based on the above, the Panel finds that the Appellant's behaviour in connection with the Genitals Incident constitutes a violation of Article 13 FDC.

#### The Carrying Incident

173. The Appellant acknowledges that while it should not have happened, the stadium was empty at the time and Ms Castillo never appeared to feel threatened or uncomfortable with the act. He submits that for him to carry her on his shoulder was nothing more than an expression of happiness, comparable to when the Appellant carried the then coach of the Men's national team in 2020.
174. FIFA submits that it is but another indecent and sexist example of the Appellant exhibiting his dominance over players by acting without their consent and without heeding any semblance of decorum or propriety.
175. While the Panel appreciates that the Carrying Incident might have been, as alleged by the Appellant, a mere expression of happiness, this behaviour is not one which should be condoned by a high ranking official. The Panel accepts FIFA's submission that officials who hold positions of authority are viewed as role models within the sport and that when such officials engage in misconduct such as making indecent gestures or displaying sexist behaviours towards female players, like carrying them over their shoulder, they breach the core principles of decency and respect that FIFA mandates.
176. The Panel finds that while perhaps not egregious on their face (e.g.: carrying a player over one's shoulder), such actions by officials must not be normalized. Rather, they are particularly egregious because the behaviour of officials sets a tone for what is perceived as appropriate conduct both on and off the field. Power imbalances are everywhere in sport. Actions and microaggressions that reinforce the same by disrespecting women are offensive and prohibited under Article 13 FDC. For the (male) President of a federation to carry a (female) player over his shoulder without her consent is not appropriate or decent conduct at any time. It would serve a great injustice to women's sport and to FIFA's efforts to promote equality and respect among players and fans alike to find otherwise.
177. The Panel also notes that the Appellant was fully acquainted with celebration protocols and aware of the exemplary behaviour expected from him as an extremely high ranking official in the final of the Women's World Cup. Nevertheless, the Panel finds that the Appellant engaged in physical contact with a female football player under his leadership by carrying her over his shoulder in violation of the rules of basic conduct thus underlining the intrinsic power imbalance between the two.
178. Based on the above, and even if the Panel does not find the Carrying Incident as egregious as the Kiss or Genitals Incident, the Panel finds that the Appellant's behaviour in

connection with the Carrying Incident and the context in which it occurred does constitute a violation of Article 13 FDC.

#### The Peck Incident

179. The Appellant submits that it is entirely surprising for him to give a Player a peck on the cheek has been perceived as a violation of Article 13 FDC since it is not only a global expression of appreciation, but also a way of greeting between men and women in Spanish culture.
180. FIFA argues that the peck was unsolicited and another example of the Appellant exhibiting his dominance and power over players. Ms Carmona was in the middle of giving an interview when the Appellant, again without her consent and without thought as to the consequences, exhibited his dominance by kissing her on the cheek, as though he was free to do as he pleased.
181. The Panel accepts that a peck on the cheek would not in many circumstances be condemned. Nonetheless, as also mentioned above, the Appellant was fully acquainted with celebration protocols and aware of the exemplary behaviour expected from him as an extremely high-ranking official in the final of the Women's World Cup and should have refrained from such behaviour.
182. Whether or not the player in question was comfortable with the situation does not, in the Panel's view negate that, from the perspective of a reasonable and objective observer, for the highest ranking official of a federation to give a female player an unsolicited peck on the cheek whilst she was giving an interview is contrary to basic decent conduct.
183. Based on the above, and even if the Peck Incident is to be considered the least serious of the four, the Panel finds that the Appellant's behaviour in connection with the Peck Incident and the context in which it was given also constitutes a violation of Article 13 FDC.

#### Subsequent behaviour and further considerations

184. Without having to address whether the Appellant's behaviour subsequent to the Incidents could be considered as an additional violation of Article 13 FDC, the Panel finds that the Appellant's initial defiance and accusatory declarations in the media and other mediums in which he *inter alia* attacked Ms Hermoso's credibility and called out "false feminists" did not help in any way to restore the disrepute that he had brought on football and FIFA.
185. FIFA has submitted that "*this is a moment of reckoning for football as a whole*" and that "*The world is watching and how we decide will affect how leaders should act*". The Panel agrees. For a national federation President to forcefully kiss one of his players on the lips without her consent, to grab his genitals in public and to take liberties like pecking and carrying athletes over his shoulders should not and must not be normalized. Such actions, even in the heat of the moment, cannot simply be treated as insignificant, certainly even

more so because of the circumstances and context in which they were done. What a normal and reasonable observer perceives as indecent cannot be dismissed as a simple act of euphoria. Human standards of integrity and decency and decorum must always prevail.

186. Indeed, the Panel appreciates the importance of celebration and the joy that may be felt after winning big games, championships and medals and does not in any manner wish to dampen such festivities or their raw and euphoric nature. They are to a very large extent natural and human ways of responding to sporting success and life success. However, such celebrations must remain within a reasonable range of civility, decency and decorum. Celebrations must not be offensive, must not violate rules of decent conduct and must not bring the sport of football or FIFA into disrepute – that is precisely what Article 13 FDC expressly provides. Accordingly, where celebrations do fall well outside the boundaries of acceptable and decent behaviour, then pursuant to Article 13 FDC they amount to violations that are subject to discipline.
187. The Panel thus finds that the Appellant’s behaviour cannot be dismissed as a mistake in the heat of a moment of euphoria over winning a very important match.
188. The Appellant’s behaviour vis-à-vis each Incident thus constitutes a violation of Article 13 FDC and is subject to discipline.
189. Having answered the first question in the affirmative the Panel now turns to the second issue for determination.

**b) Is the sanction imposed on the Appellant for violation of Article 13 FDC proportionate?**

190. Regardless of their severity, established violations of Article 13 FDC are subject to sanctions under Article 6 FDC.
191. Pursuant to Article 6 FDC, a violation of Article 13 FDC may be disciplined with sanctions ranging from a mere warning to life bans. While, to some, this provision may be questioned as lacking legal certainty, to the Panel it is quite the opposite. As provided *supra* there is a very wide range of prohibited human behaviours that might be subject to discipline under Article 13. They cannot be exhaustively listed. Conversely, it is impossible to exhaustively list all the possible sanctions applicable to each prohibited behaviour. The sections of Article 13 FDC pertinent to the Panel’s determination have been drafted to ensure, *inter alia*, that all offensive and indecent behaviours and all actions (or inactions) which may bring FIFA and the sport of football into disrepute may be disciplined – so long as the discipline imposed is reasonable and proportional – and so long as the body which imposes the discipline respects Article 25 FDC.
192. Article 25 FDC reads as follows:  
*“1. The judicial body determines the type and extent of the disciplinary measures to be imposed in accordance with the objective and subjective elements of the offence, taking into account both aggravating and mitigating circumstances.*

2. *Disciplinary measures may be limited to a geographical area or to one or more specific categories of match or competition.*
  3. *When determining the disciplinary measure, the judicial body shall take into account all relevant factors of the case, including any assistance of and substantial cooperation by the offender in uncovering or establishing a breach of any FIFA rule, the circumstances and the degree of the offender's guilt and any other relevant circumstances.*
  4. *In exercising its discretionary powers, the relevant FIFA judicial body may scale down the disciplinary measure to be imposed or even dispense with it entirely.*
193. The FIFA Judicial Bodies' assessment of the evidence in this matter and application of relevant FIFA Regulations, cf. Article 13, 6 and 25 FDC, resulted in a three-year ban being imposed upon the Appellant as a reasonable and proportionate sanction for his Article 13 breaches. According to FIFA the sanction accounts for the fact that notwithstanding that he was President of RFEA and VP of UEFA and was at the pinnacle of influence in global football, the Appellant used his platform in way that was demanding, indecent and abusive. As such, FIFA submits that his actions violated fundamental principles of decency and brought FIFA and the entire sport of football into disrepute.
194. The Panel accepts, as FIFA submits, that its judicial bodies are owed deference, especially in relation to the nascent jurisprudence related to safeguarding and integrity issues. In this regard, the Panel recognizes that FIFA wishes to use this case as a deterrent and a cautionary tale to avoid Article 13 prohibited behaviours akin to those of the Appellant being normalized within the world of football and sport in general. As FIFA stated during their opening statements, *"this case and its outcome transcends football. It is about justice and the examples FIFA wants to set for football, sport and society"*.
195. The principle of deference is well-established in CAS jurisprudence (cf. CAS 2022/A/9053 at para 123). CAS panels have often found that they should exert self-restraint in reviewing the level of a sanction imposed by a first instance disciplinary body (cf. CAS 2017/A/5086 at para 206, CAS 2015/A/3875 at para 108, CAS 2012/A/2824 at para 127, CAS 2012/A/2702 at para 160, CAS 2012/A/2762 at para 122, CAS 2009/A/1817 & 1844 at para 174, CAS 2007/A/1217 at para 12.4).
196. Moreso, according to the CAS jurisprudence, CAS panels should reassess first instance disciplinary sanctions only if they are evidently and grossly disproportionate to the offence or if a different conclusion than that of the first instance body is reached on the substantive merits of the case (cf. CAS 2017/A/5086 at para 206, CAS 2009/A/1817 & 1844 at para 174 with references to further CAS case law, CAS 2012/A/2762 at para 122, CAS 2013/A/3256 at paras 572-572, CAS 2016/A/4643 at para 100, CAS 2019/A/6344 at para 501).
197. The above does not mean that CAS's powers are somehow formally limited. Rather, it means that – far from excluding or limiting the power of a CAS panel to review *de novo* the facts and the law of the dispute at hand (pursuant to Article R57 of the CAS Code) – a CAS panel should tend to pay respect to a fully-reasoned decision and would not easily

“tinker” with a well-reasoned sanction, not considering it proper to just slightly adjust the measure of the sanction (cf. CAS 2015/A/3875 at para 109, CAS 2011/A/2645 at para 94, CAS 2011/A/2515 at paras. 66-68; CAS 2011/A/2518 at para 10.7, CAS 2010/A/2283 at para 14.36).

198. In other words, according to one current of CAS precedent – CAS Panel’s should defer to the sanction imposed by first instance bodies where the same conclusion is reached on the substantive merits of case, so long as the sanction imposed is not evidently or grossly disproportionate.
199. According to another current, some CAS Panels applied a lower threshold of review: “[t]here is well-recognized CAS jurisprudence to the effect that whenever an association uses its discretion to impose a sanction, CAS will have regard to that association’s expertise but, if having done so, the CAS panel considers nonetheless that the sanction is disproportionate, it must, given its *de novo* powers of review, be free to say so and apply the appropriate sanction” (see CAS 2022/A/9053, para 274). Similarly, in yet another CAS decision, the panel stated that the jurisprudence according to which CAS should reassess sanctions only if they are evidently and grossly disproportionate to the offence “*should be interpreted (and applied) with care*” since CAS “*powers to review the facts and the law of the case are neither excluded nor limited*” (see CAS 2018/A/5808).
200. Given the unique nature of the case at hand and that Article 13( 2) d) FDC is partly the basis upon which the sanctions have been imposed, FIFA is best placed to assess the disrepute that behaviours have brought to the sport it governs worldwide and to its organisation. Thus, this Panel favours the “evidently and grossly disproportionate approach” in its standard of review.
201. In any event, and as set out below, regardless of whether this Panel’s standard of review to justify amending the FIFA Disciplinary Bodies’ sanction is that it was “*evidently and grossly disproportionate*” or “*disproportionate*”, the outcome would be the same.
202. In the Appealed Decision, the Appeal Committee presented a detailed discussion and explanation as to why it deemed the sanction imposed on the Appellant by the FIFA DC to be appropriate and proportionate. As such, to arrive at its decision, this Panel may analyse the provided explanation along with its own reasons in assessing the appropriate measure of the sanction in accordance with the principle of proportionality.
203. With respect to the factors to consider in determining a sanction, the Panel, as other panels before it, finds the reasoning of the panel in CAS 2019/A/6219 (and in CAS 2019/A/6344) helpful, *mutatis mutandis*:

*“In the Panel’s opinion [...] when imposing a sanction, account has to be taken [...] of the following relevant factors:*

- the nature of the violation;*
- the impact of the violation on the public opinion;*
- the importance of the competition affected by the violation;*

- *the damage caused to the image of FIFA and/or other football organizations;*
- *the substantial interest of FIFA, or of the sporting system in general, in deterring similar misconduct;*
- *the offender's assistance to and cooperation with the investigation;*
- *the circumstances of the violation;*
- *whether the violation consisted in an isolated or in repeated action(s);*
- *the existence of any precedents;*
- *the value of the gift or other advantage received as a part of the offence;*
- *whether the person mitigated his guilt by returning the advantage received, where applicable;*
- *whether the offender acted alone or involved other individuals in, or for the purposes of, his misconduct;*
- *the position of the offender within the sports organization;*
- *the motives of the violation;*
- *the degree of the offender's guilt;*
- *the education of the offender;*
- *the personality of the offender and its evolution since the violation;*
- *the extent to which the offender accepts responsibility and/or expresses regret".*

204. Whilst the above list is a helpful guideline, no criteria however detailed, should obscure the fact that a sanction can only be applied to a particular prohibited conduct on a case-by-case basis in consideration of all the evidence, circumstances, severity and context of the violation. This is even more important when assessing the appropriate sanction to apply to violations of a regulatory provision like Article 13 FDC, which prohibits a wide range of behaviours and ethical or integrity breaches like those established in this unique case.
205. Similar principles have been raised in earlier CAS awards which have also found that while CAS rulings can be a useful guide, each case must be decided on its own merits and “*although consistency of sanctions is a virtue, correctness remains a higher one; otherwise unduly lenient (or, indeed, unduly severe) sanctions may set a wrong benchmark inimical to the interests of sport*” (see CAS 2011/A/2518, para 10.23, see also CAS 2019/A/6344).
206. Thus, there is no “standard” sanction to be found for a violation of Article 13 FDC. While, in time, cases with similar factual or evidentiary circumstances might be heard and decided, and perhaps allow for future panels to consider and be guided by the sanctions imposed in those similar circumstances, ultimately, given what can only be described as the inherently unique and varying nature of many Article 13 ADC violations, like the ones in the case at hand, each individual matter will need to be determined on its face.

#### Individual vs collective assessment

207. Turning to the Appellant's contention that FIFA erred in considering his violations collectively, the Panel notes that applicable FIFA regulations, particularly the FDC, are

silent on the issue of whether each violation of the FDC must be sanctioned independently. To be clear, there is nothing in the FDC which provides that each individual violation committed is to carry its own sanction.

208. As such, the Panel does not find that the FIFA DC, and subsequently the Appeal Committee, erred when not imposing individual sanctions for each of the Incidents. Instead, the sanction imposed on the Appellant by the judicial bodies correctly covered and considered all four Incidents.
209. In this regard, as argued by FIFA, the Panel relies on the principle set out in CAS 2017/A/5393, para 236 and applies it here by analogy. Even if the Panel does have some reservations as to whether the Peck or Carrying Incident warrant the imposition of a 3-year suspension – this does not warrant a reduction of the period of suspension imposed, particularly considering that the more severe Article 13 FDC breaches, the Kiss and the Genitals Incidents, have been considered proven.

#### The Article 25 FDC assessment

210. As mentioned above, pursuant to Article 6 FDC a wide range of sanctions may be imposed as discipline for violations of Article 13 FDC.
211. Ultimately, this is where a (disciplinary) panel's role becomes determinative. Once a violation has been established, pursuant to Article 25 FDC, a thorough analysis of all the available evidence must be conducted including, the context of the violation, the spirit of the regulations and the conduct at the time of the violation and post violation, all of which assist the panel to assess what may be a reasonable starting point, and/or mitigating and aggravating elements may be taken into consideration by the panel in making a determination of the appropriate, reasonable and proportionate sanction to impose as a result of the confirmed violation.
212. Under the current FIFA regime, the first instance panel(s) entrusted to make this determination are the FIFA judicial bodies, who – given their position as the regulators of their sport – are in the best position to make this initial thorough assessment. The fact that similar actions and/or gestures might have taken place in the past without being sanctioned and, if so, merely with a fine, as alleged the Appellant alleges, does not alter this. To the Panel, FIFA as the regulator of its sport, is best placed to determine what prohibited behaviours it does not wish to normalise and condone and what reasonable measures may be imposed to discipline such behaviours.
213. Article 25 FDC provides that a panel must *determine the type and extent of the disciplinary measures to be imposed in accordance with the objective and subjective elements of the offence, taking into account both aggravating and mitigating circumstances.*
214. The FIFA judicial bodies have in their respective Decisions conducted this assessment to arrive at the three-year sanction they have imposed on the Appellant. The Appeal



Committee even stated that “[...] *a harsher sanction could properly have been imposed but was mindful that it was bound by the decision of the first instance.*”

215. The Panel shall now conduct its own assessment to determine if the measures imposed and confirmed by the judicial bodies should be amended or overturned for lack of proportionality.
216. While there are four separate offences (together the Incidents), as provided above, the Panel is to conduct the preponderance of its assessment based on the more serious violation(s): the Kiss Incident and the Genitals Incident, which are both considered proven.
217. Pursuant to Article 25 (1) FDC, the Panel first notes several circumstances and factors which must be taken into consideration as mitigating circumstances when deciding on the reasonableness and proportionality of the sanction. The list below also includes a consideration of the various factors set out in CAS 2019/A/6219 at para 154 cited *supra*:
  - The Appellant had not been previously sanctioned for any disciplinary violations.
  - The Incidents occurred in connection with the joy and celebration over winning the World Cup, and it has not been proven to the Panel that the Appellant did in fact have any sexual or derogatory intentions when acting as he did.
  - While the overall testimony provided by Mr. Sanchez, the Appellant’s expert, is not determinative, the Panel accepts his opinion that to a reasonable observer the Kiss was not violent or sexual.
  - The Kiss in the Panel’s view was not a sign of violence.
  - Although tardy, the Appellant apologized for his actions.
  - To some objective observers with lasting perceptions of what was reasonable or acceptable in the past, the Kiss has been overreacted to.
  - To some objective observers with lasting perceptions of what reasonable behaviour in the past, Ole Tus Huevos is a common celebration of success and has been overreacted to.
218. As did the FIFA Appeal Committee, the Panel finds several factors in connection with the Incidents which serve as aggravating circumstances when deciding on whether the sanction imposed is reasonable and proportional. These clearly overshadow the mitigating circumstances. The list below also includes a consideration of the various factors set out in CAS 2019/A/6219 cited at para 154 *supra*:
  - The Incidents occurred in connection with the final of the FIFA Women’s World Cup Australia and New Zealand 2023 and were, at least as far as some of them are concerned, broadcast live to a record-setting number of viewers in addition to the fans at the stadium.
  - The Appellant was, at the time of the Incidents, the President of RFEF and Vice-President of UEFA, i.e. one of the highest-ranking officials in European football.
  - The Appellant’s behaviour included not one but four separate established violations of Article 13 FDC. This was not a situation that involved one isolated incident.

- The public opinion and reaction to the Incidents, particularly the Kiss Incident, was overwhelmingly critical and condemning towards both the Appellant and FIFA.
  - The Kiss, the Peck and The Carrying Incidents may each serve as examples of gender-based micro-aggressions. Behaviour which includes actions or language that discriminate or demean any individual based on gender is particularly damaging to the reputation of football and of FIFA.
  - FIFA and the sports world in general, have a profound and legitimate interest in protecting the image of football and making sport safe for all genders. The Appellant's behaviour has jeopardized FIFA's interests by tarnishing the today's public opinion of the sport.
  - The Kiss Incident and the Genitals Incident and the disrepute they have caused to the sport constitute serious violations of Article 13 FDC.
  - Even though the Appellant subsequently publicly stated that the majority of the Incidents should not have happened and that, because of his position he should have maintained the highest level of composure, such statements were made relatively late after the Incidents occurred and, at least in the Panel's view, did not afford much assistance to restoring the damage inflicted on FIFA and football, as they did not appear to be wholeheartedly genuine or remorseful. In fact, the Appellant himself stated to media outlets "*I have no other choice but to apologize*".
  - The Appellant's initial and persistent defiance, accusatory declarations, attacks on and vulgar dismissal of "false feminists", "idiots and stupid people" and "assholes" did not serve him.
  - While the Appellant has conceded that his actions were not those of a professional in his position, FIFA submits that his apologies and defence, anchored in self-preservation, were given at the expense of the integrity of the sport and those he harmed. On the evidence, the Panel favours FIFA on this point and agrees that the Appellant's conduct post-Incidents amount to aggravating circumstances.
219. Accordingly, even if it does not find each Incident to be equally severe or deserving of a three-year ban, the Panel sees no reason to consider the sanction imposed on the Appellant as discipline for all four Incidents to be grossly disproportionate or even disproportionate when taking into consideration the totality of the circumstances. The Appealed Decision is well-reasoned and takes into consideration most, if not all, the facts and circumstances that the Panel also found material in its assessment of the sanction imposed on the Appellant.
220. For the sake of good order, it must also be noted that the Panel neither finds that the suspension can *per se* be considered as representing the "end of the Appellant's career" nor can it be considered to violate any applicable international standards of human rights, specifically the fundamental right to freely exercise a profession or any other fundamental rights of the Appellant. The Panel is aware that in individual cases and under certain circumstances, imposing a multi-year ban on an athlete - who has a short-term career - could perhaps amount to a disproportionate suspension because it could end the athlete's career (e.g. because qualifying competitions or camps will occur before the end of the period of ineligibility whose successful completion is necessary for competing in the next season or in the future thereby effectively resulting in a longer prohibition from

competition). However, that the suspension imposed on the Appellant might end his football-related career is in no way apparent and/or has not been established the present case.

221. Based on the above, the Appellant's appeal is dismissed, and the Appealed Decision is confirmed.

**X. COSTS**

(...).

## **ON THESE GROUNDS**

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

1. The appeal filed on 3 March 2024 by Mr Luis Rubiales against the decision rendered by the FIFA Appeal Committee on 16 January 2024 is dismissed.
2. The decision rendered by the FIFA Appeal Committee on 16 January 2024 is upheld.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland  
Date: 21 February 2025

## **THE COURT OF ARBITRATION FOR SPORT**

Lars Hilliger  
President of the Panel

Mr Martin Schimke  
Arbitrator

Ms Janie Soublière  
Arbitrator