

Decision of the FIFA Appeal Committee

passed on 16 January 2023

DECISION BY:

Mr. Neil EGGLESTON (USA), Chairperson

Mrs. Julia GONZÁLEZ VIZCAÍNO (Guatemala), Member

Mr. Salman AL ANSARI (Qatar), Member

ON THE APPEAL LODGED BY:

Mr. Luis RUBIALES BEJAR, Spain

(Decision FDD-16857)

AGAINST THE:

**Decision passed by the FIFA Disciplinary Committee on 26 October 2023
(ref. FDD-15763)**

I. FACTS OF THE CASE

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 Appeal 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.

A. Facts of the case

2. The present appeal lodged by Mr Luis Rubiales (**the Appellant**) relates to the final match of the FIFA Women's World Cup Australia and New Zealand 2023™, during and after which the latter is reported to have behaved in way contrary to art. 13 of the FIFA Disciplinary Code (**FDC**).

a. The Match and the incidents

3. On 20 August 2023, the final of the FIFA Women's World Cup Australia and New Zealand 2023™ was played in Sydney, Australia, between the representative teams of Spain and England (**the Match**) (Attendance 75,784 spectators – Final score 1-0).
4. During the Match, the Appellant was, amongst others, seen:
 - celebrating the Spanish victory by grabbing his crotch/genitals in the VVIP area (**the Genitals Incident**);
 - carrying the Spanish player Athenea del Castillo over his shoulder during the post-Match celebrations on the field of play (**the Carrying Incident**);
 - giving a peck on the player Olga Carmona's cheek during these celebrations (**the Peck Incident**).
5. A further incident occurred at the award ceremony at the end of the Match, during which the Spanish player Jennifer Hermoso (**the Player** or **Ms Hermoso**) stood on the podium and received her medal from the FIFA President, before greeting the officials and other dignitaries present on the podium, including the Appellant. In particular, when Ms Hermoso was facing the Appellant to greet him, the latter hugged her, spoke to her briefly, then put his hands on the back of her head and kissed her on her lips (**the Kiss** or **the Kiss Incident**).

b. The events following the Match

6. Subsequently to the award ceremony, in a video shared on social media by Ms Hermoso, she is seen in the dressing room commenting on the Kiss Incident, saying "*I did not like it*".
7. The Kiss Incident was widely reported in the media and condemned, *inter alia*, by the players' unions concerned, FUTPRO and FIFPRO respectively.

¹ Free translation from Spanish.

8. After the Match, the Appellant commented on the Kiss during an interview with a COPE journalist and said, *inter alia*, that "it was a kiss between two friends celebrating somethings" stating that those who saw this incident (the Kiss) differently were "idiots and stupid people"².
9. Later, in a video published by RFEF, the Appellant stated *inter alia* that he "made a mistake for sure" and that he "[has] to accept it. In a moment of such emotion, without any bad intention or bad faith, what happened, happened, in a very spontaneous way, with no bad faith from either side". He further explained that "we saw it as something natural normal" but "on the outside it has caused commotion, because people have felt hurt by it, so I have to apologize; there's no alternative. I have to learn from this and understand that a president of an institution as important as the federation, above all in ceremonies and that kind of thing, should be more careful". The Appellant also said that "I'm also saddened, because this is the biggest success in our history in women's football, the second World Cup that we've won, and this has affected the celebration."³.
10. On 23 August 2023, RFEF urgently convened an Extraordinary General Assembly for Friday 25 August 2023 in connection with the Kiss Incident.
11. On 25 August 2023, the Appellant gave a speech at the RFEF's Extraordinary General Assembly, in which he claimed, *inter alia*, that the Kiss was mutual and consensual, explaining that the Player had lifted him up and that he had asked her for a little kiss, to which she said yes. The Appellant considered himself to be the victim of a witch-hunt led by false feminists, promising that he would defend his honour in court and that he would not resign from his position as RFEF president.
12. On the same day:
 - FUTPRO issued an official statement stating, *inter alia*, that "Given the statements made by [the Appellant], Jennifer Hermoso wants to emphasise that she did not give consent to [the Appellant] to kiss her during the World Cup Final. "I want to clarify that as seen on the footage, I never consented to the kiss he gave me, and of course, I never intended to lift [the Appellant] in the air." (...)". The statement, signed by about 81 Spanish women players, including 23 world champions, concludes "After everything that has happened during the award ceremony of the Women's World Cup, we want to declare that all the players who sign this letter will not return to a call-up for the National Team if the current leaders continue".
 - Ms Hermoso published a statement on social media, which read as follows:

"After achieving one of the most desired successes of my sporting career and after a few days of reflection, I want to give my heartfelt thanks to my teammates, fans, followers, media and all of you who have made this dream come true; your work and unconditional support have been a fundamental part of winning the World Cup.

In reference to what happened today. While it is true that I do not want to interfere with the multiple legal processes underway, I feel obliged to denounce that the words of Mr. Luis

² Free translation from Spanish.

³ Free translation from Spanish.

Rubiales explaining the unfortunate incident are categorically false and part of the manipulative culture that he has generated.

I clarify that at no time did the conversation to which Mr. Luis Rubiales referred take place and that, far from it, his kiss was consensual. In the same way, I would like to reiterate, as I did at the time, that this was not to my liking.

The situation caused me a shock due to the context of the celebration, and as time went by and after delving a little deeper into those first feelings, I felt the need to denounce this event, as I believe that no person, in any work, sporting or social environment, should be a victim of this type of non-consensual behaviour. I felt vulnerable and a victim of aggression, an impulsive, sexist act, out of place and without any type of consent on my part.

I was asked to make a joint statement to reduce the pressure on the president, but at that moment in my mind I only had the idea of enjoying the historic milestone achieved together with my teammates. That's why, at all times, I told the RFEF and its various interlocutors, as well as the media and people I trusted, that I would not make any kind of individual or joint statement on this matter, as I understood that, if I did, it would take even more attention away from such a special moment for my teammates and for me.

Despite my decision, I have to say that I have been under continuous pressure to come up with a statement that could justify the act of Mr. Luis Rubiales. Not only that, but in different ways and through different people, the RFEF has pressured my entourage (family, friends, colleagues, etc.) to give a testimony that had little or nothing to do with my feelings.

It is not for me to evaluate communication and integrity practices but I am sure that as a World Champion National Team we do not deserve a manipulative, hostile and controlling culture. This type of incident joins a long list of situations that we players have been denouncing in recent years, so this incident, in which I have been involved, is just the last straw and what everyone has been able to see, but attitudes like this have been part of the daily life of our national team for years.

For all these reasons, I want to reinforce the position I took from the beginning, considering that I do not have to support the person who has committed this action against my will, without respecting me, at a historic moment for me and for women's sport in this country.

In no case can it be my responsibility to assume the consequences of transmitting something I do not believe in, which is why I have refused the pressure I have been put under.

ZERO TOLERANCE with such behaviour.

I want to close by making it very clear that although I am the one expressing these words, it is all the players in Spain and the world who have given me the strength to come out with this statement. Faced with such a show of disrespect and inability to recognise my own mistakes and assume the consequences, I have taken the decision not to return to play for the national team as long as the current leadership continues.

Thank you all for your messages of support and words of encouragement. I know I am not alone and thanks to all of you we will move forward more united. I leave this to the people I trust TMJ and FUTPRO and they will continue to work on the next steps in light of recent events.

#It'sOver".

13. On 26 August 2023, RFEF released an official statement, saying *"We have to state that Ms Jennifer Hermoso lies in every statement she makes against the president. We have all the reports and expert opinions that prove what the president has stated and we are going to take the corresponding legal actions against all those people who are falsifying reality and committing very serious crimes. The facts are what they are; and, no matter how many statements are made to distort reality, it is impossible to change what happened. The kiss was consensual. The consent was given in the moment with the conditions of the moment. Later you can think that you have made a mistake, but you cannot change reality."* (free translation from Spanish).
14. The statement was subsequently deleted from the website and RFEF shortly thereafter issued a second statement regarding the one released by FUTPRO and stated that *"the RFEF and the President will demonstrate each falsehood that is spread, whether by someone on behalf of the player or, if necessary, by the player herself. Given the gravity of the content in the press release by the Futpro union, the RFEF and the President will initiate the appropriate legal actions. The RFEF laments that after such an extraordinary sporting success as witnessed in the World Football Championship, the situation cannot be celebrated as it deserves due to entirely non-sporting reasons. In any case, and as it should be, the RFEF respects, as it has always respected, the decisions of the players to participate or not with the Spanish national team in international matches. Nevertheless, it is noted that participation in the national team is an obligation for all federated individuals if called upon to do so."* (free translation from Spanish).

B. Proceedings before the FIFA Disciplinary Committee

15. On 24 August 2023, disciplinary proceedings were opened against the Appellant for potential breaches of arts. 13.1, 13.2.a and 13.2.d FDC.
16. On 26 August 2023, the Appellant was provisionally suspended by the Chairperson of the FIFA Disciplinary Committee from exercising any football related activity for 90 days (**the Provisional Suspension**).
17. On 30 October 2023, the FIFA Disciplinary Committee notified the decision it rendered on 26 October 2023 in relation to the conduct(s)/behaviour(s) of the Appellant within the scope of the Match (**the Appealed Decision**), thereby imposing a three (3) year suspension upon the Appellant for *"having behaved in a manner contrary to the principles enshrined under art. 13 of the FIFA Disciplinary Code"*.
18. On 6 December 2023, the grounds of the Appealed Decision were notified to the Appellant.

C. Proceedings before the FIFA Appeal Committee

19. On 6 December 2023, the Appellant notified FIFA about his intention to appeal the decision of the Disciplinary Committee dated 26 October 2023.
20. On 15 December 2023, the Appellant submitted its appeal brief and *inter alia* provided a copy of the proof of payment of the appeal fee. Within its submission, the Appellant requested a hearing to be held.
21. On 3 January 2024, the Secretariat informed the Appellant (i) that its request for a hearing had been granted, (ii) that said hearing would take place in Zurich on 16 January 2024 and (iii) of the composition of the panel deciding in the present case.
22. On 8 January 2024, the legal representative of the Appellant informed the Secretariat that "[d]ue to priorly scheduled professional commitments, it would be really difficult to attend the hearing as scheduled".
23. On the same day (8 January 2024), the Secretariat acknowledged receipt of said communication and informed the Appellant that "*further information and/or instruction will be communicated in due course*".
24. On 11 January 2024, the legal representative of the Appellant informed the Secretariat that "*having elapsed 3 days since [its] last letter and considering the worrisome lack of response by FIFA (...), [it] couldn't postpone anymore the organization of the trip and [has] arranged the flights and hotels for the hearing on the 16th*" and, as such, "*will be in Zurich as requested by FIFA*".
25. On the same day (11 January 2024), the Secretariat reminded the Appellant that "*any potential rescheduling of a meeting of the FIFA Appeal Committee requires several internal arrangements (...) to be done before any confirmation could be provided*". The Appellant was thereby informed that "*the hearing could be postponed and be scheduled to take place on 9 February 2024*", and was thus invited to confirm as to whether it would be available on said date.
26. On 12 January 2024, the legal representative of the Appellant sent a communication to the Secretariat, insisting that both the Appellant and himself "*have already arranged accommodation and flights to go to Zurich, to participate in [the] hearing*", thus confirming that they would both "*attend the hearing as scheduled*", i.e. on 16 January 2024.
27. On the same day (12 January 2024), the Secretariat informed the Appellant that the hearing would take place on 16 January 2024 in Zurich.
28. On 16 January 2024, a hearing was held by the FIFA Appeal Committee at the Home of FIFA in Zurich (**the Hearing**). Together with the Committee and representatives of the Secretariat, the following persons attended the hearing:
 - Mr Luis Rubiales Bejar, the Appellant;
 - Mr Enric Ripoll Gonzalez, Legal representative of the Appellant.

29. During the Hearing, the Appellant presented its position.

II. APPELLANT'S POSITION

30. The position of the Appellant can be summarized as follows:

A. Preliminary remarks

31. On the one hand, the Appellant considered that *"the Appealed Decision is contrary to the law", as it "derives its grounds in a completely biased and distorted assessment of the facts, and without properly considering the evidence presented by the Appellant"*.
32. On the other hand, *"the Appealed Decision sanctions separate and independent actions considering them jointly, which leads to a more severe sanction that (if any) should have been imposed"*.

B. Factual background

33. *"As a preliminary issue, and prior to explaining the context of each of the "incidents", the Appellant wishes to express once again his deepest regret at everything that happened. Mr. Rubiales is aware that independently of the context, and the reasons that led him to do what he did, he should not have celebrated the Spanish victory the way he did nor kiss Ms. Hermoso during the award ceremony"*.

a. The Genitals Incident

34. *"[I]t is essential to place in context the circumstances that led the Appellant to make the gesture subject to sanction"*.
35. During the year 2022, *"several players from the national team decided to resign from the team if the RFEF did not dismiss Mr. Vilda"* (i.e. the head coach of the Spanish women's national team). Despite those threats, the Appellant *"reaffirmed his trust to Mr. Vilda, and confirmed that he would be the head coach for the World Cup"*, a decision for which the RFEF and the Appellant had been criticised.
36. It is in this context that, as *"soon as the referee blew the final whistle in the Final against England, Mr. Vilda turned towards the stands, pointed at the Appellant, and gestured his thanks for the trust placed in him when no one else wanted him to continue as the head coach"*. In turn, the Appellant, *"ecstatic to see the women's team win their first World Cup, pointed at Mr. Vilda, and made the gesture documented in the case"*.
37. The gesture was *"unfortunate"* and the *"highly biased media judgment (...) completely disregards the context in which it occurred"*.
38. As a matter of fact, *"this gesture means nothing more than "olé tus huevos", a typical and widespread expression in Spain to tell someone that they have done something well"*. Said

expression "could be translated as "way to go" or "you are the best", but under no circumstance can it be attributed the slightest negative connotation, as it is being suggested, not at least in this case".

39. In sum, the gesture was "directed solely and exclusively at Mr. Vilda" and by no means did the Appellant "try to disrespect anyone or to bring any disrepute to football and/or FIFA".
40. According to the Appellant, "until now this gesture had never been considered grounds for such a serious penalty when others have done it" (incl. Diego Simeone, Cristiano Ronaldo or Emiliano Martinez who "did a similar gesture when granted the Best Goalkeeper trophy").
41. However, the Appellant has been the only one sanctioned and the consideration made by the first instance (that the crotch-grab "is a taunting gesture almost exclusively done by males, and, as such, widely perceived as misogynist and sexist (literal)") is a harsh statement that would be "a violation of the principle of 'venire contra factum proprium', as FIFA has never sanctioned anyone in a hostile context".
42. "According to this principle, the conduct of a party who takes a position contrary to one it has previously taken may constitute an abuse of rights if the other party has relied to its detriment on the original position. (...) Also known as the doctrine of estoppel, it prevents an authority from modifying its conduct when it affects the legitimate expectation of a third party's right and has been applied repeatedly by the CAS since 1998".
43. "This principle also combines with another principle, also recognized by the CAS on multiple occasions, the 'in dubio contra stipulatorem'. In this case, since 2003, it has been understood that "If a sports federation promulgates rules that do not make it clear which time limit to apply, a judicial body of that same federation must adopt the interpretation that may be most favourable to the appellant, in accordance with the widely recognized interpretative principle 'contra proferentem or contra stipulatorem'."
44. "The ambiguity, or breadth of FIFA's language, obviously intentionally made by the draftsman of the rule, allows the FIFA Disciplinary Committee to interpret the scope of its definitions as it pleases, being able to fit any behavior it wishes into the established rules. This attempts against legal certainty and the basic principles of justice, which in the case at stake allowed FIFA Disciplinary Committee to interpret the rules at their convenience, disregarding fact and truth and imposing a sanction completely detached from reality."

b. The Carrying Incident

45. The Appellant referred to its argument raised before the first instance and reiterated the following:
- "This "incident" took place 45 minutes after the end of the game, when the stadium was empty, and the medal ceremony was over;
 - Mr. Rubiales was overcome by joy and happiness and while they were all celebrating hugging and jumping, he took Ms. Castillo on his shoulders, and at no point she was trying to request Mr. Rubiales to put her down, nor does she appear to feel threatened or uncomfortable with the act;

- *At no point the players protested and/or called him out for having done so;*
- *Once in the bus, all the players started signing "Presi, Presi, Presi", a playful diminutive meaning "President, President, President", cheering for him to the extent that the Appellant had to request them to stop because they were making him blush;*
- *The players refer to Mr. Rubiales as "Rubi", which is how only Mr. Rubiales' friends refer to him; and*
- *The players tossed in the air Mr. Rubiales in a clear display of affection and celebration".*

46. This gesture *"is an affectioned behavior towards one of the players of the national team, just like the one they had when they tossed Mr. Rubiales in the air, and thus there should be no disciplinary reproach arising from it".* In this respect, the Appellant pointed out that he *"did the same with the former male head coach, Luis Enrique Martínez, when Spain eliminated Croatia in the Euro 2020, and such action had no consequences whatsoever".*

c. The Peck Incident

47. According to the Appellant, *"it is entirely surprising that (serious) disciplinary consequences arise from a peck on the cheek, since not only it is a worldwide shown of appreciation, but also a way of greeting in Spanish culture between men and women".*

d. The Kiss Incident

48. To begin with, the Appellant *"wishes to reiterate that he acknowledges and recognizes that it should not had happened, and that he should had maintained the highest level of composure".*

49. The Appellant stressed the following elements:

- *"The exchange was quick, but she hugged him in the air, they expressed their admiration for each other, and Mr. Rubiales told her to forget about the penalty she had missed."*
- *"Ms. Hermoso replied saying "you are the best", then Mr. Rubiales asked, "can I kiss you?" and Ms. Hermoso said "pues vale" ("ok then"), and then the kiss occurred, very quick, after which she left with a pat on his ribs."*
- *"The whole exchange including the kiss lasted around 3 seconds."*
- *"(...) it seems clear that when Ms. Hermoso left the stage, happy and smiling, she was not concerned about anything."*
- *"(...) a TV news program conducted a lip-reading analysis which confirms that Mr. Rubiales requested permission to kiss Ms. Hermoso and, despite not being able to confirm Ms. Hermoso's response, the available evidence also confirms that she answered in the affirmative."*
- *After the Match, in an interview from the national radio, the Player inter alia said "Let others drop them because I don't care, I mean, I'm the world champion and that's what I'm going to take with me tonight. (...) I can only say that it has been the moment, the excitement and of the moment, that there is nothing further and that it will stay in an anecdote and that's it (...). I'm sure it won't go any further".*
- *Two videos were recorded in the dressing room after the Match. They shall provide context to the incident and are "crucial" in so far that (i) "it confirms precisely the fact that Mr. Rubiales asked for permission to give the kiss and confirms that she granted such permission" and (ii) "we can see from the reaction of Ms. Hermoso and the other players (they are laughing) that they made fun of the situation, thus not being uncomfortable or upset":*

- *"The first one, uploaded by Ms. Salma Paralluelo on her Instagram live, where Ms. Hermoso can be seen next to Mr. Rubiales while he announces a trip to Ibiza to celebrate the title. In this video, Mr. Rubiales even jokes with him getting married with Ms. Hermoso, obviously a joke in which Ms. Hermoso participated and at which she overtly laughed.*
 - *And the second one, uploaded by the very same Ms. Hermoso on her Instagram live, where we can see Ms. Hermoso and another teammate watching the kiss on another screen and someone asks Ms. Hermoso "and what did you say", and she responds "pues vale" ("ok then") what can be translated to "sure"⁴.*
 - *Once they were in the bus after the Match, the players "all overtly laughing with Ms. Hermoso about the situation, even she was explaining (again) how the kiss occurred, and then started chanting "kiss, kiss, kiss" when Mr. Rubiales stepped inside"⁵.*
50. The Integrity Department of the RFEF activated its "sexual harassment protocol" and investigated the matter. It is in this context that:

- On 23 August 2023, the psychologist of the National Team and safeguarding and welfare officer of FIFA for the World Cup, provided a report confirming that (i) "Ms. Hermoso considered it something anecdotal and consequence of celebration", (ii) "Mr. Rubiales confirmed the same interpretation"; and (iii) "there was no concerning attitude from any of them, neither from Mr. Rubiales nor from Ms. Hermoso".
 - Two forensic criminal experts "confirmed the brevity of the kiss", and concluded that (i) there was "no violent behavior, abuse of power or sexual connotation in the behavior of Mr. Rubiales, as well as behaviors of rejection or disapproval by the player Mrs. Jenni Hermoso, specifically during the kiss at the awards ceremony to the Spanish Women's Football Team in Australia", (ii) "no signs or symptoms of victimization have been observed in the player Mrs. Jenni Hermoso directly linked to the kiss of Mr. Rubiales that occurred at the awards ceremony for the Spanish Women's Football Team, in Australia, reactions that are not compatible with the manifesto of the players days later", and (iii) "[n]o objective evidence associated with denouncing elements or expressive signs linked to manipulations in vestige No. 16 has been observed, beyond the editing of the recording and the cuts indicated in the body of this report".
51. The Appellant insisted that he "apologizes for letting emotions control his acts, but none of them was done with the intention of harming Ms. Hermoso, FIFA, the football family, or anyone that might have felt offended by his acts".

C. Grounds of the Appeal

a. Standard of proof

52. According to the Appellant, "the Appealed Decision is contrary to the law since it has been adopted not only based on an entirely biased interpretation that lacks the slightest evidential support, but even more seriously by ignoring the evidence presented by the Appellant".

⁴ See <https://as.com/futbol/videos/show-de-rubiales-en-el-vestuario-viaje-pagado-a-ibiza-y-boda-con-jenni-hermoso-v/> and <https://elpais.com/deportes/mundial-futbol-femenino/2023-08-20/video-jenni-hermoso-tras-el-beso-de-rubiales-que-hago-yo-no-me-ha-gustado-eh.html>

⁵ See <https://as.com/futbol/femenino/el-video-de-las-jugadoras-en-el-autobus-despues-del-beso-de-rubiales-a-jenni-v/>

53. In the case at hand, the first instance *"has succumbed to the media judgement that had already condemned the Appellant even before he could provide his version and, more importantly, disregarding the evidence submitted to this disciplinary proceeding"*.
54. *"In other words, instead of adhering to the applicable standard of proof which (...) requires a higher level of evidence for more severe actions, the [first instance] has deemed a set of assessments (not evidence) sufficient to sanction the Appellant, each of which has been refuted one by one by [the Appellant]"*.
55. The Appellant is not trying to justify *"the occurrence of the events (which, once again, [he] deeply regrets)"*, but aims at *"ensuring that any sanction imposed is in accordance with the law and respects the principles of disciplinary proceedings regarding the burden of proof and proportionality, which is definitely not the case"*.

b. Art. 13 FDC and the "reasonable and objective observer"

56. *"As expressly stated in the Appealed Decision, the particular behavior should be analyzed from the perspective of a "reasonable and objective observer" but also, quoting the Appealed Decision, "(...) it was equally important to take into account the context in which those incidents occurred when assessing them"*.
57. Notwithstanding the above, the first instance *"has taken into account an entirely biased context of what actually occurred, accepting as valid all the explanations provided in this file with the clear exception, of course, being those provided by the Appellant"*.

c. The Genitals Incident

58. *"It is quite surprising that the [first instance] associates this gesture with gender equality, but even more so that it states it belongs to a different period in Spain"*.
59. As previously explained, the gesture was *"solely directed at Mr. Vilda, as an evident expression of congratulations after achieving the victory and the first FIFA Women's World Cup ("Óle tus huevos", "Way to go" or "you are the best")"*. This, being *"the only possible interpretation of the events in view of the evidence provided, which clearly shows that Mr. Rubiales was addressing Mr. Vilda without intending to insult, discredit, or offend anyone, much less to violate the basic rules of decent conduct or behave in a way that brings the sport of football and/or FIFA into disrepute"*.
60. The first instance should have taken into account the *"true context"* of the gesture⁶, and not *"biased speculations to discredit the Appellant by portraying him as someone sexist and "macho"*.
61. The conclusion reached by the first instance (namely that the gesture *"can only be seen as an insulting and/or offensive gesture contrary to the basic rules of decent conduct"*) is completely false, also considering that *"this is not the first occasion someone has made this gesture (neither in this century), but it is indeed the first time it has resulted in such disciplinary consequences"*. In the mentioned cases, *"the individuals were directing their gesture towards the opposing fans, a clear*

⁶ To that end, the Appellant refers to *"an article published in the newspaper SPORT which headline reads as follows: "Óle tus huevos, Luis"*.

display of contempt, which is not the case at hand, as Mr. Rubiales was expressing his support and congratulations to Mr. Vilda".

62. In sum, *"there have been similar situations in the past (in terms of gestures, not the meaning) that did not reach the severity of disciplinary consequences seen in this case. Therefore, not only from the perspective of a reasonable and objective observer, but also due to a comparative injustice, the sanction (if any) to be imposed on the Appellant should, at most, be a fine".*

d. The Kiss Incident

63. To begin with, the Appellant insisted that he *"has recognized that it should not have happened and acknowledged that because of his position as President of the RFEF he should have maintain the highest level of composure".* In this regard, it is *"completely false that the Appellant has not apologized for this incident or for the above exposed".*
64. In relation to said incident, the Appellant referred to the arguments presented in his submissions before the first instance, as well as to those outlined *supra* *"regarding the objective and proven facts of the Kiss Incident".*
65. This said, the Appellant pointed out that *"the Appealed Decision initially affirms that the kiss to Ms. Hermoso was completely unacceptable, irrespective of whether it was or not consensual (if she consented it), although it later also affirms that the kiss was not consensual, and reaches their conclusion (and sanctions) on that basis".* The Appellant cannot agree with such assertion *"because, no matter how unacceptable the act was (an aspect that the Appellant has never questioned), the [first instance] should have conducted a more thorough analysis of the context and not solely relied on an investigation that, from the moment Mr. Rubiales was provisionally suspended, has been taking into account exclusively those evidence that might be considered against M. Rubiales".*
66. The Appellant further insisted that he *"does not seek to justify the Kiss Incident, but simply that the sanction imposed for it be appropriate and proportionate, and not the result of a value judgement that was resolved even before the opening of this disciplinary proceeding".*
67. The conclusions reached by the first instance⁷ are *"categorically false, and this can only be the result of not having carefully analyzed Mr. Rubiales' submissions as claimed or, worse still, having completely ignored the evidence presented by the Appellant" which, according to the Appellant "unequivocally prove" that (i) "[b]efore the Kiss, Mr. Rubiales asked Ms. Hermoso "can I kiss you?"; (ii) the Player "responded "pues vale" ("ok then")" and (iii) "[a]fter the Kiss Incident, in an interview with the radio station Cadena Cope, Ms. Hermoso not only downplayed the matter, but also stated "let others drop them [the kisses] because I don't care, I mean, I'm the world champion and that's what I'm going to take with me tonight" and that "let's see today everything is going to be frowned upon by the eyes of those who look at it and I can only say that it has been at the moment, the*

⁷ Namely that (i) *"the Player and the [Appellant] were not involved in a personal and/or sentimental relationship, their relationship being purely professional, a fact that has been confirmed by both of them"; (ii) "there was no agreement between them – neither before or during the award ceremony – on a potential kiss"; and (iii) "the Player's behaviour and the overall circumstances prior to the kiss did not in any way imply that she might want to or consent to be kissed by the [Appellant]" (cf. para. 157 of the Appealed Decision).*

excitement and of the moment, that there is nothing further and that it will stay in an anecdote and that's it, there will be people that will want to make a fuzz of it and others that won't, but well...".

68. Those facts have been proven *"through the submission of numerous videos of the Kiss Incident, as well as videos posted on the players' own Instagram accounts, including Ms. Hermoso's. In these videos, Ms. Hermoso can be seen stating that she consented to the kiss while joking with the other teammates".* In addition to that, the Appellant relied on *"videos of the players inside the locker room and on the bus, where they all joke about the kiss", and "even jokes about a wedding in Ibiza where all the players laugh heartily, and praising Mr. Rubiales chanting "Presi, Presi, Presi" on the bus".*
69. The first instance erroneously provided more weight to *"the absolutely prepared questionnaire of Ms. Hermoso, biased media images, various statements and, worse still, the testimonies of the Presidents of the NZF and the FA"* than to *"a video in which Ms. Hermoso explicitly explains to her teammates not only that Mr. Rubiales asked her before kissing her, but also that she said "pues vale" ("ok then"), or more than her own statements on Cadena Cope moments later".*
70. According to the Appellant, *"without delving into whether the Kiss Incident deserves disciplinary reproach or not, what must be taken into account is the real context of the incident and, above all, the fact that Ms. Hermoso consented to the kiss".* As such, and *"[i]f analyzed properly, if reviewed all the evidence provided, the only possible conclusion is that the sanction is way more severe than it should really be".*
71. In continuation, the Appellant pointed out that he had *"not only (...) been sanctioned for the Kiss Incident (along with the other three Incidents), but (...) also (...) for his attitude after the incident, despite there not being any charges for those behaviors".* To that end and since *"the Appellant had no opportunity to comment on these facts (the press conference held on the 25th and the other elements the [first instance] uses to further strengthen its grounds), (being unaware that they were also subject of this procedure), the [Appeal Committee] can only reject them and consequently review the sanction to be imposed without taking them into account".*
72. Finally, the Appellant insisted *"on the fact that [he] apologizes for letting emotions control his acts, but none of them was done with the intention of harming Mr. Hermoso, FIFA, the football family, or anyone that might have felt offended by his acts".*
73. The Appellant further claimed that *"there is still evidence that FIFA has not released".* In particular, the latter pointed out that *"[i]n the moments prior to enter the locker room, Mr. Rubiales and Ms. Hermoso were talking outside and the FIFA camera operators were recording and taking pictures of that moment, we know that those were FIFA cameras because they were the only cameras allowed to be in that area. Unfortunately, this evidence, post medal ceremony, therefore, post incident, has been retained by FIFA. Evidence of the existence of the evidence can be found in the picture reported by [a] media article"⁸. As can be seen on the relevant picture, the Player "is overtly laughing next to Mr. Rubiales".*

⁸ See <https://www.20minutos.es/deportes/noticia/5178039/0/rubiales-pidio-jenni-hermoso-llorando-por-sus-hijas-que-explicara-momento-beso.amp.html>

74. The Appellant is therefore requesting *"FIFA to provide the full footage of what was recorded by its cameras"*.
75. In conclusion, *"[a]s the evidence confirms, the facts occurred in the way Mr. Rubiales has explained from the very beginning when he was questioned about those moments and therefore, with all due respect, there is no justification to impose such a serious suspension on Mr. Rubiales"*.

e. The Peck and the Carrying Incident

76. In relation to these incidents, *"the Appellant can only express his utmost astonishment at how the [FIFA Disciplinary Committee] defines him"*⁹. In this respect, *"it is completely unacceptable to justify an alleged inappropriate behavior for having given a peck on the cheek to a player and having carried another one by drawing a scenario that is not at all realistic"*.
77. With respect to the Carrying Incident, and while the first instance never requested the relevant player's statement, the Appellant *"has demonstrated that at no point the player was trying to request Mr. Rubiales to put her down, neither does she appear to feel threatened or uncomfortable with the act"*. In fact, *"[a]t no point the players protested and/or called him out for having done so to the extent that when they were leaving the stadium, being in the bus, all the players started singing 'Presi, Presi, Presi'"*.
78. With respect to the Peck Incident, *"there is no more left to say than that it is a worldwide shown of appreciation, especially in the Spanish culture, where this pecks on the cheeks are common (as shown, for instance, with the images of Mr. Rubiales kissing effusively the male players after their victory in the UEFA Nations League against Croatia)"*. In addition, *"there is no single evidence suggesting that any of the players were uncomfortable about the situation, not only during the 'incidents', but after them"*. This behaviour should *"be considered as nothing but a happiness expression, comparable to what in other occasion Mr. Rubiales did with the Head Coach of the Men National Team (...) or with the male players, but at no point should it be regarded in the terms of the Appealed Decision"*.
79. *"In light of the above, and considering the evidence presented, if any disciplinary reproach is deemed necessary for either of these two 'incidents', once again, the [FIFA Appeal Committee] should apply the least severe in accordance with the principle of proportionality"*.

f. Proportionality of the sanctions

80. The Appellant cannot agree with the first instance *"when it is established that the four incidents should result in the same sanction (i.e., a ban), when the FDC provides for a wide range of sanctions to be imposed on natural persons"*. In fact, *"each violation of the FDC should entail its specific sanction since, as the Appealed Decision itself asserts, not all the incidents are equally serious or severe"*.
81. In this respect, *"it is absolutely disproportionate to compare, from a disciplinary standpoint, the Carrying Incident, the Genitals Incident, and the Peck Incident to the Kiss Incident"*.

⁹ The Appellant specifically referring to paras. 174-175 of the Appealed Decision.

82. From the Appellant's perspective, the *"truth is that the only reason the four incidents are considered together is to justify a longer suspension, as if only the Kiss Incident had occurred, undoubtedly the ban sanction would not have been for three years, but less"*.
83. *"In conclusion, and in accordance with the principle of proportionality, there is no other interpretation but to: (i) Consider each of the incidents as individual infractions; and (ii) If applicable, sanction each of them separately, taking into account their specific context and gravity while considering them individually"*.

g. Previous cases under art. 13 FDC

84. *"A thorough search on the FIFA Legal & Compliance website has only yielded two prior cases where the [first instance] applied Article 11 of the 2019 version of the FDC (current Article 13)", namely the "disciplinary proceedings against José María Giménez (FDD-12714) and Fernando Muslera (FDD-12712), members of the Uruguay national team, for the incidents that occurred in a game against Ghana in the FIFA World Cup hosted in Qatar". Both of them were "investigated for assaulting members of the referee team" and sanctioned with a four-match suspension.*
85. In this regard, the Appellant pointed out that *"Mr. Muslera and Mr. Gimenez, as Mr. Rubiales, were sanctioned for violating FIFA regulations during a world cup (the formers in Qatar FWC and the latter in Australia FWWC), and while the two players, that assaulted members of the referee team, received 4 games of suspension, which is either 2 FIFA windows (...), or 1 month (...) and Mr. Rubiales, the equivalent to 280 games (using 70 games per season as reference) and lost his job as president of the RFEF and all his other positions in football"*.
86. Given that the same article was applied in those cases, *"[t]he comparison shall be made" between 4 matches and 280, thus demonstrating that the sanction "is grossly disproportionate"*.
87. In addition, the case of the Appellant *"is the only case (to our knowledge) in which the [first instance] has applied the most severe of sanctions to a natural person, namely, a ban on taking part in football-related activity"*.

h. Previous cases under the FDC and the FIFA Code of Ethics

88. During the 2014 World Cup, the Uruguayan player Luis Suarez *"physically assaulted another player" and was "banned from taking part in any football-related activity (administrative, sporting or of any other kind) for four (4) consecutive months including a ban from entering the confines of any stadiums during the period suspension, plus a fine of 100.0000 CHF and 9 games of suspension with his national team". Said sanction "was considered to be extremely harsh, but was imposed due to his recidivism"*.
89. Furthermore, Mr Platini and Mr Blatter – who were at the time *"the most senior individuals in the world of football"* – were *"respectively subjected to bans of four years and six years, together with fines of CHF 80,000 and CHF 50,000" for cases concerning "bribery and corruption; accepting gifts and other benefits; conflicts of interest; and breaches of loyalty and general rules of conduct"*.

90. In a separate case (CAS 2011/A/2433), and *"despite the severe violations committed"*, a *"two-year ban was imposed on a member of the FIFA Executive Committee who was caught soliciting bribes in respect of the bidding process for the 2018 and 2022 World Cups"*. In a further case (CAS 2017/A/5006 Harold Mayne-Nicholls v FIFA), *"a two-year ban was imposed on the Chairman of the Bid Evaluation Committee who was found guilty of soliciting personal benefits the bidding process for the 2018 and 2022 World Cups"*.

91. In sum:

- *"the imposition of one sanction or the other should respect the principle of proportionality, which does not occur in this case, where all the Incidents have been collectively assessed despite the fact that, as indicated in the Appealed Decision, not all the Incidents carry the same level of severity or seriousness"*;
- when comparing *"the decision of the FIFA disciplinary committee when applying article 13 of the FDC"*, the Appellant *"found an absolute disproportion between the sanction imposed for assaulting a referee and a consensual kiss"*;
- when comparing *"decisions imposed for the violation of the FDC and the CE by FIFA officials"*, the Appellant *"found that the sanction imposed on Mr. Rubiales does not relate to those imposed on other officials who engaged in corruption, bribery and requesting of personal benefits, even the highest officials"*.

D. Conclusions

92. In view of all the above, the Appellant considered it *"crystal clear that"*:

- He *"has recognized that he regrets profoundly all the Incidents occurred"*;
- The first instance has not *"analyzed the Incidents from the proper context and have ignored a great amount of evidence provided by the Appellant"*;
- The first instance has *"wrongly analyzed all the incidents jointly, leading to a more severe sanction than the one that would be applied if the evidence provided had been considered"*.

E. Request for relief

93. Considering the above developments, the Appellant requested the Appeal Committee to:

- *"Set the Appealed Decision aside as the grounds that allegedly justified its imposition have been all discredited"*;
- *"In the alternative, to set it partially aside and to amend the sanction imposed in accordance with the principle of proportionality"*;
- *"Finally, and in the further alternative, and in the improbable case that the Appeal Committee still considers that the Genitals Incident, the Carrying Incident and the Peck Incident are subject to sanction, to amend the Appealed Decision by applying any of the other disciplinary measures provided for in Article 6.1 of the FDC in accordance with the principle of proportionality of sanctions"*.

III. CONSIDERATIONS OF THE APPEAL COMMITTEE

94. In view of the circumstances of the present matter, the Committee first decided to address some key procedural aspect, including its competence to hear the present appeal and the admissibility of the said appeal, before entering into the substance of the case at stake.

A. Competence of the FIFA Appeal Committee

95. First, the Committee recalled that the procedural aspects of the matter at stake were governed by the 2023 FDC, in particular considering that (i) the 2023 FDC entered into force on 1 February 2023 and (ii) the present appeal was lodged by the Appellant on 6 December 2023.

96. In this context, the Committee pointed out that the first instance banned the Appellant *"from taking part in any football-related activity for a duration of three (3) years for having behaved in a manner contrary to the principles enshrined under art. 13 of the FIFA Disciplinary Code"*.

97. In light of the above, the Committee considered that, in accordance with art. 60 in conjunction with art. 61 of the 2023 FDC, it was competent to hear the appeal lodged by the Appellant against the decision rendered by the Disciplinary Committee.

98. This having been established, the Committee acknowledged that:

- the grounds of the Appealed Decision were notified on 6 December 2023;
- the Appellant communicated its intention to appeal on the same day, *i.e.* 6 December 2023;
- the Appellant submitted its appeal brief and the proof of payment for the appeal fee on 15 December 2023; and
- FIFA received the appeal fee.

99. In view of this, the Committee held that the requirements of art. 60 pars. 3, 4 and 6 FDC were met, and therefore declared the present appeal admissible.

B. Applicable law

100. The above being determined, the Committee next considered that the merits of the present appeal should also be analysed in light of the provisions of the 2023 edition of the FDC, the former being the edition which was in force at the time of the pertinent events.

101. In this respect, the Committee gave particular attention to art. 13 FDC, this without prejudice that other rules may also be at stake. Said provision governs the standard(s) of expected behaviour from (in particular) officials, mandates respect for the relevant (FIFA) rules and regulations and likewise stipulates the associated requirement for officials (in particular) to comply with the principles of fair play, loyalty and integrity.

102. Said article, titled *"Offensive behaviour and violations of the principles of fair play"* reads as follows:

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

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

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

103. This being established, the Committee subsequently turned its attention to the merits of the present case.

C. Merits of the case

a. Preliminary remarks

104. After reading the Appealed Decision and careful analysis of the Appellant's submission (both in his appeal brief and the Hearing), the Committee recalled that the present appeal relates to the behaviour of the Appellant during and after the final match of the FIFA Women's World Cup Australia and New Zealand 2023™, and specifically to the following incidents (together **the Incidents**):

- the Genitals Incident;
- the Carrying Incident;
- the Peck Incident;
- the Kiss Incident.

i. The Appealed Decision

105. In this context, the Committee took note that the Disciplinary Committee considered that (i) the incidents had to be *"analysed from the perspective of a "reasonable and objective observer" in order to determine as to whether it may be contrary to art. 13 FDC"*¹⁰, and (ii) *"it was equally important to take into account the context in which those incidents occurred when assessing them"*¹¹.

106. In fact, analysing the incidents separately, the Disciplinary Committee *inter alia* concluded the following:

¹⁰ Cf. para. 136 of the Appealed Decision.

¹¹ Cf. para. 138 of the Appealed Decision.

- the Genitals Incident *"undoubtedly constituted a breach of art. 13 FDC in so far that it was contrary to the very basic rules of decent conduct"*¹²;
- *"the [Appellant's] attitude in relation to the Kiss Incident (...) undoubtedly tarnished the image of football and/or FIFA, bringing both into disrepute. Indeed, the [first instance] held that, from the very first moment it initiated the Kiss to the moment the present decision has been rendered, the [Appellant] repeatedly and continuously violated the basic rules of decent conduct, thereby infringing art. 13 FDC"*¹³;
- the Peck and the Carrying Incident *"were further examples of the completely unacceptable conduct the [Appellant] adopted towards women and/or female players. In fact, while putting them in perspective with the previously analysed incidents, the Committee was of the view that the [Appellant] appeared to have abused its position as president of the RFEF to approach and/or treat players in a completely intolerable and outrageous manner"*¹⁴;
- *"all incidents at stake, analysed separately, undoubtedly constituted individual breaches of art. 13 FDC in so far that they related to failures by the [Appellant] to comply with the principles enshrined under art. 13 FDC, the latter having on several occasions violated the basic rules of decent conduct, used offensive gestures or behaved in a way that brought football and/or FIFA into disrepute"*¹⁵.

107. When determining the sanction(s) to be imposed, the Disciplinary Committee stressed that, although the Appellant *"appeared to present a clean record in relation to similar incidents"*¹⁶, the first instance stressed that *"a series of aggravating circumstances needed to be taken into account"*¹⁷.

108. For those reasons, the first instance *"determined that a ban on taking part in any football-related activity was the most appropriate and proportionate measures with which to sanction the [Appellant] in view of the offence(s) committed. In particular, while taking into account the undeniable media impact of the [Appellant's] behaviour and its repercussions on the reputation of football as well as of FIFA, but also and more importantly, on the Player's mental state, the Committee considered that a ban for a duration of three (3) years was justified in the present circumstances"*¹⁸.

ii. The Appellant's submissions

109. Having acknowledged the main elements contained in the Appealed Decision, the Committee subsequently acknowledged that the Appellant does not dispute the occurrence of the Incidents (particularly considering that each of them had been documented by videos and/or photographic evidence), but rather considers (in essence) that:

- *"the Appealed Decision is contrary to the law", as it "derives its grounds in a completely biased and distorted assessment of the facts, and without properly considering the evidence presented by the Appellant"; and*

¹² Cf. para. 149 of the Appealed Decision.

¹³ Cf. para. 168 of the Appealed Decision.

¹⁴ Cf. para. 174 of the Appealed Decision.

¹⁵ Cf. para. 176 of the Appealed Decision.

¹⁶ Cf. para. 186 of the Appealed Decision.

¹⁷ Cf. para. 187 of the Appealed Decision.

¹⁸ Cf. para. 195 of the Appealed Decision.

- the first instance has not *“analyzed the Incidents from the proper context and have ignored a great amount of evidence provided by the Appellant”*, resulting in the sanctions imposed being disproportionate, particularly considering that the Incidents were *“wrongly analyzed (...) jointly, leading to a more severe sanction than the one that would be applied if the evidence provided had been considered”*.

110. In view of the above, the Committee considered that the following questions were to be addressed in deciding the present appeal:

a) *Did the Appellant breach art. 13 FDC?*

and, if in the affirmative,

b) *Are the sanctions imposed on the Appellant by the first instance proportionate?*

111. Prior to answering the above questions, the Committee found it essential to recall (but also to keep in mind while deciding on the present appeal) that in line with the CAS jurisprudence, *“the president of a national federation [as in casu] (...) bears the responsibility to set a proper example for the federation’s employees, the others individuals affiliated thereto, and more generally to all those involved in the world of football”*¹⁹.

112. By way of consequence, the Committee concurred with the first instance in so far that, upon assessing the present appeal, it *“should not lose sight that – at the time of the incidents at stake – the Respondent was one of the most prominent officials in the football world, being the president of one of the most successful football federation (both in Europe and in the world) but also a member of the UEFA Executive Committee and one of UEFA’s vice-presidents”*²⁰.

b. Did the Appellant breach art. 13 FDC?

113. To begin with, the Committee duly noted that, in his submission, the Appellant is trying to provide the “real” context of each of the Incidents with the aim to demonstrate that the first instance assessed them in a *“biased and distorted”* manner, failing to accept the explanations provided by the former.

114. In these circumstances, and while accepting that as emphasised in the Appealed Decision, the Incidents were widely reported worldwide and the Appellant’s *“behaviour during and after the Match was considered improper, indecent and/or offensive by most (if not all) objective observers”*, the Committee decided to assess each of the Incidents separately, while analysing (i) their respective context and (ii) the explanations put forward by the Appellant.

i. The Kiss Incident

115. As a starting point, the Committee noticed that following lengthy developments, the first instance concluded that (i) *“kissing a player, more importantly without their consent, undoubtedly constituted a behaviour contrary to the very basic principles contained under art. 13 FDC”*, particularly *“when taking into account the previously described hierarchical link between the*

¹⁹ CAS 2019/A/6388 Karim Keramuddin v. FIFA.

²⁰ Cf. para. 129 of the Appealed Decision.

*[Appellant] and the Player*²¹, (ii) the events that followed the Kiss “put together undoubtedly denoted (...) a behaviour incompatible with the general principles of fair play, loyalty and integrity enshrined under art. 13 FDC”²² and (iii) the Appellant’s “attitude in relation to the Kiss Incident (...) undoubtedly tarnished the image of football and/or FIFA, bringing both into disrepute”²³. As such, the first instance held that “from the very first moment it initiated the Kiss to the moment the present decision has been rendered, the Respondent repeatedly and continuously violated the basic rules of decent conduct, thereby infringing art. 13 FDC”²⁴.

116. In turn, in his submission, the Appellant essentially considered that (i) the first instance “*should have conducted a more thorough analysis of the context and not solely relied on an investigation that, from the moment Mr. Rubiales was provisionally suspended, has been taking into account exclusively those evidence that might be considered against M. Rubiales*”, and (ii) the conclusions of the first instance are “*categorically false, and this can only be the result of not having carefully analyzed Mr. Rubiales’ submissions as claimed or, worse still, having completely ignored the evidence presented by the Appellant*”.
117. Before analysing those arguments, the Committee wanted – *for the sake of completeness* – to address two elements raised by the Appellant in relation to the Kiss, specifically:
- the Appellant’s request to be provided with additional video footage – namely “*the full footage of what was recorded by [FIFA’s] cameras*” (specifically with respect to “*the moments prior to enter the locker room, [when the Appellant and the Player] were talking outside*” and where the Player “*is overtly laughing next to [the Appellant]*”) – and (ii) his concern that he was not provided with any footage of the Kiss Incident showing the Player’s lips;
 - the Appellant’s argument related to the potential violation of his right to be heard, the latter considering that he had been sanctioned “*for his attitude after the incident, despite there not being any charges for those behaviors*”, without having the “*opportunity to comment on these facts (the press conference held on the 25th and the other elements the [first instance] uses to further strengthen its grounds)*”.
118. With regard to the first point, the Committee wished to clarify that, upon verification, such footages do not appear to exist and/or to be available. In fact, all available video footages and images of the Incidents (including of the Kiss) were already provided to the Appellant (upon his request) during the proceedings before the first instance.
119. In relation to the second point, the Committee saw no reason to set aside the conclusions of the Appealed Decision in relation thereto in so far that “*according to the constant jurisprudence of the CAS violations of the right to be heard at a previous instance may be healed in case of de novo hearing at the second instance*”²⁵. As such, and since the present appeal proceedings are *de novo*, it follows from the above that the Appellant’s objection must be dismissed and the conclusions of the first instance thus confirmed.

²¹ Cf. para. 162 of the Appealed Decision.

²² Cf. para. 167 of the Appealed Decision.

²³ Cf. para. 168 of the Appealed Decision.

²⁴ Cf. para. 168 of the Appealed Decision.

²⁵ CAS 2022/A/9078 ŠK Slovan Bratislava v. UEFA.

120. This being clarified, the Committee subsequently acknowledged that, according to the Appellant, all evidence provided by the latter²⁶ demonstrate that the Player in fact consented to the Kiss. To that end, the Appellant maintained that he had asked the Player whether he could kiss her ("*can I kiss you?*") to which she responded "*pues vale*" (translated by the Appellant as "*ok then*").
121. In fact, the Committee noted that the Appellant's main argument revolved around the consensual nature of the Kiss, the latter emphasising that the burden to prove that the Kiss was made without the Player's consent was on the first instance (and is now on the Committee).
122. With regard to the notion of consent, the Appellant insisted during the Hearing on the fact that his narrative (and the description of the Kiss Incident) always remained the same (i.e. the Kiss had been consensual), while the Player, for her part, changed her version of the events: she initially corroborated the above statements in a radio interview immediately after the Match (stating that the Kiss had allegedly occurred between two friends in the excitement of the moment) - which was further confirmed when she was interviewed by the RFEF welfare officer a few days after the incident - but suddenly, she changed her mind and claimed that the Kiss was not consensual.
123. With those elements in mind, and while it appears that the Appellant is now trying to defend himself by cherry-picking the evidence, disregarding all those that go against him, the Committee wished to insist on the fact that, as rightly pointed out by the first instance, "*such a kiss – emanating from the president of an association towards a player (of the opposite sex) of one of the national team under his leadership and responsibility – was completely unacceptable. This, regardless of whether or not it would have been consensual*"²⁷.
124. Notwithstanding the above, the Committee pointed out that:
- on the one hand, the videos and/or interviews referred to by the Appellant were taken directly after the match, i.e. in the heat of the action while the Player was celebrating the pinnacle of her sporting career, at a time when she was in the throes of euphoria without necessarily being fully aware of what had just happened;
 - on the other hand, the Player had time to realise the seriousness of the incident, but also to put into words the emotions she felt during and after the Kiss.
125. In fact, this evolution is precisely what the Player described in the statement she submitted to the first instance, the former insisting on the fact that when the Kiss Incident occurred, as well as in the following hours and days, she did not want to tarnish the celebrations and/or "steal the moment" from her team and teammates:
- "*As I said before, my **mental and emotional state was unique** because of the fact that I was a World Champion and I was in a special moment. What I remember was **feeling embarrassed at the time** and I quickly shared with some of my teammates what had happened because I didn't feel good. **As time went on**, and although I always tried to keep the focus on the*

²⁶ Including "a lip-reading analysis" conducted by "a TV new program", an interview from the Player on the national radio and two videos recorded in the dressing room after the Match.

²⁷ Cf. para. 151 of the Appealed Decision.

celebration as well so as not to upset my teammates, **I was able to reflect on what had happened and I was more aware that I didn't feel respected, that it put me in a very complicated situation.** (...) Also, as I said immediately afterwards, I didn't like it and **he put me in a very complicated position** and to leave me alone that it wasn't right" (emphasis added)²⁸;

- "Yes, as soon as it happened, once I went down to the pitch, I said to my teammates Alexia and Irene something like: "Tia, Rubiales just kissed me on the mouth" and they said to me, "What do you say, Tia? I told them because it really affected me a lot and **at that moment I started to digest a bit what he had done to me.** Afterwards, during the presentation of the cup, I also shared it with other teammates. From there we went to the dressing room and we did a live show and the subject came up with some teammates who didn't know what had happened. That's when I saw the video for the first time. **I remember telling them that "I didn't like it" and that "I couldn't do anything about it".** At that moment, what was very clear to me was that something had happened that was completely out of place and that **I had felt humiliated, not respected.** What I also remember clearly is that **I didn't want to steal the limelight from that unique moment that the team was experiencing, celebrating the achievement of something brutal and historic,** and for that reason at times I felt uncomfortable talking a lot about it and with a bit of internal conflict because it certainly disturbed me" (emphasis added)²⁹;
- "As I said before, these were moments of many emotions in a historic and unique moment, so it is true that on some occasions, talking to colleagues or even publicly, **I wanted to avoid stealing the limelight from that special moment we had experienced,** although at all times and in every conversation I made it very clear that I had not liked it and that I had not been able to react. I had sacrificed a lot over the years to achieve this success and **I could not allow myself to take the limelight away from what was most important, but I felt bad, even if I did not express it at the time.** If I had done so and said what I felt, I would not have been happy for the rest of my life. I had to enjoy the moment and not take the limelight away from it." (emphasis added)³⁰.

²⁸ Free translation – original text in Spanish: "Como comentaba anteriormente, mi estado mental y emocional era único por el hecho de haber sido Campeonas del Mundo y estar en un momento especial. Lo que recuerdo fue sentirme avergonzada en el mismo momento y rápidamente les compartí a algunas compañeras lo que había pasado porque no me sentía bien. A medida que pasaba el tiempo, y aunque siempre intenté mantener el foco en la celebración también para no fastidiar a mis compañeras, pude reflexionar sobre lo que había pasado era más consciente de que no me sentí respetada, de que ese hecho me puso en una situación muy complicada. (...) Además, como dije inmediatamente después, no me gustó y me situó en una posición muy complicada y que me dejara tranquila que no estaba bien."

²⁹ Free translation – original text in Spanish: "Sí. Nada más ocurrió, una vez bajé al césped, le dije a mis compañeras Alexia e Irene algo así como: "Tia que Rubiales me acaba de dar un beso en la boca" y ellas me dieron, ¿qué dices tia?" Se lo comenté porque de verdad que afectó mucho y en ese momento empecé a digerir un poco lo que me había hecho. Después, durante la entrega de la copa, también se lo compartí a otras compañeras. De ahí nos fuimos al vestuario y haciendo un live salió el tema con algunas compañeras que no sabían que había pasado. Ahí vi el video por primera vez. Recuerdo que les dije que "no me había gustado" y que "no pude hacer nada". En esos momentos, lo que tenía muy claro es que había pasado algo que estaba completamente fuera de lugar y que me había sentido humillada, no respetada. Lo que recuerdo claramente también es que yo no quería robar protagonismo a ese momento único que estábamos viviendo el equipo, de celebración por conseguir algo brutal e histórico y que por esa razón en algunos momentos me sentía como incómoda hablando mucho del tema y con un poco de conflicto interno porque ciertamente me perturbaba."

³⁰ Free translation – original text in Spanish: "Como decía anteriormente fueron momentos de muchas emociones en un momento histórico y único por lo que es cierto que en alguna ocasión hablando con compañeras o incluso públicamente quise evitar robar protagonismo a ese momento tan especial que habíamos vivido, aunque en todo momento y en cada conversación dejé muy claro que no me había gustado y que no había podido reaccionar. He sacrificado mucho en estos años para lograr este éxito y no podía permitir restar protagonismo a lo más importante, pero yo me sentía mal, aunque no lo exteriorizara en ese momento. Si lo hubiera hecho y hubiera dicho lo que sentía no habría sido feliz el resto de mi vida. Tocaba disfrutar del momento y no restarle protagonismo."

126. Taking into consideration the overall context and the unique situation in which the Player found herself in through the sole fault of the Appellant, the Committee was convinced by the explanations put forward by the Player in that she initially tried to play down the incident and/or its direct impact, so as not to distract media and public attention from her and her teammates achievements and their first World Cup victory. To that end, the Committee wished to emphasise that it was particularly impressed by the calm and mature way in which the Player reacted to the Incident, putting aside her own emotions and feelings so as not to amplify the impact of the Appellant's deplorable behaviour, while always focusing on her and her teammates' career pinnacle.
127. The evidence provided by the Appellant, as set out above, must therefore not be disregarded, but rather be placed in its proper context and given the adequate probative value it deserves.
128. In this regard, and upon reading the statement submitted by the Player during the proceedings before the first instance, the Committee considered that the point of view of the Player – as the "real" victim³¹ – is clear and unequivocal: she *"never gave him permission or consented to [the Kiss]"*.
129. Notwithstanding this clear statement, the Committee wished to address the alleged dialogue which occurred between the protagonists on stage, before the Kiss occurred. At first, upon reviewing the images, the Committee could indeed observe that a short conversation occurred between them before the Appellant kissed the Player, but by no means could it ascertain (to the required degree of satisfaction) the content of such conversation, namely that the reported words (i.e. from the Appellant: *"can I kiss you?"*; and from the Player: *"pues vale"*) were indeed exchanged.
130. The Committee was further comforted in its opinion upon reading the Player's statement as submitted to the first instance. As a matter of fact:
- when asked whether she *"den[ied] the conversation [she] had with him until the kiss [occurred] in the manner described by Mr Rubiales at the Assembly"*, she answered in the following terms: *"Yes, of course, I never gave him my consent. That conversation as he explained it in the Assembly did not happen"*³²;
 - similarly, when asked whether she *"den[ied] that [the Appellant had] asked for permission and that [she] agreed to the kiss as Mr Rubiales explained during the Assembly"*, she explicitly stated: *"Yes, I deny it. He didn't ask my permission, so I couldn't give him my consent. He also had me by the head, locked very close to his mouth and it was him who comes to my mouth to kiss me, I was in shock"*³³.
131. Again, the Committee insisted on the fact that it was comfortably satisfied that, from the Player's perspective, the Kiss had – at no point – been consented.

³¹ As opposed to the Appellant who appears to see and consider himself as the victim in the present case – cf. also paras. 11 *supra* and 175-177 *infra*

³² Free translation - original version in Spanish: *"Sí. Por supuesto, yo nunca le di mi consentimiento. Esa conversación tal cuál la explicó en la Asamblea no sucedió."*

³³ Free translation - original text in Spanish: *"Sí. Lo niego. No me pidió permiso, por lo que no pude darle mi consentimiento. Además me tenía agarrada de la cabeza, bloqueada muy cerca de su boca y fue él quien se acerca a mi boca para darme el beso, me quedé un en shock."*

132. This said, and even assuming that the conversation between the protagonists indeed occurred as quoted by the Appellant, and specifically that the Player had answered to his "request" by "*pues vale*", the Committee deemed that such answer should rather be seen as a demonstration of the fact that the Player got caught off-guard and/or trapped in the moment, particularly as all cameras and the eyes of the entire football world were riveted on her, and she seemingly did not know how to react appropriately to such a request (which was completely out of place in such circumstances).
133. In fact, the Player's (alleged) answer rather translates her inner reflection at this precise moment: "*what else can I do? What option(s) do I have?*". This is, in the Committee's view, precisely what the Player tried to explain to her teammates in the dressing room when asked about the Kiss Incident³⁴. In the same vein, when questioned before the first instance, the Player *inter alia* explicitly stated that (i) "*he grabbed my head tightly in a moment that caught me **completely unawares***" (emphasis added)³⁵, (ii) "*it was a surprise and unexpected and unpleasant, **with no capacity for any reaction on my part** and I felt very embarrassed and bad*" (emphasis added)³⁶, (iii) "*he had me by the head, locked very close to his mouth and it was him who came close to my mouth to kiss me, **I was in shock***" (emphasis added)³⁷, or (iv) "***I didn't even have the opportunity to react or reject his action***" (emphasis added)³⁸.
134. As a final consideration, the Committee wished to point out that it would have been easy for the Player to simply align her version of events with that of the Appellant in order to "close the chapter" and get rid of the media and public attention. Nevertheless, the Player's account of the events (as set out above) remained consistent in the months following the Incident, especially in the course of the criminal proceedings she initiated in Spain against the Appellant³⁹.
135. As such, and after careful analysis of all evidence presented to it (including those put forward by the Appellant), the Committee was comfortably satisfied that the Appellant kissed the Player without her consent. To that end, the Committee emphasised that, not only was this its firm opinion, but it is also precisely how this incident has been widely perceived *from the perspective of reasonable and objective observers*⁴⁰ (as demonstrated by the first instance).
136. In any event, and would one follow the argumentation of the Appellant (*i.e.* that the Kiss was consensual), it remains that, as emphasised by the first instance, "*such a behaviour would not*

³⁴ Cf. Instagram video put forward by the Appellant.

³⁵ Free translation - original text in Spanish: "*Me agarró la cabeza con fuerza en un momento que me pilló completamente desapercebida (...)*".

³⁶ Free translation - original version in Spanish: "*Fue una sorpresa e inesperado y desagradable, sin capacidad de reacción alguna por mi parte y me sentí muy avergonzada y mal.*"

³⁷ Free translation - original text in Spanish: "*Además me tenía agarrada de la cabeza, bloqueada muy cerca de su boca y fue él quien se acerca a mi boca para darme el beso, me quedé un en shock.*"

³⁸ Free translation - original text in Spanish: "*Ni siquiera tuve la oportunidad de reaccionar o rechazar su acción.*"

³⁹ Cf. for instance: <https://www.france24.com/en/europe/20230906-spain-s-hermoso-files-criminal-complaint-over-rubiales-kiss>; <https://www.marca.com/futbol/futbol-femenino/seleccion/2023/10/09/6524625646163f7a258b4572.html>; <https://www.bbc.com/news/world-europe-67861492>; <https://www.aljazeera.com/sports/2024/1/2/jenni-hermoso-kiss-scandal-luis-rubiales-womens-world-cup-scandal>

⁴⁰ Amongst those "objective observers", the following can be named: the Presidents of both the NZF and The FA (see their respective submissions in the Appealed Decision), the Spanish Prime Minister, the United Nations and UNICEF, European parliament, the Players' unions Futpro and FIFPRO, other football players or athletes (see para. 139 of the Appealed Decision).

*be the one expected from the President of an association having won the World Cup and would still be seen as contrary to the basic rules of decent conduct. Indeed, the image of a man, president of a football association, grabbing the head of a female player and kissing her during the Women's World Cup Final cannot be tolerated and is in total contradiction with the tournament's aim to unite and inspire people around the world through the power of the FIFA Women's World Cup and women's football"*⁴¹.

137. By way of consequence, and regardless of the explanations and/or evidence provided by the Appellant, the Committee saw no reason to deviate from the conclusions of the first instance in that *"kissing a player, more importantly without their consent, undoubtedly constituted a behaviour contrary to the very basic principles contained under art. 13 FDC"*⁴². In other words, the Committee was of the firm opinion that the Kiss was clearly inappropriate and unacceptable – be it consented (*quod non* as demonstrated *supra*) or not –.

ii. The Genitals Incident

138. In its decision, the first instance *"concluded that the Genitals Incident undoubtedly constituted a breach of art. 13 FDC in so far that it was contrary to the very basic rules of decent conduct. In addition, and while putting in perspective the media coverage of such gesture, the [first instance] also deemed that, by grabbing his crotch in one of the most exclusive areas of the stadium, in the presence of the most prominent dignitaries and during the most important match of the competition at stake, the [Appellant] clearly behaved in a way that brings the sport of football and/or FIFA into disrepute"*⁴³.
139. In reply thereto, the Appellant argued that the analysis made by the first instance *"completely disregards the context in which it occurred"*. While conceding that it was an "ugly" gesture, the latter insisted on the fact that (i) it *"means nothing more than "olé tus huevos", a typical and widespread expression in Spain to tell someone that they have done something well"* and (ii) it was not aimed at offending anyone, but was *"directed solely and exclusively at Mr. Vilda"*.
140. According to the Appellant, the *"true context"* of the gesture shall be taken into account, and not *"biased speculations to discredit the Appellant by portraying him as someone sexist and "macho"*.
141. Despite the Appellant's allegations, the Committee observed that these explanations were in fact already taken into account by the first instance which (i) *"convene[d] that one explanation for the gesture could be that the [Appellant] was touching his genitals to show his support to the coach, as an expression of a cultural gesture in Spain"*⁴⁴, but (ii) emphasised that *"regardless of the justification behind it, it remains that, from the perspective of any reasonable and objective observer, the gesture performed by the [Appellant] can only be seen as an insulting and/or offensive gesture contrary to the basic rules of decent conduct"*⁴⁵.

⁴¹ Cf. para. 163 of the Appealed Decision.

⁴² Cf. para. 162 of the Appealed Decision.

⁴³ Cf. para. 149 of the Appealed Decision.

⁴⁴ Cf. para. 143 of the Appealed Decision.

⁴⁵ Cf. para. 146 of the Appealed Decision.

142. Notwithstanding the above and in view of the arguments reiterated by the Appellant, the Committee decided to refer to the reasoning adopted by CAS in the context of discriminatory chants/words:

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

In particular, the fact that the meaning and the use of a word could have been trivialized by part of the society and that in some contexts or moments such word is being used without intending to insult, disrespect or humiliate to whom it is addressed does not mean that the word itself has lost its discriminatory, insulting and harmful connotation, or that the expression is harmless and legitimate. (...) In this regard, the Panel agrees with the opinion of CONAPRED and considers that an insulting word like "Puto" does not lose its negative or insulting nature and harmful effect just because at a given time the use of such word became a custom, a habit or even a tradition."⁴⁶ (emphasis added)

143. In the light of these considerations, the Committee was convinced that gesture(s) or word(s), which could be considered insulting or offensive (as *in casu*), must be determined by how they could be perceived by a reasonable and objective observer (as emphasised in the Appealed Decision) and not by the intention with which they were used (as erroneously alleged by the Appellant).
144. As such, the Committee was satisfied that the assessment made by the first instance in relation thereto shall be confirmed given that - *from the perspective of a reasonable and objective observer* - the gesture is undoubtedly contrary to the basic rules of decent conduct, and, as such to art. 13 FDC.
145. This conclusion was reinforced by the fact that the Appellant explicitly confirmed during the Hearing that the gesture in question is to be seen as a "*praise to manhood*" (sic). In the Committee's view, such a stand cannot be tolerated and such a machist/sexist gesture can logically only be seen as contrary to the values upheld by FIFA (and protected by art. 13 FDC), all the more so (i) in the context the final match of the most important women's football competition, (ii) within the VVIP area and, as such, (iii) in the presence of dignitaries, including Queen Letizia and Princess Sofia of Spain, located just a few metres away from the Appellant.
146. Finally, the fact that other individuals may have made "*a similar gesture*", as the Appellant pointed out, is irrelevant to the analysis of whether or not it is contradictory to art. 13 FDC. Indeed, this provision is clear and unambiguous in that "*officials (...) must comply with the principles of fair play, loyalty and integrity*" and "*may be subject to disciplinary measures*" if they "[violate] the basic rules of decent conduct" or "[behave] in a way that brings the sport of football and/or FIFA into disrepute". In other words, there is no room for a *contra proferentem* or *contra*

⁴⁶ CAS 2016/A/4788 Federación Mexicana de Fútbol Asociación v. FIFA.

stipulatorem interpretation, as claimed by the Appellant: any behaviour contrary to the principles contained in the aforementioned article may lead to disciplinary sanctions.

iii. The Carrying and the Peck Incidents

147. While conceding that these incidents *"did not bear the same seriousness as the first two incidents (i.e. the Genitals Incident and the Kiss Incident)"*, the first instance nevertheless considered that they *"constituted behaviours incompatible with the principles of art. 13 FDC"*⁴⁷, putting emphasis on the behaviour expected from *"the highest ranked official in Spanish football"* and *"the completely unacceptable conduct the Respondent adopted towards women and/or female players"*⁴⁸.
148. Against such background, the Appellant argued that *"it is completely unacceptable to justify an alleged inappropriate behavior for having given a peck on the cheek to a player and having carried another one by drawing a scenario that is not at all realistic"*.
149. Providing context to the Carrying Incident, the Appellant reiterated that following the victory of his team he *"was overcome by joy and happiness"* so that *"he took Ms. Castillo on his shoulders"*, insisting that (i) *"at no point she was trying to request Mr. Rubiales to put her down, nor does she appear to feel threatened or uncomfortable with the act"*, (ii) *"[a]t no point the players protested and/or called him out for having done so"* and (iii) he *"did the same with the former male head coach, Luis Enrique Martínez, when Spain eliminated Croatia in the Euro 2020, and such action had no consequences whatsoever"*.
150. With respect to the Peck Incident, the Appellant insisted that it is not serious enough to justify the imposition of disciplinary measures given that (i) *"not only it is a worldwide shown of appreciation, but also a way of greeting in Spanish culture between men and women"* and (ii) *"there is no single evidence suggesting that any of the players were uncomfortable about the situation, not only during the "incidents", but after them"*.
151. In this context, the Committee wished to emphasise, once again, that those incidents (and specifically the behaviour of the Appellant) shall be assessed *from the perspective of a reasonable and objective observer* within the context in which they occurred.
152. In this regard, the Committee recalled that, as rightly pointed out by the first instance, *"the [Appellant] was – at the time of those incidents – the highest ranked official in Spanish football, and held prominent positions within European football"*⁴⁹ (being the president of the RFEF and the vice-president of UEFA). As such, the latter was fully (i) acquainted to celebration protocols and (ii) aware of the exemplary behaviour expected from him in a context as unique as a World Cup final. On the contrary, the Appellant adopted a deplorable attitude (with unacceptable sexist connotations): he engaged in (improper) physical contact with female players (under his leadership) by either carrying or kissing them. In this specific context, the comparison made by the Appellant with other behaviours towards other players and on other occasions is thus completely inappropriate and out of place.

⁴⁷ Cf. para. 172 of the Appealed Decision.

⁴⁸ Cf. paras. 173-174 of the Appealed Decision.

⁴⁹ Cf. para. 173 of the Appealed Decision.

153. On that basis, the Committee deemed that the conclusions reached by the first instance in relation to those incidents shall be confirmed in so far that the Appellant clearly and undoubtedly *"appeared to have abused its position as president of the RFEF to approach and/or treat players in a completely intolerable and outrageous manner"* by carrying and/or kissing them in a controversial manner. The fact that these players may not have protested and/or objected to those physical contacts is completely irrelevant in the assessment of whether or not the Appellant's behaviour is contrary to art. 13 FDC, particularly considering that the players were all under a *de facto* hierarchical link with the Appellant (thereby limiting the possibility for them to *"protest and/or call [the Appellant] out for having done so"*).
154. In the light of this, the Committee decided to confirm that the Appellant violated the basic rules of decent conduct by engaging in the above physical contacts with female players.

iv. Conclusion

155. Summarising the above, the Committee was of the view that all Incidents constituted individual breaches of art. 13 FDC, and assessed collectively clearly damaged the image of the FIFA and the sport of football more generally.
156. By way of consequence, the Committee was comfortably satisfied that the Appellant had behaved in a manner contrary to the principles enshrined under art. 13 FDC, both during and after the Match, as rightly concluded by the first instance.

c. Are the sanctions imposed by the first instance proportionate?

i. The Appealed Decision and the Appellant's submission

157. Upon determining the sanction to be imposed on the Appellant, the first instance considered that *"a series of aggravating circumstances needed to be taken into account"* and decided that *"a ban on taking part in any football-related activity was the most appropriate and proportionate measures with which to sanction the Respondent in view of the offence(s) committed"*⁵⁰.
158. In particular, the first instance, *"while taking into account the undeniable media impact of the [Appellant's] behaviour and its repercussions on the reputation of football as well as of FIFA, but also and more importantly, on the Player's mental state, (...) considered that a ban for a duration of three (3) years was justified in the present circumstances"*⁵¹.
159. In this context, and although *"it was tempted to impose more severe sanctions in view of the seriousness and gravity of the incidents at stake as well as of the profound negative impact that the Respondent's actions had on the image of FIFA, women's football and women's sport in general"*, the first instance *"was satisfied that the imposition of such a measure would serve the necessary deterrent effect upon the Respondent given his established (prohibited) behaviour(s), but also the*

⁵⁰ Cf. para. 194 of the Appealed Decision.

⁵¹ Cf. para. 194 of the Appealed Decision.

*category of the competition in which the incident(s) had occurred and the significant impact of those*⁵².

160. In turn, the Appellant considered that such sanction is disproportionate given that (i) all incidents have erroneously been considered by the first instance with the sole aim *"to justify a longer suspension"*⁵³; (ii) for similar offences (i.e. breaches of art. 13 FDC), the Disciplinary Committee imposed less severe sanctions; (iii) it *"does not relate to those [sanctions] imposed on other officials who engaged in corruption, bribery and requesting of personal benefits, even the highest officials"* and (iv) such sanction represents the *"end of his career"*.

ii. General considerations

161. As a preliminary remark, the Committee recalled that it is broadly considered that the measure of a sanction imposed by a disciplinary body, in the exercise of its discretion allowed by the relevant rules, can only be reviewed when such sanction is evidently and grossly disproportionate to the offence⁵⁴.
162. In view of the foregoing, the Committee emphasised that, according to CAS, a decision-making body fixing the level of pecuniary sanctions should, amongst others, take into consideration the following elements: (a) the nature of the offence; (b) the seriousness of the loss or damage caused; (c) the level of culpability; (d) the offender's previous and subsequent conduct in terms of rectifying and/or preventing similar situations; (f) the applicable case law and (g) other relevant circumstances.
163. As such, reference shall be made to *"CAS jurisprudence (CAS 2014/A/3665, 3666 & 3667) [which] has already explicitly acknowledged that the mere exercise of discretion by a body entrusted with similar powers does not, in and of itself, run afoul predictability. **What matters is whether the decision-making body has properly used (and, in this case, the principle of predictability has been observed), or abused (and, in this case, the principle of predictability has been violated) its discretion**"*⁵⁵ (emphasis added).
164. In particular, disciplinary measures serve different purposes: *"On the one hand, a sanction shall help to undo harm that has been inflicted by the offender. On the other hand and more importantly, a disciplinary sanction shall prevent re-offending by the offender. Consequently, **harsher sanctions are warranted in case of serious infringements**, structural non-compliance with the various obligations and in case of recidivism"*⁵⁶ (emphasis added).
165. Therefore, as far as the proportionality of the sanction is concerned, it is the responsibility of the FIFA Disciplinary Committee - and then that of the Appeal Committee - to determine the type and extent of the disciplinary measures to be imposed (i) in accordance with the objective and subjective elements of the offence, taking into account both aggravating and mitigating circumstances (cf. art. 25.1 FDC) and (ii) taking into account all relevant factors of the case,

⁵² Cf. para. 196 of the Appealed Decision.

⁵³ In this respect, and according to the Appellant *"if only the Kiss Incident had occurred, undoubtedly the ban sanction would not have been for three years, but less"*.

⁵⁴ Cf. CAS 2018/A/5800 Samir Arab v. UEFA, referring to CAS 2011/A/2645.

⁵⁵ CAS 2019/A/6345 Raja Casablanca v. FIFA.

⁵⁶ CAS 2017/A/5299 Olympique Lyonnais v. UEFA.

including the circumstances and the degree of the offender's guilt and any other relevant circumstances (cf. art. 25.3 FDC). To that end, CAS made it clear that "[a]ccount **must be taken of the seriousness of the facts and other related circumstances as well as of the damage that the penalised conduct entails for the parties involved, for the federation in question and for its sport**"⁵⁷ (emphasis added).

166. In this context, and "[a]s recognised by the CAS in various precedents (see inter alia CAS 2005/A/976 & 986), the principle of proportionality under Swiss law implies that there must be a reasonable balance between the misconduct of the actor and the applicable sanction. More specifically, the principle of proportionality requires that: "(i) the measure taken by the disciplinary body is capable of achieving the envisaged goal; (ii) the measure is necessary to reach the envisaged goal; and (iii) the constraints which the affected person will suffer as a consequence of the measure are justified by the overall interest to achieve the envisaged goal" (CAS 2019/A/6219; CAS 2019/A/6489). In other words, to be proportionate a measure must not exceed what is reasonably required in the search of a justifiable aim."⁵⁸

iii. Analysis of the sanction imposed in light of the circumstances at hand

167. To begin with, and keeping in mind that, as previously emphasized, all circumstances shall be taken into account in deciding on the measure to be imposed, the Committee decided to address all relevant mitigating and aggravating circumstances pertaining to the case at hand.
168. To that end, the Committee acknowledged that, both in his submission and during the Hearing, the Appellant contested any and all elements and circumstances taken into account by the first instance to justify the 3-year ban.
169. In this context, the Committee noted that, surprisingly, the Appellant even attempted to contest completely irrelevant elements, such as the designation used by the first instance to refer to the "event" held by the RFEF on 25 August 2023 during which the Appellant announced that he would not resign from his position as president of the RFEF and "*explained what happened on Sunday [20 August 2023] in Sydney*"⁵⁹. In particular, the Appellant insisted that it was a press conference and not a "*General Assembly*" as indicated in the Appealed Decision. Keeping in mind that what is relevant *in casu* is the content of the Appellant's speech and not the denomination of said "event", the Committee, without entering into further details, referred to the RFEF's own website, specifically to the relevant article related to said intervention of the Appellant and titled "*Speech by Luis Rubiales at the **Extraordinary General Assembly***" (emphasis added)⁶⁰. In fact, and upon reviewing the footage available on the website of the RFEF, it remains undisputed that, as highlighted by the first instance, the Appellant used this "*forum to defend himself and distort the reality of the Kiss in his favour*"⁶¹.

⁵⁷ CAS 2013/A/3358 Mersin Idman Yurdu Club v. FIFA.

⁵⁸ CAS 2022/A/8651 Edgars Gauračs v. UEFA.

⁵⁹ Cf. <https://rfef.es/en/noticias/speech-by-luis-rubiales-at-the-extraordinary-general-assembly>.

⁶⁰ Said article (see reference *supra*) inter alia contained a video of "*the full speech of the president of the Royal Spanish Football Federation, Luis Rubiales, at the **Extraordinary General Assembly** that took place on Friday, August 25*" (emphasis added). For the sake of good order, the Committee also wished to point out that the images of the "event" are quite explicit on its nature: the backdrop used explicitly mentions "*Asamblea General Extraordinaria*".

⁶¹ Cf. para. 191 of the Appealed Decision.

170. This being said, and in addition to the various elements put forward in his written submission, the Appellant *inter alia* pointed out the following elements during the Hearing:

- the absence of apology and the public insults by the Appellant⁶² emphasised in the Appealed Decision are simply “untrue” and “lies”;
- the threat of legal actions against the Player were not to be seen as threats *per se* but rather as means for the Appellant to defend himself and clean his name;
- there is no reason why he may not have used the General Assembly – which he qualified as a “press conference” (see above developments) – as a forum to defend himself in his position as president of the RFEF;
- the fact that the Appellant “*has been subject to criminal proceedings in Spain as a result of the Kiss*”⁶³ shall not be considered as an aggravated factor, particularly considering that the initiation of such proceedings does not automatically lead to indictment or prosecution. As a matter of fact, at the time of the Hearing, these proceedings were still ongoing without any conviction pronounced against the Appellant.

171. In continuation, the Committee observed that part of the Appellant’s arguments in respect of the proportionality of the sanction are premised on the argument that the Kiss had been consented by the Player and can therefore not entail a breach of art. 13 FDC. As has been determined *supra*, (i) the Kiss could not be considered as having been consensual and (ii) the Appellant’s behaviour in relation to said incident was therefore contrary to the very basic principles contained under art. 13 FDC, with the consequence that any such arguments are groundless.

172. With this in mind, and while it understands and does not question the fact that – as advanced by the Appellant – the latter supported the development of football (particularly women’s football) in Spain, the Committee wishes to make it clear that its role is not to assess this, but rather to determine whether the sanction imposed by the first instance is appropriate.

173. In this context, the Committee stressed that, in the case at stake and consistently with the CAS jurisprudence, two essential elements shall not be ignored and are of particular relevance, namely (i) the context in which the incidents occurred (*i.e.* at a World Cup final, which had been broadcasted worldwide) and their related impact, as well as (ii) the position held by the Appellant at the time of those incidents:

- “*since the incident was broadcasted to millions of viewers via television and thereby tarnished [FIFA] competitions and the sport of football. Such incidents are totally intolerable and deplorable and warrant a harsh sanction in order to prevent such events from reoccurring*”⁶⁴ (emphasis added)
- “*In the Sole Arbitrator’s opinion it makes sense to provide harsher sanctions in such contexts, because misbehaviour in the context of a match competition will – in principle – arouse much more attention from either spectators or the media. Consequently, misbehaviour*

⁶² Cf. para. 191 of the Appealed Decision.

⁶³ Cf. para. 191 of the Appealed Decision.

⁶⁴ CAS 2017/A/5299 Olympique Lyonnais v. UEFA.

*displayed in connection with "match competitions" will bring about **greater harm to the interests of the Respondent**.*"⁶⁵ (emphasis added)

- *"The **gesture and the comments were made** by an **experienced** coach **during or, in relation to**, the FIVB's **flagship competition** (the 2014 World Championships). Neither the gesture nor the comments are denied; they **clearly damage the image** of the FIVB and the sport of volleyball more generally."*⁶⁶ (emphasis added)

174. In fact and in light of his seniority and the high profile of the Women's World Cup as FIFA's flagship international women competition, any failure by the Appellant to comply with the standards and principles contained in the FDC was likely to have a significant adverse impact on FIFA's reputation, standing and interests. Those elements undoubtedly have to be taken into account (as aggravating circumstances) when assessing whether or not the three-year ban imposed on the latter is to be considered disproportionate or not.

175. Notwithstanding the above, the Committee was particularly astonished by the fact that – despite everything that happened after the Match (incl. the present proceedings and the various statements made by the Player) – the Appellant still considers and describes himself as a victim in the case at hand.

176. To that end, the Committee pointed out that the Appellant's overall behaviour during the present proceedings is regrettably in line with that of perpetrators of sexual abuse who commonly resort to victim-blaming tactics, asserting that the (actual) victims somehow provoked and/or contributed to the abuse or even that following they did not behave like victims following such abuse. As a matter of fact and as previously mentioned, the Appellant insisted on several occasions on the fact that:

- on the one hand, it was the Player who initially "*hugged [the Appellant] lifting him in the air*"⁶⁷, thereby initiating the Kiss;
- on the other hand, the Player herself "*downplayed the matter*", the latter having even been "*joking*" about the Kiss.

177. In relation thereto, and for the sake of good order, the Committee wished to clarify that:

- after reviewing the images of the Incident on several occasions, it appeared to be clear that, at no point did the Player "lift" the Appellant in the air, and that it was the Appellant who initiated the Kiss (the latter lifting the Player, holding her head and kissing her on the mouth);
- it was convinced that the Player "*downplayed*" the matter so as to not tarnish the celebrations as previously demonstrated, particularly considering that she quickly became the centre of the (media) attention due to an incident involving the president (*i.e.* the highest ranked official) of the federation she was representing on a global stage.

178. In the same way, and while the Appellant appeared to have expressed remorse for the incidents in his submissions – although mainly conceding that he should not have done it or

⁶⁵ CAS 2019/A/6367 Paris Saint-Germain & Neymar Da Silva Santos Junior v. UEFA.

⁶⁶ CAS 2015/A/4095 Bernardo Rezende & Mario da Silva Pedreira Junior v. FIVB (in relation to a middle finger gesture).

⁶⁷ Cf. also para. 155 of the Appealed Decision.

behaved in such manner –, it appeared to the Committee that the Appellant is, in reality, still in denial about the seriousness of the offences. Indeed, the latter explicitly claimed that his “*biggest regret*” was to have “*taken over the attention from the victory of the Spanish national team*”, without even expressing (for instance) any remorse regarding the (clear) absence of consent of the Player to the Kiss (or at the very least conceding that the Player may have perceived this incident from a different angle than him, the latter rather considering – *still and always* – his vision and interpretation of the facts as the absolute truth). In the Committee’s view, the fact that the Appellant still insists on the fact that the Genitals Incident was a “*praise to manhood*” is further evidence that the Appellant persists in his denial of the gravity of his behaviour.

179. All the above – as read together with the various circumstances put forward by the first instance (namely: (i) the persistent denial of the absence of consent on the side of the Player regarding the Kiss; (ii) the public insults from the Appellant on those who saw the Kiss differently than “*a kiss between two friends celebrating something*”; (iii) the use of his position as president of the RFEF by the Appellant to threaten the Player and distort the reality of the facts; (iv) the pressure(s) exercised by the Appellant and/or his entourage on the Player⁶⁸; and (v) the impact of the Appellant’s actions on the Player’s mental health and her career) clearly and undoubtedly consisted serious aggravating circumstances that shall not be ignored and could by no means be undermined and/or outweighed by the sole facts that the Appellant presented a clean record and/or might have supported and promoted the development of (women’s) football in Spain.
180. Keeping all those circumstances in mind (specifically the number of serious aggravating circumstances), the Committee subsequently went on to address the proportionality of the sanction *per se*.
181. In this respect, the Committee pointed out that art. 13 FDC does not provide for specific and/or minimum sanctions. In other words, “*anyone who acts in any of the (...) ways [listed under art. 13.2 FDC] may be subject to disciplinary measures*”, such measures being listed under art. 6 FDC. The first instance – and now the Committee – shall therefore be at liberty to determine the most appropriate sanction from among these measures.
182. In such circumstances, and in the absence of any directly applicable sanction in case of related breach of said provision, FIFA’s judicial bodies (the Committee *in casu*) must adopt a sanction which “*in light of the facts of the case as established, is relevant to the type of misconduct, proportional, reasonable, just and fair*”⁶⁹.
183. As stated above, it is the responsibility of the President of a member association to behave in an exemplary and irreproachable manner at all times, and even more so when carrying out his duties. As such, the Appellant’s behaviour during (and after) the Match was completely unacceptable, inappropriate, intolerable, and, given his position, all the more deplorable, thus calling for severe sanctions commensurate with the impact that the said behaviour may have

⁶⁸ In this respect, the Committee pointed out that - contrary to the Appellant’s allegations (the latter claiming that at no point had he tried to coerce the Player) - the assessment made by the first instance was undoubtedly supported by the statement of the Player.

⁶⁹ CAS 2014/A/3519 & 3520 Arnaud Di Benedetto & Bastien Cotte-Barrot v. FIT

had on the player(s) concerned, on FIFA, but also on the world of football and women's football in particular.

184. By way of consequence, the Committee deemed that, while mild sanctions such as a warning, a reprimand or a fine were clearly insufficient when put in perspective with the seriousness of the case at hand, a ban on taking part in any football-related activity appeared as an appropriate sanction in response to the infringements at stake.
185. As to the length of such ban, the comparison made by the Appellant between the one imposed upon him and the ones imposed on other individuals is irrelevant given that the infringements are of a different nature (the ones referred to by the Appellant relating to on-pitch incidents or ethics-related abuses related to financial infringements).
186. Consequently, while keeping in mind all circumstances of the case at hand, the Committee found that the imposition on the Appellant of a 3-year ban from all football-related activities is appropriate. Nonetheless, the Committee found it important to stress that the case at hand related to (very) serious infringements within the meaning of art. 13 FDC and a harsher sanction could properly have been imposed, but was mindful that it was bound by the decision of the first instance.
187. Finally and for the sake of completeness, the Committee wished to address the Appellant's allegations that the aforementioned suspension would represent the "*end of his career*". In this respect, the Committee noted in particular that, during the Hearing, the latter explained that football had always been part of his life, and such ban would basically deprive him from any financial means given that he cannot even exercise as a football agent, play for a club (keeping in mind that he had been a professional player and could still be one in some countries) or work for a club, a national or international organisation.
188. In this regard, the Committee recalled that, in accordance with the pertinent jurisprudence of CAS⁷⁰, such sanction – *a ban from taking part in any kind of football-related activity* – does not violate the applicable international standards of human rights, specifically the fundamental right to freely exercise a profession, *i.e.* their economic freedom. As a matter of fact, as emphasised by CAS, "*the sanction imposed on the Appellant simply limits his capability of performing any football activity, during a temporary and limited period of [time]*". Put differently and applied *in casu*, during the temporary period for which he has been suspended, the Appellant will keep enjoying his economic freedom and would be allowed to exercise any profession or economic activity, provided that it is not related with football. This being particularly the case given that, according to his very own statement, the Appellant is a lawyer by training, a profession which he is still able to pursue despite the above-mentioned sanction.
189. As such, while endorsing the above considerations of CAS, the Committee was of the firm opinion that the 3-year ban from any football-related activity imposed on the Appellant does not violate any of his fundamental rights.

⁷⁰ CAS 2017/A/4947 Ion Viorel v. Romanian Football Federation (RFF).

190. Summarising all above developments, the Committee was comfortably satisfied that – contrary to the Appellant's submission – the sanction imposed by the first instance is proportionate to the offences committed, and shall therefore be confirmed.

D. Conclusion

191. Summarising the above developments, the Committee concluded that the Appellant's present appeal should be rejected, and the Appealed Decision confirmed in its entirety.

E. Costs

192. The Committee decided, based on art. 49.1 FDC, that the costs and expenses of the present proceedings amounting to CHF 1,000 were to be borne by the Appellant.
193. In this sense, since the Appellant had already paid the appeal fee of CHF 1,000, the Committee determined that the costs and expenses of the present appeal proceedings shall be set-off against such amount.

IV. DECISION

- 1. The appeal lodged by Mr. Luis Rubiales Bejar against the decision passed by the FIFA Disciplinary Committee on 26 October 2023 is dismissed. Consequently, said decision is confirmed in its entirety.**
- 2. The costs and expenses of the proceedings (in the amount of CHF 1,000) are to be borne by Mr. Luis Rubiales Bejar. This amount is offset against the appeal fee of CHF 1,000 already paid.**

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Neil EGGLESTON

Chairperson of the FIFA Appeal Committee

NOTE RELATING TO THE LEGAL ACTION:

According to art. 58 par. 1 of the FIFA Statutes as read together with art. 52 of the FDC, this decision may be appealed against before the CAS. The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision. Within another 10 days following the expiry of the time limit for filing the statement of appeal, the appellant shall file a brief stating the facts and legal arguments giving rise to the appeal with the CAS.