CAS 2022/A/8598 Hungarian Football Federation v. FIFA

ARBITRAL AWARD

rendered by

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President:	Mr Hendrik Willem Kesler, Attorney-at-Law, Enschede, The Netherlands
Arbitrators:	Mr Attila Berzeviczi, Attorney-at-Law, Budapest, Hungary
	Mr Jan Räker, Attorney-at-Law, Stuttgart, Germany
Clerk:	Ms Alexandra Veuthey, Attorney-at-law, Lausanne, Switzerland

in the arbitration between

Hungarian Football Federation (HFF), Budapest, Hungary

Represented by Mr Thomas Hochstrasser and Ms Anja Vogt, Attorneys-at-Law with Niederer Kraft Frey, Zurich, Switzerland

Appellant

v.

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

Represented by Mr Miguel Liétard Fernández-Palacios, Director at FIFA Litigation Department and Mr Alexander Jacobs, FIFA Senior Legal Counsel

Respondent

I. PARTIES

1. The Hungarian Football Federation ("HFF" or the "Appellant") is the governing body of football in Hungary. It is a member of the Fédération Internationale de Football Association. Its headquarters are located in Budapest, Hungary.

2. The Fédération Internationale de Football Association ("FIFA" or the "Respondent") is the international governing body of football at worldwide level, headquartered in Zurich, Switzerland.

3. The Appellant and the Respondent are referred to collectively as the "Parties".

II. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations based on the Parties' written and oral submissions and evidence adduced during the procedure. Additional facts and allegations found in the Parties' written and oral submissions and evidence may be set out, where relevant, in connection with the legal discussion that follows.

5. On 2 September 2021, a football match was played between the representative teams of Hungary and England in Budapest, Hungary, in the context of the Preliminary Competition of FIFA World Cup Qatar 2022, European Zone ("the Match").

6. In this context, the referee of the Match mentioned several incidents involving Hungarian spectators in his report, including the throw of plastic glasses and the lighting of bengals towards the pitch.

7. In addition, the match commissioner reported instances of misbehaviour of Hungarian spectators, including monkey chanting, racial slurs towards some English players, the throwing of various objects onto the pitch and the blocking of stairways in the stadium.

8. In parallel, FARE network, an organisation set up to counter discrimination in European football, submitted three videos aimed at corroborating these statements.

9. On 3 September 2021, disciplinary proceedings were opened against the HFF with respect to potential breaches of Articles 13 and 16 of the FIFA Disciplinary Code ("FDC").

10. On 8 September 2021, the English Football Association ("The FA") lodged a formal complaint in relation to several incidents that occurred during the Match, including racist abuse directed at the Players Raheem Sterling and Jude Bellingham and Assistant Coach Chris Powell, and racist abuse in the form of monkey chanting.

11. On 20 September 2021, the FIFA Disciplinary Committee passed a decision against the Appellant, whereby it decided as follows:

"1. The Hungarian Football Federation is found liable for the discriminatory behaviour of its supporters and the throwing of objects, lighting of fireworks and blocked stairways in connection with the match played on 2 September 2021 between the representative teams of Hungary and England in the scope of the Preliminary Competition for the FIFA World Cup Qatar 2022nd.

2. The Hungarian Football Federation is ordered to play its next two (2) home matches of the Preliminary Competition of the FIFA World Cup TM without spectators, the second match being suspended for a probationary period of two (2) years.

3. The Hungarian Football Federation is ordered to pay a fine to the amount of CHF 200,000.

4. The fine is to be paid within 30 days of notification of the present decision."

12. On 13 October 2021, the Appellant filed an appeal against the FIFA Disciplinary Committee's decision with the FIFA Appeal Committee.

13. On 11 November 2021, the FIFA Appeal Committee issued the operative part of its decision ("the Appealed Decision"), which confirmed the findings of the FIFA Disciplinary Committee, as follows:

"1. The appeal lodged against the decision passed on 20 September 2021 by the FIFA Disciplinary Committee is dismissed. Consequently, said decision is confirmed in its entirety.

2. The costs and expenses of these proceedings in the amount of CHF 1,000 are to be borne by the Hungarian Football Federation. The amount is set off against the appeal fee of CHF 1,000 already paid."

14. On 16 December 2021, the FIFA Appeal Committee allegedly communicated the grounds of its decision by email at 8:40pm. In its most recent submissions, the Appellant challenges, however, having received this email before 17 December 2021.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

15. On 4 January 2022, the Appellant sent a letter dated 3 January 2022 to the CAS Court Office, through his General Secretary, indicating that it *"intend[ed] to lodge an appeal"* against the FIFA Appeal Committee's decision of 11 November 2021.

16. On the same day, the CAS Court Office acknowledged receipt of this letter and stated that it *"ha[d] taken due note of [its] intention"*. It recalled the content of Articles R48 and 49 of the Code of Sports-related Arbitration (the "CAS Code"), related to the time limit for appeal and the conditions necessary for the recognition of the validity of a statement of appeal.

17. On 7 January 2022, the Appellant, represented henceforth by an external counsel, filed a document entitled "Statement of Appeal" with the CAS Court Office against the Appealed

Decision in accordance with Articles R47 *et seq*. of the CAS Code. In its Statement of Appeal, the Appellant nominated Mr Attila Berzeviczi, Attorney-at-Law, Budapest, Hungary, as arbitrator.

18. On 20 January 2022, the Respondent filed a letter with the CAS Court Office which indicated, *inter alia*, that it intended to file a request to bifurcate the proceedings in order to address the admissibility of the appeal. It argued that such appeal was filed outside the usual 21-day deadline provided for in the CAS Code. It highlighted that a bifurcation would allow the Parties to focus exclusively on the issue of admissibility in their first written submissions and avoid unnecessary work with respect to the merits of the case. It suggested that the Panel renders a preliminary (or final, as the case may be) award on this question.

19. On the same date, the CAS Court Office invited the Appellant to file its comments on the next steps of the procedure.

20. On 24 January 2022, the Respondent nominated Mr Kepa Larumbe, Attorney-at-Law in Madrid, Spain, as arbitrator.

21. On 25 January 2022, the Appellant filed a Response and objected the "Request for Bifurcation" filed by FIFA and its allegation that the appeal was filed late.

22. On 26 January 2022, the CAS Court Office observed that the Appellant had decided to file directly its submission on the admissibility of the appeal, and invited the Respondent to submit a Reply.

23. On 31 January 2022, the Appellant filed a Petition for Challenge against the nomination of Mr Kepa Larumbe, who subsequently decided to step down from acting as arbitrator in the matter at hand.

24. On 3 February 2022, the Respondent filed a Request for Bifurcation and Reply to the Appellant's comments within the imposed deadline.

25. On 4 February 2022, the Respondent complemented its Request for Bifurcation by filing the "delivery receipt" of the email sent by the FIFA Secretariat of the Appeal Committee to the Appellant on 16 December 2021.

26. On the same date, the CAS Court Office, invited, *inter alia*, the Appellant to file a short Rebuttal on the issue of admissibility if it deemed necessary.

27. On 7 February 2022, the Appellant requested the CAS Court Office to suspend the present proceedings on the merits and lift the deadline to file its Appeal Brief, previously extended, pending the constitution of the Panel and its decision on the admissibility of the appeal.

28. On 8 February 2022, the Respondent nominated Mr Jan Räker, Attorney-at-Law in Stuttgart, Germany, as arbitrator.

29. On 10 February 2022, the CAS Court Office informed the Parties that the Appellant's deadline to file its Appeal Brief would be stayed pending a decision on the Request for Bifurcation.

30. On 11 February 2022, the Appellant filed a Rebuttal to the Respondent's Request for Bifurcation.

31. On 14 February 2022, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, confirmed the constitution of the Panel as follows:

    President: Mr Hendrik Willem Kesler, Attorney-at-Law, Enschede, The Netherlands

    Arbitrators: Mr Attila Berzeviczi, Attorney-at-Law, Budapest, Hungary
    Mr Jan Räker, Attorney-at-Law, Stuttgart, Germany

32. On 17 February 2022, the CAS Court Office advised the Parties that the Panel had decided to assess the Respondent's Request for Bifurcation as a preliminary matter. In addition, the Panel decided to hold a preliminary hearing strictly limited to the Request for Bifurcation and admissibility of the appeal, and consulted the Parties about possible hearing dates.

33. On 22 February 2022, the CAS Court Office stated that the Panel would be assisted by Ms Alexandra Veuthey, CAS Clerk.

34. On 23 February 2022, after several exchanges of letters, the CAS Court Office organised a case management call in order to discuss possible hearing dates.

35. On 24 February 2022, the CAS Court Office confirmed to the Parties that, in view of their respective availabilities, a preliminary hearing addressing the Request for Bifurcation – i.e. the objection to the admissibility of the appeal – would be held by videoconference on 28 April 2022. It also invited them to provide a list of their hearing attendees, which they did.

36. On 28 April 2022, the hearing was held by video-conference. In addition to the Panel, Ms Alexandra Veuthey, CAS Clerk, and Mr Fabien Cagneux, CAS Managing Counsel, the following persons attended the hearing:

    <u>For the Appellant</u>

    - Mr Márton Vági, HFF General Secretary, witness
    - Mr István Huszár, Senior Adviser to HFF Vice-President, witness
    - Mr Thomas Hochstrasser, Counsel for the HFF
    - Ms Anja Vogt, Counsel for the HFF

    <u>For the Respondent</u>

    - Mr Miguel Liétard Fernández-Palacios, FIFA Director of Litigation
    - Mr Alexander Jacobs, FIFA Senior Legal Counsel

37. At the outset of the hearing the Parties declared that they had no objections as to the constitution of the Panel.

38. The Panel heard evidence from Mr Márton Vági and Mr István Huszár. Both of them were cross-examined and confirmed their previous written statements.

39. Mr Vági explained that he is the HFF General Secretary and that he is responsible for the daily operation of the federation. He acknowledged that he was in charge of FIFA disciplinary proceedings from the early stages of this dispute, and that FIFA bodies always communicated with the HFF international department via the same email address. He specified that he had no access to this email box, which was managed by three other employees, under the supervision of Mr Huszár. He could not provide any explanation about the exact date and time when the Appealed Decision was notified to this address, and underlined that he had only become aware of this decision thanks to Mr Huszár on Friday 17 December 2021, early in the morning. He also indicated that the HFF office hours usually extend from 8am to 4:30pm, and that Thursday, 16 December 2021, was no exception to that rule. He went on to say that the HFF offices were closed from Friday 17 December 2021 to Sunday Sunday 2 January 2022 included, which is why he only made the decision to contest the Appealed Decision and send a letter (*"statement of appeal"*) to CAS on Monday 3 January 2022. When asked by the Panel, why he was referring in this letter to the Appealed Decision *"submitted to us on 16 December 2021"*, he retorted that *"the answer* [*was*] *in the question"*. He also stated that FIFA sent the Appealed Decision without any prior notice, and had never notified any decision outside office hours in the past. Finally, he clarified that he had calculated the appeal deadline with his legal staff, which maintained that such deadline started running on 18 December 2021 and fell due on 7 January 2022.

40. Mr Huszár indicated that he is the HFF senior advisor. He explained that he is in charge of the international relations between the HFF and other federations and that he administers the email address to which the Appealed Decision was sent. He confirmed that this address is the official address used for communications with FIFA, that three other people could access the relevant email box and that the HFF staff usually left the office at 4:30pm, namely half an hour earlier than him. He maintained that he had not received any warning prior to the notification of the Appealed Decision by email, which he saw on Friday, 17 December 2021 at about 6:30am, from home on his mobile phone. He specified that the email was unread when he accessed it, and that he forwarded it to Mr Vági and to Mr Berzi (HFF Vice-President) *"immediately"* after seeing it.

41. The Parties thereafter were given a full opportunity to present their case, submit their arguments and submissions and answer the questions posed by the Panel.

42. At the end of the hearing, the Parties confirmed that they were satisfied with the hearing and that their right to be heard had been fully respected.

43. On 29 April 2022, the Appellant sent an unsolicited letter and additional exhibit to the CAS Court Office regarding the launch of FIFA's new legal portal for the handling of legal proceedings. The Appellant attempted to demonstrate, by reliance on a media release dated

25 April 2022, that FIFA itself had also concluded that its current system of communication by email was not reliable, because it did not allow proof of delivery.

44. On 5 May 2022, the Respondent contested the admissibility of this new submission and exhibit, in light of Article R56 of the CAS Code. It submitted that its content was in any case irrelevant, since the new legal portal was only part of its continuous efforts to modernise and facilitate the handling of proceedings, regardless of the validity of communications by email. It also underlined that the new system still significantly relies on email communication.

45. On 16 May 2022, the CAS Court Office informed the Parties that the Panel had decided to admit this new submission and exhibit into the file, and that the reasons for such decision would be provided in the award.

IV. PARTIES POSITIONS

46. This section of the Preliminary Award does not contain an exhaustive list of the Parties' contentions, its aim being to provide a summary of the substance of the Parties' main arguments. In considering and deciding upon the Parties' claims in this Award, the Panel has accounted for and carefully considered all of the submissions made and evidence adduced by the Parties, including allegations and arguments not mentioned in this section of the Award or in the discussion of the claims below.

A. The Appellant

47. On 4 January 2021, the Appellant sent a letter to the CAS Court Office, indicating that it *"intend[ed] to lodge an appeal"* against the FIFA Appeal Committee's decision of 11 November 2021.

48. On 7 January 2021, the Appellant filed a document entitled "Statement of Appeal", which contained the following prayers for relief:

"1. The Appealed Decision, i.e., the Decision FDD-9225 of the FIFA Appeal Committee, passed on 11 November 2021, be annulled and set aside. Alternatively, the sanction pronounced by the Appealed Decision be reduced.

2. The Respondent, Fédération Internationale de Football Association, be ordered to pay to the Appellant CHF 800'000 as compensation for the loss incurred as a result of the Appealed Decision.

3. The costs of the present arbitration, if any, be borne by the Respondent, Fédération Internationale de Football Association.

4. The Respondent, Fédération Internationale de Football Association, be obliged to pay a contribution to the legal costs of the Appellant in an amount to be determined by the Panel."

49. The Appellant did not file an Appeal Brief, since the Respondent requested the bifurcation of the proceedings, with a view to deciding the admissibility of the Appeal prior to addressing its merits.

50. The Appellant opposed the bifurcation, but took part in all exchanges of submissions thereto. It submits that its Appeal is admissible, for the following reasons.

(a) Relevant provisions related to the deadline to file an appeal with CAS

- Appeals with CAS should be lodged within twenty-one days as from the receipt or notification of the decision, according Article R49 CAS Code (2021 edition) and 58 (1) of the FIFA Statutes (October 2020 edition).

- The computation of this twenty-one-day time limit is, however, subject to exceptions, which the Respondent willingly avoids quoting:

  - Article 34 (1) of the FDC (2019 edition), which is applicable in disciplinary matters, states that time limits start running on the day following the receipt of the decision that is subject to appeal.

  - Article 34 (2) of the FDC indicates that time limits are interrupted from 20 December to 5 January inclusive.

- Additionally, this twenty-one-day time limit is not compliant with Article 75 of the Swiss Civil Code (CC), which provides for a one-month deadline.

- Article 75 CC is mandatory according to Swiss jurisprudence and legal writing, notwithstanding the jurisprudence of CAS stating otherwise (as per the numerous references mentioned).

(b) Notification of the Appealed Decision and entry into sphere of control

- The Appellant only received and/or took note of the Appealed Decision on 17 December 2021, as evidenced by the witness statements provided by its General Secretary and Senior Adviser.

- The Respondent, which carries the burden of proof, failed to establish that the HFF received the Appealed Decision on 16 December 2021, since the document that it presents as a "proof of receipt" is in fact only a "proof of sending". Yet, a simple notice of dispatch is by no means sufficient evidence of actual delivery or receipt (SFT 105 II 43, para 2a).

- The Respondent should have put in place a read-receipt or system of proof of delivery in order to track its communications.

- Article 34 (1) FDC states that the time limit to file an appeal with CAS shall commence on the day after the addressee received the document, but is silent about when a decision sent by email only is deemed "received". In such case, the time when the

decision was downloaded or opened should be retained as the date of legal notification, in light of Swiss procedural law (see Articles 138ff of the Swiss Civil Code of Procedure, CCP; Article 11 of the Ordinance on Electronic Service in Civil and Criminal Proceedings and Bankruptcy Procedures of the Swiss Federal Council, OCEl-PCPP).

- The jurisprudence quoted by the Respondent related to the sphere of control does not support its argument, since it emphasises the need to consider the capacity of the addressee to take note of the decision (see inter alia, SFT 4A_89/2011, para 3; CAS 2019/A/6253, para 81-82; TAS 2020/A/7494, paras 66-68).

- In the case at stake, even accepting the chronology alleged by the Respondent, one could not legitimately expect the Appellant to check its electronic mailbox on 16 December 2021 in the evening, especially since the jurisprudence of the Swiss Federal Tribunal excludes this kind of strict obligation regarding postal mail (SFT 118 II 42, para 3b; SFT 137 III 208, para 3.1.2.; FURRER/MÜLLER-CHEN: Obligationenrecht, Allgemeiner Teil, 3rd, 2018, p. 70).

- The Respondent did not either bother to send a warning, in order to inform the Appellant that it was about to receive a decision.

- Consequently, the Appellant was not bound to file its appeal on 6 January 2022 at the latest, as argued by the Respondent.

(c) Time when the Appellant filed its appeal

- The Appellant's letter of 3 January 2022 should be considered as a "Statement of Appeal".

- The Appellant's letter clearly showed its intention to challenge FIFA Appeal Committee's decision, as its title stated "*Subject: Appeal against the decision of the FIFA Appeal Committee – FDD9225."*

- The fact that the Appellant used the expression *"intend to file an appeal"* is irrelevant. FIFA also did likewise when it announced that it *"intend*[*ed*] *to file a request to bifurcate the present proceedings."*

- Likewise, the absence of the documents and other elements required by Article R48 (1) of the CAS Code should not prejudice it, as these were provided three days later.

- Article R48 (3) of the CAS Code, which allows the CAS Court Office to grant a short deadline to the appellant to complete its statement appeal, was specifically introduced to address this situation.

- Any other interpretation would constitute excessive formalism, in light of the jurisprudence of the Swiss Federal Tribunal and legal doctrine (SFT 134 II 244, para 2.4.2; MAVROMATI/REEB, The Code of the Court for Arbitration for Sport, Commentary, Cases and Materials, 2015, N88 p. 418).

- As a result, the Appellant complied with the 21-day deadline provided for by the CAS Code and FIFA Statutes.

- Alternatively, the document entitled "Statement of Appeal", filed with the CAS Court Office on 7 January 2022, should be considered as Appellant's first submission.

- In any case, the time limit to file the appeal was complied with, given the date when the Appealed Decision was duly notified, its interruption during the Christmas break under the FDC and its extension through the mandatory provisions of Swiss law.

A. The Respondent

51. The Respondent submits that the appeal is manifestly late under the applicable rules, which is why it requested to bifurcate these proceedings before addressing its merits.

(a) Relevant provisions related to the deadline to file an appeal with CAS

- An appeal aimed at contesting a decision rendered by the FIFA Appeal Committee should be lodged with CAS within twenty-one days from the receipt or notification of the decision, pursuant to Article R49 CAS Code (2021 edition) and 57 (1) of the FIFA Statutes (May 2021 edition).

- The FDC (2019 edition) is not applicable to appeals with CAS, as it only governs FIFA proceedings, namely internal deadlines (CAS 2008/A/1705, paras 28ff).

- Article 75 CC is of no avail either, since the deadline established in the CAS Code and FIFA regulations take precedence over national law in international arbitration proceedings, as per longstanding CAS jurisprudence and legal doctrine (CAS 2018/A/5702, paras 79ff, and the references).

(b) Notification of the Appealed Decision and entry into sphere of control

- The Appellant received the Appealed Decision by email on 16 December 2021 at 8:40pm, as per the "delivery receipt" provided. This date should be retained as the date of notification and trigger the starting point for the appeal deadline on the next day.

- The Swiss legal writing and jurisprudence support this statement, it being specified that:

  - A legal decision is notified when the person receives the decision and not when it obtains actual knowledge of its content (CAS 2016/A/4651, para 48; CAS 2015/A/4181; CAS 2007/A/1413, para 53; CAS 2019/A/6294, para 77).

  - A decision is deemed to have been received - or as the case may be, notified - when it enters the sphere of control of the recipient. In this context, the recipient's mailbox belongs to its sphere of control, at least if it indicated that it could be reached via the email address (see *inter alia*, SFT 118 II 42, para 3b; Judgment of

Obergericht of 20 February 2019, quoted in CAS Bulletin 2021/1, p. 69; CAS 2019/A/6294, para 78).

- Once a message leaves the sender's sphere of control, it is deemed to be received by the addressee. The copy of the document generated by Microsoft, as usually provided by FIFA, is sufficient to prove that the delivery of the message is complete, if it contains the same references as the email sending the decision terminating the procedure (TAS 2020/A/7494, para 65).

- It must also be possible, according to the usage, to expect from the addressee to take note of the communication (SFT 4A_89/2011, para 3; CAS 2019/A/6253, para 81). The addressee's "inquiry obligation" increases when a party can expect that it will receive a communication, and an obligation to empty an electronic mailbox exists in any case when a person consented to this means of transmission.

- In summary, two requirements are necessary for "receipt" to be fulfilled: the declaration must have entered the sphere of influence of the addressee, and one can expect under the circumstances that the addressee will take note of it (CAS 2019/A/6253, para 82; TAS 2020/A/7494, paras 66-68). These requirements are fulfilled in the case at hand.

➢ Moreover, the "affidavits" stating that the Appellant only downloaded the Appealed Decision on 17 December 2021 are unreliable and should be disregarded, as they were drafted by interested persons (i.e. its employees).

➢ Accordingly, the Appellant should, at the latest, have lodged its appeal on 6 January 2022.

(c) Time when the Appellant filed its appeal

➢ The Appellant's letter of 3 January 2022, sent on 4 January 2022, can by no means qualify as a "Statement of Appeal".

➢ The Appellant's letter was only aimed at informing the CAS Court Office that it planned to file an appeal, and constituted thereby a mere expression of intent (*"intend to file an appeal"*).

➢ The analogy that the Appellant attempts to draw with the expression used by the Respondent in its letter of 20 January 2022 ("intends to file a request to bifurcate the present proceedings"), is of no avail. Indeed, this was an expression of intent, since the Respondent did not file its Request for Bifurcation until two weeks later, on 3 February 2022. Moreover, the Respondent was not subject to any fixed time limit, and simply had to file its Request before any defence on the merits.

➢ In any case, the Appellant's letter does not comply with the requirements of Article R48 of the CAS Code, since it does not contain the name and full address of the Respondent, a copy of the Appealed Decision, the Appellant's request for relief, the nomination of an arbitrator and a copy of the regulations providing for appeal to CAS.

- The Appellant cannot grant itself a discretionary extension of the appeal deadline under Article R48 (3) of the CAS Code.

- The Statement of Appeal was only filed on 7 January 2022. It is for its part time barred and therefore, automatically inadmissible (see *inter alia* CAS 2013/A/3135, para 27; CAS 2015/A/4181).

V. JURISDICTION

52. 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."

53. Articles 53 (3), 56 (1) and 57 (1) of the FIFA Statutes (May 2021 edition) respectively provide:

Article 53 (3): *"Decisions pronounced by the Appeal Committee shall be irrevocable and binding on all the parties concerned. This provision is subject to appeals lodged with the Court of Arbitration for Sport (CAS);"*

Article 56 (1): *"FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, football agents and match agents;"* and

Article 57 (1): *"Appeals against final decisions passed by FIFA's legal bodies* […] *shall be lodged with CAS within 21 days of notification of the decision in question."*

54. In addition, the Parties did not object to the jurisdiction of the CAS. It follows from all the above that CAS has jurisdiction to decide on the present dispute.

VI. APPLICABLE LAW

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

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

56. Article 56 (2) of the FIFA Statutes (May 2021 edition) so provides:

"The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law".

57. Accordingly, the Panel concludes that the laws applicable to this appeal are the FIFA regulations (principally the FIFA Statutes) and Swiss law (additionally and to the extent necessary). As noted above, however, there is a dispute between the Parties regarding the applicability of the FDC in CAS proceedings and the need to resort to Swiss (procedural and substantive) law in the present case.

VII. PRELIMINARY QUESTIONS

A. Request for Bifurcation

58. On 20 January 2022, the Respondent expressed its willingness to file a Request for Bifurcation and to ask the Panel to render a preliminary award on the admissibility of the Appeal. On the same date, the CAS Court Office invited the Appellant to file its comments on the next steps of the procedure.

59. The Appellant did not do so, but instead directly filed a "Response" to the Respondent's (forthcoming) Request for Bifurcation. It indicated that it opposed such request, but at the same time extensively developed its arguments regarding the admissibility of its appeal. This was followed by a second exchange of submissions, during which the Parties had the opportunity to further develop their arguments.

60. On 17 February 2022, the Panel decided to assess the Respondent's Request for Bifurcation as a preliminary matter. In addition, the Panel decided to hold a preliminary hearing strictly limited to the Request for Bifurcation and admissibility of the appeal, which took place 28 April 2022.

61. For the sake of clarity, the Panel observes that the question of whether or not to bifurcate proceedings in order to decide on a preliminary question is a procedural issue that is – at least implicitly –, governed by Article R49 *in fine* of the CAS Code, which states that:

"When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties."

62. Although Article R49 of the Code does not expressly refer to the concept of "incidental ruling", some Panels considered that its wording established a sufficient legal basis to allow them bifurcate the proceedings (see e.g. CAS 2021/A/7713, paras 52 *et seq*.).

63. Other Panels drew parallels with various laws that they deemed fit, such as Article 125 lit. a CCP, which provides that a court may *"[i]n order to simplify the proceedings… limit the proceedings to individual issues or prayers for relief."* This power is directly connected to

Article 237 CCP, according to which a court *"may issue an interim decision."* (see e.g. CAS 2019/A/6294, paras 63 *et seq*., and the references mentioned).

64. The Respondent, for its part, suggests applying, by analogical reasoning, Article 55 (5) of the CAS Code, which allows Panels to rule on their own jurisdiction *"either in a preliminary decision or in an award on the merits."* It also refers to Article 186 (3) PILA, which equally states that *"[t]he arbitral tribunal shall, in general, decide on its jurisdiction by a preliminary decision."*

65. The Panel is of the opinion that this controversy is rather academic and ultimately not decisive since, regardless of the argument retained, the bifurcation of the proceedings is widely recognised in CAS jurisprudence for reasons of procedural efficiency, provided that it is requested before any defence on the merits (for recent awards, see e.g. CAS 2019/A/6294; CAS 2019/A/6298). It may result in a separate decision in the arbitration (depending on the outcome, in the form of a letter or final award).

66. The Panel further notes that the Appellant filed various submissions and precisely took part in the preliminary hearing with a view to clarifying the issue of the admissibility of its appeal.

67. Consequently, the Panel confirms its decision to tackle the issue of admissibility separately, in line with the Respondent's request and procedural behaviour of the Parties.

B. Filing of the Appeal

68. The Parties have different opinions as to whether the Appellant's preliminary letter dated 3 January 2022, sent to the CAS Court Office on the following day, i.e. 4 January 2022, could, in fact, be considered as a Statement of Appeal. Assuming that this is the case, consideration of their other arguments raised would become moot, which is why this issue must be addressed in priority.

69. The Appellant submits that its letter of 3 January 2022 is in fact its Statement of Appeal. It clearly shows its intent to challenge the Appealed Decision, and was complemented with all missing documents *"three days later"*, in compliance with Article R48 of the CAS Code.

70. The Respondent argues that this letter is a mere expression of intent. It does not fulfil the requirements of a statement of appeal nor can it be completed under Article R48 of the CAS Code.

71. The Panel notes that the Appellant's letter dated Monday, 3 January 2022 has the following content:

*"**Subject: Appeal against the decision of the FIFA Appeal Committee - FDD9225***

Dear Mr. Reeb,

We refer to the decision with grounds of the FIFA Appeal Committee (submitted to us on the 16/12/2021) regarding the FIFA World Cup Qatar 2022 preliminary competition match Hungary vs. England, which took place in Budapest on the 2nd September 2021.

At the same time we herewith wish to announce you that we intend to lodge an appeal against this decision to CAS.

Thank you for taking note of it.

Yours faithfully

Márton Vági

General Secretary"

72. When questioned as a witness at the hearing as to the nature of this letter, Mr Vági indicated that he meant to file an appeal.

73. The Panel notes, however, that the CAS Court Office expressed a completely different understanding of this document in its letter to the Appellant of Tuesday, 4 January 2022. It stated that it had *"taken due note of its intention"* to lodge an appeal, and recalled the content of Articles R48 and 49 of the CAS Code, related to the time limit for appeal and the conditions of the validity of a statement of appeal.

74. The Appellant then filed a comprehensive document entitled *"Statement of Appeal"* on Friday, 7 January 2022, together with four exhibits (a power of attorney, the Appealed Decision, FIFA regulations and a document in Hungarian presented as a proof of payment of the CAS Court fee).

75. The Panel finds it useful to recall the content of Article R48 of the CAS Code, which states as follows:

*"**R48** Statement of Appeal*

The Appellant shall submit to CAS a statement of appeal containing:

- *the name and full address of the Respondent(s);*
- *a copy of the decision appealed against;*
- *the Appellant's request for relief;*
- *the nomination of the arbitrator chosen by the Appellant from the CAS list, subject to Article S18, unless the Appellant requests the appointment of a sole arbitrator;*
- *if applicable, an application to stay the execution of the decision appealed against, together with reasons;*
- *a copy of the provisions of the statutes or regulations or the specific agreement providing for appeal to CAS.*

Upon filing the statement, the Appellant shall pay the CAS Court Office fee provided for in Article R64.1 or Article R65.2.

If the above-mentioned requirements are not fulfilled when the statement of appeal is filed, the CAS Court Office may grant a one-time-only short deadline to the Appellant to complete its statement of appeal, failing receipt of which within the deadline, the CAS Court Office shall not proceed."

76. The CAS practice to grant an additional deadline to the appellant in order to rectify possible mistakes or to complete an incomplete statement of appeal follows the jurisprudence of the Swiss Federal Tribunal and legal writing (MAVROMATI/REEB, op. cit, N88, p. 418, and the references). Nevertheless, it does not allow an appellant to complete a simple declaration of intent and convert it into a statement of appeal in order to safeguard the applicable time limit (see e.g. CAS 2006/A/1065, quoted in CAS 2011/A/2568, paras 62 *et seq*.).

77. Against this background, the Panel concurs with the Respondent that the Appellant's letter dated 3 January 2022 cannot be qualified as a statement of appeal, nor become one after being complemented by further documents and information. It merely states that an appeal will be lodged at a later date ("*we herewith wish to announce you that we intend to lodge an appeal"*), and does not meet a single one of the conditions listed in Article R48 of the CAS Code. It does not contain the name and full address of the Respondent, a copy of the Appealed Decision, the Appellant's request for relief, the nomination of an arbitrator and a copy of the regulations providing for appeal to CAS. Similarly, the payment of the CAS Court fee was only credited to the CAS bank account on 11 January 2022, namely eight days later.

78. Besides, the Appellant itself does not appear to have considered its letter dated 3 January 2022 as a statement of appeal until the Respondent raised issues related to the time limit and expressed its intention to bifurcate the proceedings. This is demonstrated by the document entitled *"Statement of Appeal"* that it subsequently filed on 7 January 2022, without even referring to its first letter, or the possibility or need to supplement it. In any event, the mere intention of a letter's author, whatever it may be, would be insufficient to create an according legal effect if the letter's content does not support such evaluation.

79. The analogy that the Appellant attempts to draw in relation to the Respondent's letter of 20 January 2022, by which FIFA announced that it planned to file a request to bifurcate the present proceedings, is also ill-founded. As explained above, this letter was indeed no more than a mere declaration of intent.

80. In view of the above, the Panel concludes that the HFF filed its appeal against the Appealed Decision on 7 January 2022 only.

C. New documents submitted

81. On 29 April 2022, the Appellant sent an unsolicited letter and additional exhibit to the CAS Court Office, namely FIFA's press release announcing the launch of its new legal portal for the handling of legal proceedings. The Appellant submitted that this new portal was an implicit admission by FIFA of the inadequacy of its current email communication system.

82. By letter of 5 May 2022, the Respondent objected to the late filing of this new submission and exhibit, based on the application by analogy of Article R56 of the CAS Code. It further stated that the new legal portal was only intended to modernise and facilitate the processing of proceedings, irrespective of the validity of email communications. It also pointed out that the new system still relies heavily on email communication.

83. On 16 May 2022, the Panel decided to admit this document into the file, while indicating that it would provide further explanations in its award.

84. The Panel observes that Article R56 of the CAS Code states as follows:

"Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer."

85. The Panel acknowledges that Article R56 of the CAS Code should, in principle, prevent the parties from amending their arguments or producing new material once the exchange of written submissions is closed, both on the merits and, by extension, in matters of admissibility related to compliance with imposed time limits.

86. The Panel cannot ignore, however, that this rule includes, by its very wording, some exceptions, such as the existence of exceptional circumstances. In the opinion of the legal writing and jurisprudence, such circumstances exist in the presence of new evidence that has only become available to the parties after the time limit set for filing the written submissions (RIGOZZI/HASLER, in M. ARROYO (ed.), Arbitration in Switzerland: The Practicioner's Guide, 2nd edition, Vol. 2, p. 1651, N9 ad Article 56, and the references).

87. Moreover, the Swiss Federal Tribunal's practice, which has been endorsed by CAS, exempts the parties from proving their allegations with respect to well-known facts ("*faits notoires*"), namely facts that are known to the general public or to the judge/arbitrator and that can easily be consulted by anyone. Such is the case with publications on the internet, at least when the information that they include can be identified as official (Federal Statistical Office, commercial register entry, currency rates, etc.), the source and content of which is not subject to controversy (SFT 135 III 88, para 4.1; SFT 143 IV 380, paras 1.1.1 *et seq*.; CAS 2018/A/5534, paras 74 *et seq*.).

88. In the present case, the Appellant can undeniably rely on the existence of a new fact, since FIFA's press release was published on 25 April 2022, that is to say more than two months after its last written submission dated 11 February 2022. The Appellant could, possibly, have invoked this press release at the hearing of 28 April 2022 – but there is nothing to suggest that it withheld that information for dilatory purposes; and its three-day "delay" did not prejudice the Respondent, which was already aware of the document and subsequently had the opportunity to make a written determination on it.

89. Furthermore, FIFA's press release is freely available on the internet. Even if it is not stamped with an official seal, its source and content are not disputed by the party that drafted it and put it online, namely the Respondent. It may therefore constitute a well-known fact exempt from the burden of proof.

90. The Panel therefore feels comfortable accepting this new exhibit. Notwithstanding the above, it considers that the said exhibit is not decisive for the resolution of the dispute at stake.

91. In reaching this conclusion, the Panel duly considered the content of the FIFA's press release, which states in its relevant parts as follows:

"As part of its ongoing commitment to modernising FIFA's regulatory framework, FIFA will launch the FIFA Legal Portal, an online platform through which proceedings before the FIFA Football Tribunal and FIFA judicial bodies will be conducted, as of 1 May 2022. The portal will enable football stakeholders [...] *to lodge a claim with the relevant FIFA decision-making or judicial body and will gradually replace the current system of communication by email.*

While the proceedings will still be governed by the respective FIFA regulations, the notification of communications, submissions, decisions and other documents will be handled through the FIFA Legal Portal, which aims to ensure simple, secure and transparent communication between FIFA and the parties involved, as well as a better understanding of the proceedings and heightened traceability. [...]*"*

92. The Panel understands that FIFA's press release puts forth the desire to continually seek to facilitate and modernise processes by centralising the handling of proceedings, and is probably the culmination of efforts initiated before the dispute between the Parties arose. It does not see how the said press release contains any evidence of FIFA's alleged doubts about the validity of its email communications.

93. On the contrary, as highlighted by FIFA, its new system still relies on email communication. This is evidenced by FIFA accompanying Circular no 1795 dated 25 April 2022, which repeatedly refers to email notifications:

"In addition, notifications will be automatically generated and immediately sent to the email address linked to the relevant user's account in the event of: i) a change in the status of a case, ii) new information and/or documents being added to the case, or iii) new proceedings being opened against the user." [...]

"As a basic rule, users receiving an automatically generated email should immediately check their account."

94. Consequently, the Panel retains that this new evidence, although admissible, is of no avail for the Appellant.

VIII. ADMISSIBILITY

95. This Award basically centres on whether or not the Appellant filed its Statement of Appeal within the applicable time limit. It should be recalled that the respect of the time limit for appealing to CAS is not a question of jurisdiction but rather a condition for the admissibility of the appeal. Failure to observe the time limit within which an appeal must be filed with CAS does not lead to the lack of jurisdiction of this arbitral tribunal, but only to the inadmissibility of the appeal (SFT 4A_413/2019, para 3.3.2; SFT 4A_626/2020, paras 3.2 and 3.4).

96. The Parties are in common ground that the Appealed Decision was communicated to the Appellant between 16 and 17 December 2021. They also concur that Article R49 of the CAS Code and Article 57 (1) of the FIFA Statutes (or their previous version) provide for a twenty-one-day deadline to file an appeal with the CAS.

97. Nevertheless, the Parties disagree on the computation of this deadline, including its exact starting date and possible suspension during judicial vacations pursuant to the FDC, and its interaction with Article 75 CC.

98. In order to determine whether the Appellants' appeal is admissible, the Panel will address the two main arguments raised by the Parties, as follows:

- Relevant provisions related to the deadline to file an appeal with CAS;
- Notification of the Appealed Decision and entry into sphere of control.

Ultimately, the Panel will examine whether the Appellant's submission was duly filed within the applicable time limits and provide a conclusion.

A. Relevant provisions related to the deadline to file an appeal with CAS

99. The Appellant contends that that the twenty-one-day deadline provided for by Article R49 of the CAS Code and Article 57 (1) of the FIFA Statutes breach the one-month mandatory appeal period established under Article 75 CC, and should thus be extended accordingly. It also argues that Article 34 (2) FDC provides for a suspension of deadlines during the Christmas break.

100. The Respondent contests this view. It emphasises that the longer time limit under article 75 CC and the suspension of article 34 (2) FDC do not apply before CAS.

101. The Panel is satisfied with the submissions of both Parties regarding the application of Articles R49 of the CAS Code and Article 57 (1) of the FIFA Statutes, which read in their relevant parts as follows:

*"**R49** Time limit for Appeal*

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."

and

*"**57** Jurisdiction of CAS*

1. Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question." (emphasis in the original documents)

102. The Panel is also cognizant of Article 75 CC, which states that:

"Any member who has not consented to a resolution which infringes the law or the articles of association is entitled by law to challenge such resolution in court within one month of learning thereof."

103. The Panel observes, however, that, according to the prevailing and near-unanimous legal writing, the time limit of Article 75 CC, while mandatory, is not in conflict with the time limit to appeal of Article R49 of the CAS Code, because the CAS Code (or the federation's regulations) prevail in any case over national law, at least in international arbitration proceedings (see e.g. BERNASCONI/HUBER, SpuRt 2004, p. 270; NATER H., SpuRt 2006, p. 143 et seq.; RIGOZZI A., L'arbitrage international en matière de sport, 2005, N 1041, p. 534; OSWALD D., Temps et droit du sport: La relativité du temps en relation avec l'article 75 CC in: ZEN-RUFFINEN (éd.), Le Temps et le Droit, Bâle (Helbing & Lichtenhahn), 2008, p. 251; HAAS U., The 'Time Limit for Appeal' in Arbitration Proceedings before the Court of Arbitration for Sport (CAS), CAS Bulletin 2/2011, p. 7.; MAVROMATI/REEB, op. cit., N 112 p. 435).

104. The legal underpinning for this view is the autonomy of the parties to choose the law applicable to their dispute in an arbitration procedure. It is embodied in Article R58 of the CAS Code, previously mentioned, which provides that the regulations of the sports federation apply primarily, and national legal systems (e.g. Swiss law) only apply subsidiarily, or additionally, if the legal question is not (exhaustively) dealt with in the federation's statutes and regulations. It is also justified for reasons of pragmatism and standardisation, since it avoids that the length of the time limit for appeal to CAS varies continuously according to the particular circumstances of each case and the relevant national law (see e.g. HAAS U., The 'Time Limit for Appeal' in Arbitration Proceedings before the Court of Arbitration for Sport (CAS), CAS Bulletin 2/2011, p. 7; RIGOZZI A., Le délai d'appel devant le Tribunal arbitral du sport, Quelques considérations à la lumière de la pratique récente, in: ZEN-RUFFINEN (éd.), Le Temps et le Droit, Bâle (Helbing & Lichtenhahn) 2008, p. 270).

105. This approach is endorsed by CAS longstanding jurisprudence, which is very well summarised in an award rendered in 2012:

"Swiss law clearly gives precedence to the will of the parties as regards the applicable procedure for international arbitrations subject to the Swiss PIL Code. Therefore, the time limit for the commencement of claims set out in Article R49 of the CAS Code, being part of the procedural rules chosen by the parties to these arbitration proceedings, is applicable irrespective of the fact that other time limits may exist for filing appeals in front of State courts as provided for example by Article 75 of the SCC as interpreted by Swiss law." (CAS 2011/A/2360, para 54; see also CAS 2007/A/1413, paras 21 et seq; CAS 2008/A/1705, paras 21 et seq; 2018/A/5702, paras 79 et seq)

106. The majority of the Panel (hereinafter: "The Panel") considers that the Appellant does not raise any argument likely to thwart this interpretation. It merely quotes a few scholarly articles and a cantonal judgment which emphasise the mandatory nature of Article 75 CC before the state courts (which is not disputed), as well as a more specific quotation from an author which is not supported by any argument.

107. The Panel is all the more convinced of this view since the Swiss Federal Tribunal has already, on several occasions, recognised the primacy of sports regulations in arbitration, when opposed to the longer time limit established by Swiss law (SFT 4A_488/2011, para 4.3.2; SFT 4A_413/2019, para 3.3.2). In this context, it had the opportunity to emphasise that the twenty-one-day appeal period before the CAS must *"be considered as an expiry period, the non-compliance of which does not entail the lack of jurisdiction of the arbitral tribunal, but the forfeit of the right to submit the decision to judicial review and, therefore, the dismissal of the appeal."*

108. Similarly, with regard to the Appellant's claim that the time limit to file the Statement of Appeal was interrupted from 20 December 2021 until 5 January 2022 inclusive in accordance with Article 34 (2) of the FDC, the Panel finds that there is no reason to revisit the lack of suspension of time limits in CAS proceedings, which has long been recognised by legal writing based on Article R32 of the CAS Code and the need for the highest sports justice to function efficiently (see e.g. MAVROMATI/REEB, op. cit., p. 131; RIGOZZI/HASLER, op. cit., N16, p. 1603). Article 34 (2) of the FDC, according to which *"time limits are interrupted from 20 December to 5 January inclusive"*, makes no difference in this respect. Clearly, this suspension is intended to apply only to FIFA's internal procedures (i.e. the procedures carried out before its Disciplinary and Appeal Committees), rather than to CAS procedures, pursuant to Article 1 of the FDC:

"This Code describes infringements of the rules in FIFA regulations, determines the sanctions incurred, regulates the organisation and function of the FIFA judicial bodies responsible for taking decisions and the procedures to be followed before said bodies."

109. The Respondent has moreover convincingly listed various other internal time limits listed by the FDC, which do not affect the procedure before the CAS, such as:

- Deadline of ten days to request the grounds of a decision (Article 51 (3) FDC);
- Deadline of five days to reject a proposed sanction and request the commencement of disciplinary proceedings (Article 54 (3) FDC);
- Deadline of three days to inform of an intention to lodge an appeal (Article 56 (3) FDC);
- Deadline of ten days for a request for review of a decision (Article 67 (2) FDC).

110. Even admitting the opposite, Article 34 (2) FDC would, in any event, be disregarded due to the primacy of the FIFA Statutes over other potentially contradictory lower-level procedural rules. In this respect, the Panel fully adheres to the view expressed by a CAS Panel in a 2008 award, quoted by the Respondent, and rendered in a similar case:

"[…] the question of time limits relating to appeals to CAS are dealt with – exhaustively – in Chapter VIII of the FIFA Statutes. In particular the time limit for appeals to CAS is regulated in Art. 62(1) of the FIFA Statutes […] No reference is made in chapter VIII of the FIFA Statutes to lower level provisions. No power is granted to specific organs within FIFA to further outline or complement Art. 61(1) of the FIFA Statutes. From this it follows, that changes from the provisions dealing with time limits for appeals to the CAS are in the sole competence of the FIFA Congress (Art. 26(1) of the FIFA Statutes. It is questionable

in the case at hand whether Art. 15 of the DRC Procedural Rules materially changes Art. 63(1) of the FIFA Statutes. If that were the case this would amount to a failure to uphold the principle of legality that calls for inferior rules and regulations to be in conformity with the statutes. This would result in Art. 15(1) of the DRC Rules being inapplicable." (CAS 2008/A/1705, paras 28-30)

111. In light of the foregoing jurisprudence, it appears evidently that the Appellant's position does not stand. If one were to follow its argument, the application of Article 34 (2) of the FDC would contradict a higher regulation by potentially extending the twenty-one-day deadline defined in the FIFA Statutes by seventeen days to thirty-eight days. It would, therefore, be inapplicable.

112. For the sake of completeness, the Panel observes that the Appellant does not invoke Article 145 CCP by analogy, which provides for a suspension of limitation periods between 18 December and 2 January. Here also, the application of this article would conflict with the lack of suspension of time limits in CAS proceedings, as recognised by legal writing.

113. The Panel concludes that the twenty-one-day time limit provided for in Articles R49 of the CAS Code and 57 (1) of the FIFA Statutes is neither extended by the application of Swiss civil law, nor suspended by way of the recess provided for in the FDC or any other similar procedural provisions.

B. Notification of the Appealed Decision and entry into sphere of control

114. Having determined that the deadline to appeal FIFA's decisions is twenty-one days, with in principle no possibility of extension or suspension, the Panel now turns to the question of the date of notification of the Appealed Decision. The Panel observes that the positions of the Parties in this regard are opposed.

115. The Respondent states that the Secretariat of the FIFA Appeal Committee duly notified the Appealed Decision by email on 16 December 2021 at 8:40 pm, as evidenced by the "delivery receipt" provided. Henceforth, the appeal filed by the Appellant on 7 January 2022 is inadmissible, as it falls outside the twenty-one-day period enshrined in the CAS Code and FIFA Statutes.

116. The Appellant retorts that the burden of proof for proper notification lies with the Respondent. It contends the Respondent failed to prove that the HFF did receive the Appealed Decision on 16 December 2021, since the document that it presents as a "proof of receipt" is in fact a mere "proof of sending". Even admitting such timeline, the notification should be considered as completed on 17 December 2021 only, because the Appellant opened the decision on that date according to its two witnesses, and is not supposed to check its email box outside office hours, in the absence of a prior warning.

117. The Panel concurs with the Appellant that the burden of proof falls on the Respondent to establish that its decision was duly communicated, in accordance with CAS longstanding jurisprudence, it being specified that this does not absolve the former from making reasonable efforts to rebut any solid presumption established by the latter in this regard. The Panel also observes that, when dealing with disciplinary cases, the applicable standard

of proof is the "comfortable satisfaction" (see e.g. CAS 2014/A/3546, para 7.3; CAS 2017/A/5334, paras 65ff, and the references mentioned; CAS 2020/A/7075, para 82; 2009/A/1920, para 85). This same standard is referred to in Article 35 (3) of the FIFA DC.

118. The Panel is well-aware that the question of the date of notification of the Appealed Decision is decisive for the analysis of the admissibility of the appeal filed by the HFF. Indeed, if, as FIFA points out, the Appealed Decision was duly notified to the Appellant on 16 December 2021, the appeal of 7 January 2022 is clearly late and thus inadmissible. Conversely, if the Appealed Decision was notified only on 17 December 2021, the appeal should be declared admissible. The question therefore arises as to whether the email of 16 December 2021 containing the Appealed Decision was duly notified to the Appellant on that day.

119. To resolve this issue, the Panel must undertake a two-step reasoning, by examining the date of receipt and the date of notification of the Appealed Decision, bearing in mind that these dates are, in principle, deemed to coincide.

a. Date of receipt of the Appealed Decision

120. The Panel first recalls that, according to Article 44 of the FDC, *"Communications from the secretariat shall be sent to the email address specifically provided to the secretariat by the party concerned and/or via registered letter. Emails and registered letters are valid and binding means of communication and will be deemed sufficient to establish time limits and their observance."*

121. The Panel also wishes to emphasise that, according to the Swiss legal writing and jurisprudence, a decision is considered to be received (or notified) when it enters the sphere of control of the recipient (RIGOZZI/HASLER, in M. ARROYO (ed.), Arbitration in Switzerland: The Practicioner's Guide, 2nd edition, Vol. 2, N9 p. 1600 ad Art. R49, citing ATF 118 II 42, as well as other authors).

122. The Panel thus agrees with the conclusions of other CAS arbitral panels which retained that the relevant point in time for reception (or notification) is when the person has the possibility to become acquainted with content of a decision, regardless of whether it has actually done so (CAS 2019/A/6253 and CAS 2020/A/7494, citing CAS 2006/A/1153; 2008/A/1548, para 17).

"As a basic rule, a decision or other legally relevant statement is considered as being notified to the relevant person whenever that person has the opportunity to obtain knowledge of its content irrespective of whether that person has actually obtained knowledge. Thus, the relevant point in time is when a person receives the decision and not when it obtains actual knowledge of its content (CAS 2004/A/574)."

123. In this context, a recipient's mailbox belongs to the sphere of control when the recipient indicated that it could be reached via such email address. Once a message leaves the sender's sphere of control, it is in principle deemed to be received by the recipient, because of the principle of quasi-immediacy that characterises email communications. Therefore, the Panel adheres to CAS recent jurisprudence, according to which the copy of the

document generated by Microsoft, as usually provided by FIFA, is sufficient to prove that the delivery of the message is complete, if it contains the same references as the email sending the relevant decision and is not contradicted by other solid evidence on file demonstrating that this email was delivered to the recipient's server with an unusual delay (see e.g. CAS 2020/A/7494, paras 61 *et seq*.; 2019/A/6294, para 78; CAS 2017/A/5334, paras 64 *et seq*.).

124. Contrary to what is argued by the Appellant, the Panel considers that it would be excessive to require the sender to provide a read-receipt or proof of delivery from the recipient's server in order to allow for a valid notification. Indeed, such a requirement, which exists in relation to the submission of parties to state courts, would not be realistic in the opposite case, namely the notification of decisions by courts (or other adjudicatory bodies) to parties. It would make it too easy for malicious parties to block the proceedings indefinitely, by not setting up such an electronic system, or by refraining from clicking on the proposed read-receipt (CAS 2020/A/7494, para 68; CAS 2019/A/6253, para 87; F. BOHNET, Code de procedure civile commenté, Helbing & Lichtenhahn, 2011, N16 ff p. 576 ad Art. 143 CCP). In this respect, the jurisprudence invoked by the Appellant by analogical reasoning concerning the lack of probative force of a notice of dispatch, is of no avail. This judgment relates to a situation different from the issue at hand, namely a state decision sent via ordinary post where the notification itself was contested. It also makes it clear that all the circumstances of the case must be taken into account (SFT 105 III 43, paras 2a et seq).

125. Yet, in the present case, all the factual evidence adduced by the Parties tend to show that the Appellant received the decision on 16 December 2021. The Respondent provided the email that it sent to the Appellant on that date to the address that was used on several occasions by both Parties during FIFA proceedings. This same address (*"International@mlsz.hu"*) appears on the Appellant's letterhead and is thus its official and business address, which was also confirmed at the hearing by its two representatives, Mr Vági and Mr Huszár.

126. The Respondent's exhibit shows that the email was sent on 16 December 2021 at 08:40pm with the subject line *"Ref. no. FDD-9225"*. It indicates that the email was accompanied by an attachment named *"DG_FDD-9225_Decision"*, which constitutes the Appealed Decision.

127. The Respondent also produced a copy of a document generated by Microsoft Outlook to its server, with the same references, the content of which is as follows:

"La remise à ces destinataires ou groupes est terminée, mais aucune notification de remise n'a été envoyée par le serveur de destination: International (International@mlsz.hu) mlsz@mlsz.hu (mlsz@mlsz.hu) Objet : Ref. no. FDD-9225"

Translated by the Panel as follows:

"Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server: International (International@mlsz.hu) mlsz@mlsz.hu (mlsz@mlsz.hu) Subject: Ref. no. FDD-9225"

128. This document, gives rise to a presumption, in line with the aforementioned CAS jurisprudence related to the quasi-immediacy of email communications, that the Respondent sent the relevant email to the Appellant on 16 December 2021, at 08:40pm. It remains to be seen whether this presumption is contradicted by any other compelling evidence on file.

129. In the case at hand, the Panel holds that no such compelling evidence was provided by the Appellant. The most obvious and clear evidence which could have been provided, was a screenshot of the respective email inbox at the Appellant. Such screenshot would indicate the time at which the email was delivered to the Appellant (and not the time of the email's dispatch). However, no such screenshot was provided by the Appellant, which the Panel noticed with close attention.

130. Likewise, in their written and oral statements, Mr Vági and Mr Huszár merely repeated that they had become aware of the Appealed Decision on 17 December 2021 and that they had not checked their emails on 16 December 2021 after office hours. Mr Huszár stated that he had first seen the Appealed Decision on the HFF's general address from his mobile phone at 6:30am (outside the usual office hours that extend from 8am to 4:30pm), and had immediately forwarded it to Mr Vági's personal address. Mr Vági confirmed that he had received the Appealed Decision from Mr Huszár. Both witnesses made no statement as to its initial date of receipt and only referred to the time at which they became aware of the notice. Such statements however could only serve to prove that the email was received by the Appellant before the witnesses took note of it, but not to prove that the email was received at or later than 12:00am on 17 December 2022.

131. Further, the Appellant himself provided deviating information as to the exact date on which it actually received this email. Thus, in its letter dated 3 January 2022, previously mentioned, the Appellant, through its General Secretary, Mr Vági, seemed to acknowledge that it had received FIFA's communication on 16 December 2021 *("we refer to the decision with grounds of the FIFA Appeal Committee (submitted to us on the 16/12/2021)"*.

132. Consequently, the Panel finds that there is no sufficient evidence to rebut the assumption that the Appealed Decision was received by the Appellant at or immediately after 08:40pm on 16 December 2021 into question. Accordingly, the Panel is comfortably satisfied that FIFA's email of 16 December 2021, containing the Appealed Decision, was duly received by the Appellant on the same day.

b. Date of notification of the Appealed Decision

133. The Panel then turns to examine the legal distinction that the Appellant requests to make between "receipt" and "notification", by arguing that notification should be considered as completed on 17 December 2021 only, because it opened the Appealed Decision on that date and was not required, in the absence of prior warning, to check its emails outside office hours. In the Panel's view, this distinction appears to be artificial in the present case, for two main reasons.

134. First, the Appellant relies on Article 11 of the Swiss Federal Council's Ordinance, OCEl-PCPP, and Article 138 para 3 let. a CCP, which it seeks to apply by analogy:

"Art. 11 Time of delivery

1 Service is deemed completed at the time of downloading from the delivery platform.

2 If service is effected to an electronic mailbox of the addressee set up on a recognised delivery platform after personal identification of the holder of the mailbox, the provisions of the Code of Civil Procedure and the Code of Criminal Procedure on the service of registered mail shall apply mutatis mutandis."

"Article 138 Form

[…]

3 Service is also deemed to have been effected:

a. in the case of a registered letter that has not been collected: on the seventh day after the failed attempt to serve it provided the person had to expect such service;"

135. Yet, these provisions are of no relevance in this case. The OCEl-PCPP governs, in accordance with its Article 2, *"recognised secure messaging platforms"* (in particular platforms capable of *"communicating with the federal authorities in accordance with the technical standards of the federal administration"*). These platforms could eventually be compared to e-filing platforms, but in no way to communication by email. Moreover, the OCEl-PCPP, in light of its Article 1, is not intended to apply to courts that have their own rules of procedure, such as the Swiss Federal Tribunal (in the same vein, see the Commentary of this Ordinance, available on the Swiss Federal Office of Justice's website, p. 1)[1]. Thus, following this reasoning, it is difficult to understand why the OCEl-PCPP should apply to CAS, which is also governed by a specific Code aimed at harmonising national and international arbitration procedures.

136. This finding also invalidates, by ripple effect, the application of Article 138 CCP, to which the OCEl-PCPP refers, and which concerns notification by registered post. Such an analogy has also been rejected by several CAS panels, which have underlined that it would contradict the purpose of the FIFA Statutes, which were adopted to regulate proceedings in a uniform manner and on a worldwide scale (see e.g. CAS 2011/A/2506, paras 10 *et seq*.).

137. Secondly, the Appellant invokes the jurisprudence rendered initially in the field of postal mail, and then referred to more widely by some CAS Panels, which establishes that a notification is only effective against a recipient if it can be anticipated, according to usage, that it takes note of it (see inter alia, SFT 4A_89/2011, para 3; SFT 118 II 42, para 3b; SFT 137 III 208, para 3.1.2; CAS 2019/A/6253, paras 81-82; TAS 2020/A/7494, paras 66-68).

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[1] Ordonnances sur la Communication électronique, Commentaire article par article, (https://www.bj.admin.ch/dam/bj/fr/data/staat/rechtsinformatik/magglingen/2010/11ab_3_holensteinf.pdf.download.pdf/11ab_3_holenstein-f.pdf).

138. Nevertheless, this jurisprudence is, again, of no avail. In the case at stake, the Appellant was well aware of the applicable FIFA regulations, particularly with regard to the procedure for notifying the grounds of a decision by email, since it provided its contact details precisely for this purpose and already had, as its Secretary General, Mr Vági, acknowledged at the hearing, become familiar with this mode of communication during FIFA first instance proceedings before the Disciplinary Committee. It also knew that its case was pending, and that the FIFA Appeal Committee's decision in this regard was imminent. It was, hence, subject to an increased "inquiry obligation", and cannot suddenly claim to be surprised or complain about the immediacy of the communications that it received. This strict approach is supported by Swiss legal writing, and endorsed by CAS jurisprudence, which established *"that [a written declaration] is received by the recipient as soon as it can be retrieved by him; a duty to so retrieve (emptying of the electronic Mailbox) exists at least if a person disclosed its e-mail address to a larger group of other persons."* (GAUCH et al., Schweizerisches Obligationenrecht, Allgemeiner Teil, 9e éd., vol. I, n. 199 et 200 p. 38, quoted and translated in CAS 2019/A/6253, para 86; see also SFT 4A_666/2020, which confirms this decision; and CAS 2020/A/7075, para 82). For the same reasons, the requirement of a prior warning, indicating that a decision is to be notified, would be superfluous and devoid of any legal or judicial basis.

139. It would be complicated to require FIFA to refrain from communicating its decisions outside office hours, as this federation deals with hundreds of international cases in many different time zones. Stating otherwise would create uncertainty and open the door to overindulgence and case-by-case treatment and would go against the standardised approach that prevails in CAS arbitration (CAS 2020/A/7075, para 82).

140. The Panel further notes that there is no rule in the CAS Code, Swiss procedural law or jurisprudence aimed at automatically rendering an official notification served late in the evening as delivered only on the next day.

141. Drawing on this, it was up to the Appellant to adopt any appropriate measures, whether in-house or by instructing a specialised lawyer, who should in principle be aware of the relevant procedural time limits and adopt, in case of doubt, a precautionary approach.

142. The Panel ultimately observes that the time of the notification did not lead to the Appellant being deprived of its ability to defend its reasonable interests by filing an according appeal on time. The Appellant had a 21 day-time limit to file its Statement of Appeal which had to fulfil only the basic criteria stipulated in Article R48 of the CAS Code and did not have to contain any sophisticated legal argument. Therefore, the Appellant had ample time to deal with the Appealed Decision, even after having taken note of it only on the next morning. The Panel therefore does not feel that there is a legal gap in the reasonable protection of the addressee of a decision which would create the necessity to be filled by an unwritten rule of law

143. The Appellant's arguments in relation to office hours are further undermined when put in perspective with the comments of its Senior Adviser, Mr Huszár, who stated that his office usually closed at 4:30pm, but that he had checked his emails from his mobile phone at 6:30am on 17 December 2021. This two-fold statement demonstrates that the Appellant's

employees were able to check their emails at all times and that a notification from FIFA at 5pm or 6pm (instead of 8:40pm) would, in all likelihood, not have solved the problem.

144. This conclusion is reinforced by Mr Vági's testimony, who confirmed at the hearing that all the HFF staff had left at 4:30pm on 16 December 2021.

145. In view of all the above, the Panel concludes that the appeal filed by the Appellant is late and therefore inadmissible.

IX. COSTS

(…).

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ON THESE GROUNDS

The Court of Arbitration for Sports rules that:

1. The appeal filed on 7 January 2022 by the Hungarian Football Federation with the Court of Arbitration for Sport with respect to the decision issued on 11 November 2021 by the FIFA Appeal Committee is inadmissible.

2. (…).

3. (…).

Seat of Arbitration: Lausanne, Switzerland.

Date: 24 February 2023

THE COURT OF ARBITRATION FOR SPORT

Mr Hendrik Willem Kesler
President of the Panel

Mr Jan Räker
Arbitrator

Mr Attila Berzeviczi
Arbitrator

Ms Alexandra Veuthey
Clerk