

Date: 24 January 2022

Sent to:
Moroccan Football Association
tarik.najem@frmf.ma; contact@frmf.ma

Cc:
CAF - Confederation of African Football

Notification of the grounds of the Decision

Ref FDD-9834

Dear Madam, Dear Sir,

Please find attached the grounds of the decision passed in the aforementioned case by the FIFA Disciplinary Committee on 13 January 2022.

We would appreciate your taking due note of this decision and ensuring its implementation.

Yours faithfully,

FIFA



Carlos Schneider
Director of Judicial Bodies

Decision of the FIFA Disciplinary Committee

passed on 13 January 2022

DECISION BY:

Jorge Ivan PALACIO (Colombia), Chairperson

Kia Tong LIM (Singapore), Member

Thomas HOLLERER (Austria), Member

ON THE CASE OF:

Moroccan Football Association

(Decision FDD-9834)

REGARDING:

FIFA Disciplinary Code, Art. 13 - Discrimination

I. FACTS

1. The following summary of the facts does not purport to include every single contention put forth by the actors at these proceedings. However, the FIFA Disciplinary Committee (**the Committee**) has thoroughly considered in its discussion and deliberations any and all evidence and arguments submitted, even if no specific or detailed reference has been made to those arguments in the following outline of its position and in the ensuing discussion on the merits.
2. On 11 December 2021, a match was played between the representative teams of Morocco and Algeria in Doha (Qatar – Attendance 41,665 spectators – Final score 1-1) in the context of the Preliminary Competition of the FIFA Arab Cup Qatar 2021™ (**the Match**).
3. In this context, the match commissioner mentioned the following in his report (**the MC Report**):

"It was a nice match with huge spectators from both teams.

Observers from coordinator of anti discrimination a homophobic chant by several dozen Morocco fans directed at Tunisian fans who were standing next to an Algeria flag in the stadium approximately in 19th minutes into the match, block 120. He will send detailed report to FIFA Disciplinary. The chant was in Moroccan dialect Atwansa Aataya which means Gay Forgot Tunisian."

4. Following the Match, the FARE Network provided FIFA with a report mentioning the following (**the FARE Report**):
 - Where: "Section 120, rows approximately from A to F"
 - Incident caused by fans of Team A¹
 - When: "Approximately 19th minute into the match"
 - Description of the incident: "Several dozen Morocco national team supporters in Section 120 started chanting 'Atwansa Aataya' 'عطايا أتوانسا' in Moroccan Arabic (dialect) directed at a group of Tunisian fans who were supporting Algeria in the stadium approximately in the 19th minute into the match."
 - Meaning: "'Atwansa Aataya' 'عطايا أتوانسا' in Moroccan Arabic (dialect) means 'Gay Tunisians.' 'Aatay' represents a homophobic slur used against non-heterosexual people. The expression is used as an insult, questioning masculinity of the victims and using sexual orientation as a means of causing offense. It is considered homophobic regardless of the actual sexual orientation of the victims."
 - No reaction from the players and/or match officials and/or other fans
5. The FARE Report was further supported by a video footage recorded by the FARE observer.
6. In view of the foregoing, disciplinary proceedings were opened against the Moroccan Football Association (**the Respondent**) on 13 December 2021 with respect to a potential breach of art. 13 of the FIFA Disciplinary Code (**FDC**). In particular, the Respondent was provided with the relevant reports and videos and was granted a six-day deadline to provide the Secretariat to the FIFA Disciplinary Committee (**the Secretariat**) with its position.

¹ Team A being Morocco

II. RESPONDENT'S POSITION

7. On 18 December 2021, the Respondent provided its position in relation to both proceedings which can be summarised as follows (free translation from French to English):
- An erroneous translation was made: the Respondent contests the translation adopted by the Match Commissioner and affirms that "Aataya" does not mean "Gay" in Moroccan dialectal Arabic, but rather "donator"²;
 - The meaning of the word in the context of the Match: in the context of the Match, the meaning of the word is clearly "donator" or "those who give/donate" and not "gay" for the following reasons³:
 - there was a good atmosphere during the match;
 - the word was used with goodwill: there were Tunisian supporters very close to the Moroccan supporters concerned, which demonstrates the lack of any animosity;
 - the supporters involved are mainly women, and it is not conceivable in the Moroccan culture that men would use words of a discriminatory nature or with a sexual connotation in presence of women;
 - the word "Aataya" is not an insult but rather a reproach;
 - several Tunisian supporters were showing Algerian flags. As such, the Moroccan supporters were rather reproaching those fans to have chosen to support the opposite team;
 - it is clear that the incident in question did not provoke any reaction from the players, officials and supporters;
 - Questioning the value of the conduct at stake:
 - the Match Commissioner is not of Moroccan nationality and cannot know Moroccan dialect. As such, it is clear that either the match commissioner asked a third party for the meaning of the word, or was spontaneously reported the meaning of the word by a third party, or ultimately that he would know the meaning of this word in another dialect and would extend it to Moroccan dialect;
 - the video provided targets a specific group of supporters and is therefore not spontaneous;
 - The Match was not organised by the Moroccan FA, which was also not in charge of the ticket sales. It would therefore be unfair to apply the same level of responsibility towards the Respondent as if it would be a match organised by the latter;
 - The Respondent did not organise any travel for its supporters and the Moroccan borders were closed due to the COVID-19 pandemic. As such, the supporters involved in the incident most likely came from Qatar's neighbouring countries and could therefore not be assimilated to Moroccan supporters *stricto sensu*. The sole fact of wearing the Moroccan colours should not be sufficient to conclude that they are Moroccan supporters;

² Original text: " (...) en arabe dialectal marocain, le mot « Attaya », signifie tout simplement « donneurs » "

³ Original text: " (...) dans le contexte du match, le sens devant être attribué au mot litigieux est « donneurs » ou « ceux qui donnent » et ne saurait en aucun cas avoir la signification de « Gay » (...)"

- The Respondent deems that it cannot be held responsible and that art. 13 FDC is not applicable *in casu*;
 - As such, the Respondent requests that the present proceedings are closed due to the lack of basis and evidence.
8. The Committee, once again, reiterated that it has considered all the facts, allegations, legal arguments and evidence provided by the Respondent, and in the present decision had only referred to those observations and evidence regarded as necessary to explain its reasoning.

III. CONSIDERATIONS OF THE COMMITTEE

9. In view of the circumstances of the present case, the Committee decided to first address the procedural aspects of the case, *i.e.* its jurisdiction and the applicable regulatory framework, before proceeding to the merits of the case and determining the possible infringements as well as the possible resulting sanctions.

A. Jurisdiction of the FIFA Disciplinary Committee

10. First of all, the Committee noted that at no point during the present proceedings did the Respondent challenge its jurisdiction or the applicability of the FDC.
11. Notwithstanding the above and for the sake of good order, the Committee found it worthwhile to emphasise that, on the basis of art. 2 (1) FDC read together with art. 53 FDC, it was competent to evaluate the present case and to impose sanctions in case of corresponding violations.

B. Applicable law

12. In order to duly assess the matter, the Committee firstly began by recalling the content and the scope of the relevant provisions of the 2019 edition of the FDC, which was, in its view, the edition applicable to the present issue. In particular, the Committee considered that both the merits and the procedural aspects of the present case should be covered by the 2019 edition of the FDC.
13. In continuation, the Committee referred to art. 13 FDC which reads as follows:

Art. 13 of the FDC – Order and security at matches

1.

Any person who offends the dignity or integrity of a country, a person or group of people through contemptuous, discriminatory or derogatory words or actions (by any means whatsoever) on account of race, skin colour, ethnic, national or social origin, gender, disability, sexual orientation, language, religion, political opinion, wealth, birth or any other status or any other reason, shall be

sanctioned with a suspension lasting at least ten matches or a specific period, or any other appropriate disciplinary measure.

2.

If one or more of an association's or club's supporters engage in the behaviour described in paragraph 1, the association or club responsible will be subject to the following disciplinary measures:

- a) For a first offence, playing a match with a limited number of spectators and a fine of at least CHF 20,000 shall be imposed on the association or club concerned;*
- b) For reoffenders or if the circumstances of the case require it, disciplinary measures such as the implementation of a prevention plan, a fine, a points deduction, playing one or more matches without spectators, a ban on playing in a particular stadium, the forfeiting of a match, expulsion from a competition or relegation to a lower division may be imposed on the association or club concerned.*

(...)

14. The abovementioned provision represents the continuation of art. 4 of the FIFA Statutes, which strictly prohibits discrimination of any kind and on any grounds. In particular, this provision of the Disciplinary Code aims to punish the perpetrator(s) of the discriminatory act, but also holds the clubs and association to which the perpetrator(s) belongs responsible for this behaviour in accordance with art. 13 (2) FDC.
15. Through this strict liability rule, the club or association concerned is responsible for the misconduct of its supporters even if it is not at fault. As such, the Committee is empowered to sanction not only the perpetrator of the discriminatory act, but also the club/association to which the latter belongs, in order to implement FIFA's zero-tolerance policy on discrimination.
16. In particular, the Committee wished to emphasise that the abovementioned principle of strict liability is a fundamental element of the football regulatory system, as well as one of the few legal tools to prevent misconduct by supporters from occurring and going unpunished.
17. In relation to the above, the Committee recalled that according to CAS jurisprudence, the term "supporter" is an open concept, which must be assessed from the perspective of a reasonable and objective observer⁴. This means that the behaviour of the person may lead a reasonable and objective observer to conclude that the latter is a supporter of that particular club/association. Moreover, CAS specified that the behaviour of individuals and their location in and around the stadium are important criteria in determining the team they support⁵.
18. Finally, it should be kept in mind that discrimination (or insulting) behaviour can be intentional but also unintentional in the sense that even if the use of the terms was not intentionally addressed to a specific

⁴ CAS 2015/A/3874

⁵ CAS 2007/A/1217

person or group of persons for discriminatory (or insulting) purposes, these terms and expressions may still be insulting (or discriminatory) in the eyes of third parties⁶.

C. Standard of proof

19. Firstly, the Committee recalled that the burden of proof lies with FIFA, which is required to prove the infringement under art. 36 (1) FDC.
20. Secondly, the Committee pointed out that, according to art. 35 (3) FDC, the standard of "*comfortable satisfaction*" is applicable in disciplinary proceedings. According to this standard of proof, the onus is on the sanctioning authority to establish the disciplinary violation to the comfortable satisfaction of the judging body, taking into account the seriousness of the allegation.
21. Finally, the Committee referred to art. 40 FDC, according to which the facts contained in the match officials' reports, as well as in the supplementary reports or correspondence submitted by the match officials, are presumed to be accurate, bearing in mind that proof of their inaccuracy may be provided.
22. Having clarified the foregoing, the Committee proceeded to consider the merits of the case.

D. Merits of the case

1. Issue of review

23. The Committee started to analyse the evidence at its disposal, in particular the documentation and information provided in the scope of the present disciplinary proceeding to determine the potential violations of the FDC.
24. In this context, the Committee acknowledged that the match commissioner reported a "*homophobic chant by several dozen Morocco fans directed at Tunisian fans who were standing next to an Algeria flag in the stadium approximately in 19th minutes into the match*", further specifying that the "*chant was in Moroccan dialect Atwansa Aataya which means Gay Forgot Tunisian*".
25. The Committee subsequently observed that the abovementioned incident was also reported by the FARE Network in the following terms: "*Several dozen Morocco national team supporters in Section 120 started chanting 'Atwansa Aataya' عطايا أتوانسا ' in Moroccan Arabic (dialect) directed at a group of Tunisian fans who were supporting Algeria in the stadium approximately in the 19th minute into the match.*".
26. Having established the above, the Committee noticed that the Respondent did not explicitly deny the occurrence of said incident, but rather asserted that (i) an erroneous translation of the word "Aataya" was made, specifically in the context of the Match, (ii) the MC Report appears to be based on facts reported to the match commissioner (and not witnessed by the latter) and (iii) the supporters involved in this incident cannot be considered as being supporters of Morocco.

⁶ CAS 2016/A/478

27. Against such background, and after having carefully watched the video provided by the FARE Network, the Committee was comfortably satisfied that – even if not directly witnessed by the match commissioner – the reported chant actually occurred.
28. Upon reading both the MC Report and the FARE Report, the Committee remarked that this chant was reported as having been performed by Moroccan supporters, such fact being presumed to be accurate (cf. art. 40 FDC). This being said, the Committee took note that the Respondent affirmed that (i) the supporters involved in the incident most likely came from Qatar's neighbouring countries and could therefore not be assimilated to Moroccan supporters *stricto sensu*, and (ii) the sole fact of wearing the Moroccan colours should not be sufficient to conclude that they are Moroccan supporters.
29. In reply thereto, the Committee referred to its previous developments⁷. Specifically, keeping in mind that *"the term "supporter" is an open concept that (...) must be assessed from the perspective of a reasonable and objective observer"*⁸, and given that the chants were performed by supporters who were wearing Moroccan jerseys and more importantly, who were located in a section of the stadium reserved for Moroccan supporters, any (reasonable and objective) observer could only conclude that the perpetrators of the incident at stake were supporters of the Moroccan team. Such conclusion is sustained, even if the supporters in question were not Moroccan nationals and/or did not come from Morocco. As a matter of fact, *"the attribution of supporters' misconduct to either team typically arises from symbols supporting a certain team worn or held by one or more individuals (shirts, hats, etc.), by the nature of the chants or slogans voiced by some spectators, by the location of the relevant individuals within the stadium"*, such elements having been considered to be *"reasonable and objective criteria"*⁹.
30. As such, the Committee was comfortably satisfied that the abovementioned incident was committed by supporters of the Moroccan team.
31. Having clarified the above, the Committee decided to analyse this incident in order to assess whether any provisions of the FDC had been breached.

2. Infringements committed by the supporters of the Moroccan Football Association

32. As already pointed out, the Committee took due note that supporters of the Moroccan team chanted *"Atwansa Aataya"* during the Match.
33. Further, the Committee emphasised this chant – that was not contested by the Respondent – was reported in both the MC Report and the FARE Report and was clearly audible on the video at its disposal.
34. With respect to the word *"Aataya"* that was chanted, the Committee acknowledged that, according to the Respondent, it does not mean "Gay" in Moroccan dialectal Arabic, but rather "donator" or "those who give/donate".

⁷ Cf. para. 17 *supra*

⁸ CAS 2017/A/3874

⁹ CAS 2017/A/3874

35. However, the Committee was not convinced by the allegations put forward by the Respondent and held that it could not adhere to such explanations, particularly considering that they were not sustained by any documentary evidence that would corroborate such meaning. In fact, the Committee was satisfied that, as advanced by the FARE network – an organisation specialised in identifying discrimination – the word “Aataya” represents a homophobic slur used against non-heterosexual people. As such, it endorsed the conclusions contained in the FARE Report in so far that said word is to be considered an insult, questioning masculinity of the victims and using sexual orientation as a means of causing offense.
36. With the above in mind, the Committee highlighted that the use of homophobic slur by supporters is in clear violation of art. 13 FDC in so far that it *“offends the dignity or integrity of (...) a person or group of people through contemptuous, discriminatory or derogatory words (...) on account of (...) sexual orientation”*.
37. On account of the above, the Committee recalled that such behaviour is strictly prohibited and is to be sanctioned accordingly.
38. As a result, the Committee considered that Moroccan supporters performed discriminatory chants in violation of art. 13 (1) FDC, thus incurring the liability of the Respondent under the principle of strict liability contained in art. 13 (2) FDC. The Committee therefore held that the Respondent had to be sanctioned accordingly.

3. Determination of the sanction

39. The Committee observed in the first place that the Respondent was a legal person, and as such was subject to the sanctions described under art. 6 (1) and (3) FDC.
40. For the sake of good order, the Committee underlined that it is responsible to 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 (art. 24 (1) FDC).
41. As established above, the Respondent was found liable for the discriminatory behaviour of its supporters in accordance with art. 13 FDC.
42. In this context, taking into account the discriminatory behaviour of the Moroccan fans, the Committee wished to emphasise FIFA's policy of zero tolerance towards discrimination and any incidents in that regard should be condemned in the strongest possible terms as well as with sanctions that reflect the seriousness of the offence.
43. In continuation, the Committee recalled that, in so far that discriminatory incidents are concerned, it is bound by the minimum sanctions foreseen under art. 13 (2) (a) FDC.
44. Against such background, the Committee emphasised (i) that the chant was an isolated event during the Match and (ii) that it is the first time that the Respondent is charged for the discriminatory behaviour of its supporters.

45. This being said, the Committee however highlighted that, due to the occurrence of the discriminatory incident during the Match, it had no other choice but to impose at least the disciplinary measures listed under art. 13 (2) (a) FDC, that is to say playing a match with a limited number of spectators and a fine of at least CHF 20,000.
46. Given the above, and upon analysis of the circumstances of the case at stake, the Committee was satisfied that those minimum sanctions foreseen under art. 13 (2) (a) FDC were sufficient. In particular, the Committee held that playing a match with a limited number of spectators combined with a fine amounting to CHF 20,000 were to be considered appropriate and proportionate measures, the Committee being satisfied that such sanctions would serve the necessary deterrent effect, both on the Respondent and its supporters, in order to prevent such incidents to happen again.
47. Finally, and with respect to the match to be played with a limited number of spectators, the Committee recalled that the present incident occurred on the occasion of the FIFA Arab Cup Qatar 2021™. Considering that the Respondent was eliminated from said competition after the Match, such sanction could obviously not be served during that tournament. As such, the Committee deemed that this sanction had to be served in the next home match of the Respondent in the context of the Preliminary Competition for the FIFA World Cup Qatar 2022™. In this respect, the Committee emphasised that the stands behind the goals had to be closed during the match subject to the above sanction.

IV. DECISION OF THE DISCIPLINARY COMMITTEE

- 1. The Moroccan Football Association is ordered to pay a fine to the amount of CHF 20,000 for the discriminatory behaviour of its supporters in connection with the match *Morocco v. Algeria* played on 11 December 2021 in the scope of the FIFA Arab Cup Qatar 2021™.**
- 2. The Moroccan Football Association is ordered to play its next home match of the Preliminary Competition for the FIFA World Cup Qatar 2022™ with a limited number of spectators. In this regard, the Moroccan Football Association is ordered to close the stands behind the goals during the match subject to the above sanction. The Moroccan Football Association shall submit to FIFA the proposed seating plan at the latest 10 days prior to said match.**
- 3. The fine is to be paid within 30 days of notification of the present decision.**

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Jorge Ivan Palacio (Colombia)

Chairperson of the FIFA Disciplinary Committee

NOTE RELATING TO THE PAYMENT OF THE FINE:

Payment can be made either in Swiss francs (CHF) to account no. 0230-325519.70J, UBS AG, Bahnhofstrasse 45, 8098 Zurich, SWIFT: UBSWCHZH80A, IBAN: CH85 0023 0230 3255 1970 J or in US dollars (USD) to account no. 0230-325519.71U, UBS AG, Bahnhofstrasse 45, 8098 Zurich, SWIFT: UBSWCHZH80A, IBAN: CH95 0023 0230 3255 1971 U, with reference to case number above mentioned.

NOTE RELATING TO THE LEGAL ACTION:

This decision can be contested before the FIFA Appeal Committee (art. 57 FDC). Any party intending to appeal must announce its intention to do so in writing within three (3) days of notification of the grounds of the decision. Reasons for the appeal must then be given in writing within a further time limit of five (5) days, commencing upon expiry of the first time limit of three (3) days (art. 56 (4) FDC). The appeal fee of CHF 1,000 shall be transferred to the aforementioned bank account upon submission of the appeal brief (art. 56 (6) FDC).