

# Decision of the FIFA Appeal Committee

passed on 1 May 2024

## DECISION BY:

**Neil EGGLESTON (USA), Chairperson**

## ON THE APPEAL LODGED BY THE:

**Chilean Football Association**

(Decision FDD-17740)

## AGAINST:

**Decision passed by the FIFA Disciplinary Committee on 18 December 2023**

## 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 Chairperson of 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 the Chilean Football Association (**the Appellant**) relates to two matches of the FIFA World Cup 2026™ Preliminary Competition (**the Matches**), during which discriminatory incidents and delayed kick-offs were reported.

#### *a. Match 1*

3. On 12 September 2023, a match was played between the representative teams of Chile and Colombia in Macul (Chile – Attendance 22,153 spectators – Final score 0-0) in the context of the FIFA World Cup 2026™ Preliminary Competition (**the Match 1**).
4. In this context, the Match Commissioner of the Match 1 mentioned the following incidents in his report (**the MC report 1**):

*"El segundo tiempo demoro 3 minutos el comienzo por demora en el regreso de Chile al campo de juego.*

*A los 26 minutos desde la tribuna "Cordillera" donde se encuentran los simpatizantes de Chile cantaron "El que no salta es un colombiano maricon". El canto duro 15 segundos".*

#### **Free English translation from Spanish:**

*"The second half was delayed for 3 minutes due to a delay in Chile's return to the field of play.*

*After 26 minutes from the "Cordillera" stand, where the Chilean supporters are located, they chanted "El que no salta es un colombiano maricon" (He who doesn't jump is a Colombian faggot). The chant lasted 15 seconds".*

5. Following the Match 1, the FARE Network provided FIFA with a report mentioning the following (**the FARE report 1**):

#### **Incident 1:**

*Where: The entire stadium (began in "Tribuna Cordillera 35").*

*When: Minute 35; 22:05 local time.*

*Chilean fans chanted to Colombian fans: "Poropopo, el que no salte es un colombiano maricón" (In English: "poropopo poropopo the one that does not sing/jump is a Colombian 'faggot'") This lasted 2 minutes, approximately.*

6. The FARE report 1 was further supported by a video footage recorded by a FARE observer present at the Match 1.

**b. Match 2**

7. On 12 October 2023, a match was played between the representative teams of Chile and Peru in Macul (Chile – Attendance 27,940 spectators – Final score 2-0) in the context of the FIFA World Cup 2026™ Preliminary Competition (**the Match 2**).
8. In this context, the Match Commissioner of the Match 2 mentioned the following incidents in his report (**the MC report 2**):

*“El inicio del primer tiempo tuvo retardo de dos minutos y 45 segundos, por demora de los dos equipos en el cumplimiento de la cuenta regresiva y del protocolo de salida.  
El inicio del segundo tiempo tuvo retraso de tres (3) minutos por demora de los dos equipos.”*

**Free English translation from Spanish:**

*“The start of the first half was delayed by two minutes and 45 seconds, due to delays by both teams in complying with the countdown and the starting protocol.  
The start of the second half was delayed by three (3) minutes due to delays by both teams.”*

9. Following the Match 2, the FARE Network provided FIFA with a report mentioning the following (**the FARE report 2**):

**Incident 1:**

Where: *Galerías Arica, Lautaro, Tucapel, Caupolicán, and Tribuna Cordillera*

When: *21:05; Minute 2 of the match (started slightly late). Duration of 15 seconds in the Galería Arica, approximately 6,000 people.*

*In minute 29 of the match. Duration of 50 seconds, throughout the stadium but particularly Galería Arica, approximately 10,000 people.*

*In minute 30 of the match. Duration of 30 seconds, Galerías Arica, Lautaro, Tucapel, Caupolicán, and Tribuna Cordillera, approximately 10,000 people.*

*In minute 55 of the match. Duration of 15 seconds, Galerías Arica y Lautaro, approximately 1,000 people.*

*In minute 77 of the match. Duration of 30 seconds, Galerías Arica, approximately 10,000 people.*

*Chile home supporters chanted: “Poropopo, poropopo él que no salta es un peruano maricón” (In English: “poropopo poropopo the one that does not jump is a Peruvian faggot.”).*

10. The FARE report 2 was further supported by video footages recorded by a FARE observer present at the Match 2.

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

11. On 14 September 2023, disciplinary proceedings (in relation to Match 1 – under ref. FDD-16004) were opened against the Chilean Football Association (**the Appellant**) with respect to the potential breaches of arts. 14.5 and 15 of the FIFA Disciplinary Code (**FDC**).
12. On 16 October 2023, disciplinary proceedings (in relation to Match 2 – under ref. FDD-16330) were opened against the Appellant with respect to the potential breaches of arts. 14.5 and 15 FDC.
13. On 18 December 2023, the FIFA Disciplinary Committee rendered its decision in relation to the Matches (**the Appealed Decision**) as follows:
  1. *The Chilean Football Association is found responsible for the discriminatory behaviour of its supporters as well as for the misconduct of the members of its representative team (late kick-off) in connection with the matches Chile v. Colombia and Chile v. Peru played on 12 September 2023 and 12 October 2023 respectively, in the scope of the FIFA World Cup 2026™ Preliminary Competition.*
  2. *The following disciplinary measures are imposed on the Chilean Football Association, subject to point 3. below:*
    - a. *The Chilean Football Association is ordered to pay a fine to the amount of CHF 80,000.*
    - b. *The Chilean Football Association is ordered to pay a further fine of CHF 50,000, such fine being suspended for a period of 6 (six) months.*
    - c. *The Chilean Football Association is ordered to play its next (A level) FIFA competition match with a limited number of spectators. During the match subject to the above sanction, the Chilean Football Association is ordered to close at least 50% (fifty percent) of the available seats, such closure being required to be implemented primarily within the stands behind the goals. In addition, the Chilean Football Association shall submit to FIFA the proposed seating plan at the latest 10 days prior to said match.*
    - d. *The Chilean Football Association is issued with a warning with regard to the misconduct of the members of its representative team.*
  3. *In accordance with art. 7 par. 2 of the FIFA Disciplinary Code, the following directives shall apply to the above sanctions:*
    - a. *The Chilean Football Association shall, within 6 (six) months of the notification of the present decision, invest the fine due as per point 2.a. above towards the implementation and/or further development of a comprehensive plan to ensure action against discrimination and to prevent repeated incidents, in compliance with art. 15 par. 3 of the FIFA Disciplinary Code. The plan shall be approved by FIFA.*
    - b. *In case of failure by the Chilean Football Association to comply with point 3.a. within the stipulated deadline granted, the suspension foreseen under point 2.b. shall be*

*revoked and both the non-suspended fine (point 2.a.) and the suspended fine (point 2.b.) shall be fully paid to FIFA within 30 days.*

14. On 10 January 2024, the terms of the Appealed Decision were notified to the Appellant *via* the FIFA Legal Portal.
15. On 23 February 2024, the grounds of the Appealed Decision were notified to the Appellant *via* the FIFA Legal Portal.

### **C. Proceedings before the FIFA Appeal Committee**

16. On 26 February 2024, the Appellant informed FIFA of its intention to appeal the Appealed Decision.
17. On 1 March 2024, the Appellant submitted its appeal brief.
18. On 26 March 2024, the Secretariat *inter alia* informed the Appellant that it had "*not yet received any proof of payment of the appeal fee pertaining to the present proceedings*" and invited it "*to provide (...) any comments it may have in this respect, by 01 April 2024 at the latest*".
19. On 27 March 2024, the Appellant provided a copy of the bank order related to the payment of the appeal fee. According to the "*SWIFT Message details*" the payment was allegedly made on 5 March 2024.
20. On the same day (16 April 2024), the Secretariat informed the Appellant that "*according to Finance department the appeal fee has not been received and probably rejected as the last digit "U" is missing in the IBAN.*"
21. On 19 April 2024, the Appellant informed the Secretariat as follows (free English translation from Spanish): "*In relation to the payment of the appeal fee, and as indicated on the payment receipt, the transfer was instructed on 5.03.2024, and the charge was made. Notwithstanding the above, we request a review by our executives to determine what happened to the payment, and we hope to resolve the matter as soon as possible. Finally, we would like to inform you that the FFCH has previously transferred to the same account, using the same details without any problems*".

## **II. APPELLANT'S POSITION**

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

### **A. As to the merits**

#### ***a. Erroneous assessment by the first instance***

23. "*The Disciplinary Committee's decision did not address the fact that, in the match between the Chilean national team and its Colombian counterpart on 12 September 2023, the conduct accused of being discriminatory was initiated by the fans of the Colombian national team against the Chileans, and that*

*immediately afterwards, as a reaction to the Colombian chant, it was sung by the Chilean fans. This implies a previous provocation which led to the only incident of that match concerning discriminatory conduct. As it was not addressed by the Disciplinary Committee, it was given the same seriousness as an unprovoked act, which clearly constitutes an error of assessment that does not take into account mitigating circumstances."*

24. *"According to the Commissioner's report of the Chile-Colombia match of 12 September 2023, the team that took three minutes to take the field was the Colombian team. The Disciplinary Committee erroneously attributed this delay to the Chile team, which influences the determination of the final sanction".*
25. *"The stewards' report of the Chile-Peru match of 12 October 2023 states the length of the kick-off times for both teams, but does not state which team caused the longest delay, nor whether this was due to or caused by the Chilean team. In its assessment, the Disciplinary Committee erroneously attributed responsibility to the Chilean team as the cause of the delay in the start of both halves of the match".*

### **b. Lack of proportionality of the sanctions imposed**

26. *"The errors of assessment set out above, together with the failure to assess the other evidence adduced in the proceedings, as explained below, mean that the penalty imposed is disproportionate."*
27. *"Apart from the errors of assessment already noted, (...) these sanctions are not proportionate to the efforts made by the [Appellant] to prevent the occurrence of discriminatory conduct by spectators during its matches, nor to the extent to which the [Appellant] has been able to prevent the occurrence of discriminatory conduct by spectators during its matches, nor to the extent to which the [Appellant] has been able to prevent the occurrence of discriminatory conduct by spectators during its matches".*
28. *"Among the efforts deployed by the [Appellant] for this purpose are the following:*
- Activation of the so-called "Green Card", which consists of handing out a green card to each seat in the stadium, together with an invitation to supporters to show the card during the opposing team's anthem, without booing or whistling, as a sign of respect and culture.*
  - An audio message and awareness-raising campaign in the stadium, as well as an extensive communication campaign through institutional channels, the media and social networks, in which the so-called "green card" was disseminated with a powerful message: "I want to see you respecting again".*
  - Broadcasting of pre-recorded chants from the stadium's loudspeakers as soon as the start of a chant is detected that could constitute discriminatory behaviour on the part of those in attendance".*
29. *"The continuous efforts of [the Appellant] to prevent the occurrence of these facts should have been weighed in order to establish the amount of the sanction".*
30. *"Likewise, the Disciplinary Committee should have taken into consideration the fact that the chants for which this Federation is held responsible for discriminatory conduct are limited to specific sectors and in no case correspond to a generalised conduct on the part of the attending public";*

## **B. Requests for relief**

31. In view of the above, the Appellant requested the Appeal Committee to:

- *“exonerate the [Appellant] for breaches of article 14.5 and article 15 [FDC]”* and as such to annul the Appealed Decision;
- Alternatively, to either *“remove or reduce the sanction against the [Appellant], with regard to the restriction of 50% of the available seats in the next home match in the framework of the FIFA World Cup Qualifying Competition”*;
- Alternatively, to remove or reduce the fine of CHF 130,000.

### **III. CONSIDERATIONS OF THE APPEAL COMMITTEE**

32. 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.

#### **A. Competence of the FIFA Appeal Committee**

33. 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 26 February 2024.

34. In this context, the Committee pointed out that the first instance found the Appellant *“responsible for the discriminatory behaviour of its supporters as well as for the misconduct of the members of its representative team (late kick-off) in connection with the [M]atches”*, and imposed the following disciplinary measures upon it: (i) *“a fine to the amount of CHF 80,000”*, (ii) *“a further fine of CHF 50,000, such fine being suspended for a period of 6 (six) months”*, (iii) one *“(A level) FIFA competition match [to be played] with a limited number of spectators”* and (iv) a warning.

35. 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.

36. Its competence established, the Committee subsequently went on to analyse the admissibility of the present appeal on the basis of the requirements established under art. 60 FDC.

#### **B. Admissibility of the Appeal**

37. As denoted *supra*, the Appellant decided to challenge the Appealed Decision by means of which it was sanctioned for the discriminatory behaviour of its supporters as well as for the misconduct of the members of its representative team in relation to two matches of the FIFA World Cup 2026™ Preliminary Competition.

38. In this context, the Committee recalled that, in order for an appeal to be admissible, the party lodging said appeal must comply with a number of formal (procedural) requirements set out in art. 60 FDC.

More specifically, the party wishing to lodge an appeal before the FIFA Appeal Committee against a decision of the FIFA Disciplinary Committee shall:

- submitting its intention to appeal and formalise the appeal through the filing of an appeal brief within the time limits prescribed in arts. 60.3 and 60.4 FDC, as follows:

"3. *Any party intending to lodge an appeal must inform the Appeal Committee of its intention to appeal, in writing via the FIFA Legal Portal, within three days of notification of the grounds of the decision.*

4. *Within five days of expiry of the time limit for the declaration of appeal, the appellant must file, in writing via the FIFA Legal Portal, the appeal brief. This must contain the appellant's requests, an account of the facts, evidence, a list of the proposed witnesses (with a brief summary of their expected testimony) and the appellant's conclusions. The appellant is not authorised to produce further written submissions or evidence after the deadline for filing the appeal brief." (emphasis added)*

- pay an appeal fee amounting to CHF 1,000, at the latest upon submission of its appeal brief, as specifically provided under art. 60.6 FDC, as follows:

"6. *The appeal fee is CHF 1,000, payable on submission of the appeal brief at the latest.*" (emphasis added).

39. Against such background, the Committee stressed that art. 60.7 FDC specifically determines that "[t]he appeal is not admissible if any deadline and/or any of the above-mentioned requirements are not met". In other words, an appeal against a decision of the FIFA Disciplinary Committee would only be declared admissible provided that all the abovementioned formal requirements have been cumulatively complied with, *i.e.* (i) both the intention to appeal and the appeal brief have been filed in due time and (ii) the appeal fee has been paid upon filing the appeal brief at the latest.

40. With those elements in mind, the Committee subsequently acknowledged that *in casu*:

- the grounds of the Appealed Decision were notified on 23 February 2024;
- the Appellant communicated its intention to appeal on 26 February 2024;
- the Appellant submitted its appeal brief on 1 March 2024.

41. In view of the above, the Committee held that both the intention to appeal and the appeal brief had been submitted in due time.

42. In continuation, and with respect to the payment of the appeal fee, the Committee noticed that:

- on 26 March 2024, the Secretariat *inter alia* informed the Appellant that it had "*not yet received any proof of payment of the appeal fee pertaining to the present proceedings*" and invited it "*to provide (...) any comments it may have in this respect, by 01 April 2024 at the latest*";



- on 27 March 2024, the Appellant provided a copy of the bank order related to the payment of the appeal fee. According to the "SWIFT Message details" the payment was allegedly made on 5 March 2024;
- on 16 April 2024, the Secretariat informed the Appellant that "*according to Finance department the appeal fee has not been received and probably rejected as the last digit "U" is missing in the IBAN*";
- on 19 April 2024, the Appellant *inter alia* stated that "*(...) as indicated on the payment receipt, the transfer was instructed on 5.03.2024*".

43. In this context, the Committee recalled that, pursuant to art. 60.6 FDC, the appeal fee should have been paid "*on submission of the appeal brief at the latest*", i.e. on 1 March 2024.

44. Notwithstanding the above, the Committee highlighted that:

- on the basis of the documentation submitted by the Appellant – and as explicitly confirmed by the latter – the payment of the appeal fee had allegedly been made on 5 March 2024;
- more importantly, and upon verification with FIFA's Finance Department, it appeared that, to date, no appeal fee had been received by FIFA.

45. Given the above, the Committee was comfortably satisfied that the appeal fee could not be considered to have been paid within the deadline provided by the pertinent provision of the FDC.

46. As a matter of fact, in the Committee's view, the decisive moment for assessing whether the appeal fee has been paid in time is the date of submission of the appeal brief (as clearly provided in art. 60.6 FDC). In other words, the filling of the appeal brief triggers the payment of the appeal fee (provided that the said fee had not already been paid).

47. More specifically, the Committee pointed out that arts. 60.6 and 60.7 FDC are clear and leave no room for interpretation, in so far that the appeal fee must be paid at the latest when the appeal brief is filed, failing which the appeal would be declared inadmissible.

48. In these circumstances, the Committee referred to the jurisprudence of the Court of Arbitration for Sport (**CAS**) pertaining to the late (or lack of) payment of the appeal fee.

49. In particular, the Committee noted that under CAS 2008/A/1621, the Panel had to decide on the legal consequence of the late payment of the appeal fee and ruled that as the appeal fee had not been paid in due time, the consequence foreseen in the Disciplinary Code shall inexcusably apply<sup>1</sup>. More specifically, the Panel emphasised that, as the consequence of the lack of payment of the appeal fee was expressly mentioned in the FDC, there was no excessive formalism for rejecting the appeal on the basis of the lack of payment of the appeal fee. Put differently, this award made it clear that if the consequence of the lack of payment of the appeal fee is stipulated in the legal provision, there is no room for discussion.

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<sup>1</sup> CAS 2008/A/1621 Iraqi FA v. FIFA & Qatar FA

50. Similarly, in another award pertaining to an individual having failed to pay the appeal fee within the deadline foreseen by the then applicable edition of the FDC, the Sole Arbitrator confirmed that such failure shall result in the inadmissibility of the appeal before the FIFA Appeal Committee<sup>2</sup>.
51. In the same vein, in a more recent award where the appeal fee *“was not paid by the time of submission of the appeal brief “at the latest”*<sup>3</sup>, the Sole Arbitrator stressed that there is no excessive formalism in declaring an appeal inadmissible where one of the conditions required for the valid submission of an appeal is not met. In particular, the latter made it clear that *“the regulations [i.e. the FDC] allows no room for debate: the [appeal] fee must be paid by that time “at the latest”. (...) There may therefore be no other conclusion: when the event under the rule has occurred – the failure to comply with all the requirements – this triggers a chain reaction with the regulatory consequence or sanction. In this case, the appeal may not be admitted”* (free English translation from Spanish). In this respect, the Sole Arbitrator emphasised that the FDC *“also leaves no room for doubt with regard to the duty – and not simply the ability – of the FIFA [Appeal Committee] to refuse to admit the appeal when any of the requirements contained in article 56 of the [2019] FIFA Disciplinary Code”* (now art. 60 FDC - free English translation from Spanish).
52. Consequently, in view of the clear wording of art. 60 FDC and in light of the aforementioned awards, the Committee considered that declaring the present appeal inadmissible on the grounds of the late (or even lack of) payment of the appeal fee would not amount to excessive formalism.
53. Finally, the Committee found that admitting the present appeal when other FIFA (in)direct members have had their appeals declared inadmissible for failure to comply with the formal requirements contained in the FDC, such as in the aforementioned CAS award, would clearly infringe the principle of equal treatment between its (in)direct members and put legal certainty at risk. In other words, FIFA's interest in ensuring a strict application of the formal requirements contained in art. 60 FDC for the sake of legal certainty and equal treatment in the application and interpretation of the rules with regard to its multiple (in)direct members clearly outweigh the Appellant's interest in having its appeal heard on the basis of an exception to the mandatory formal requirements of art. 60 FDC.
54. In view of the foregoing, the Committee held that the requirements set out under art. 60.6 FDC had not been met as a result of the late (or even lack of) payment of the appeal fee, and therefore declared the present appeal lodged by the Appellant inadmissible.

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<sup>2</sup> CAS 2017/A/5291 Abel Jun Martínez Colón v. FIFA

<sup>3</sup> CAS 2022/A/8752 Federación Nacional Autónoma de Fútbol de Honduras v. FIFA

## IV. DECISION

**The appeal lodged by the Chilean Football Association against the decision passed by the FIFA Disciplinary Committee on 18 December 2023 is declared inadmissible.**

FÉDÉRATION INTERNATIONALE  
DE FOOTBALL ASSOCIATION



**Neil EGGLESTON**

Chairperson of the FIFA Appeal Committee

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**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.