

Decision

of the

Chairman of the FIFA Appeal Committee

on 6 December 2019

in the case:

Mr Markus Kattner

(Decision 26/2019 APC)

regarding:

Objection filed by Mr Markus Kattner on 15 November 2019

I. Inferred from the file

1. Below is a summary of the main relevant facts and allegations based on the documents pertaining to the file. Although the Chairman of the FIFA Appeal Committee (hereinafter, *the Chairman*) has considered all the facts, legal arguments and evidence submitted by the parties, namely Mr Markus Kattner (hereinafter, *the Appellant*), the Chairperson of the Investigatory Chamber, the Chairperson of the Adjudicatory Chamber and the Chief of Investigation, he will refer in his decision only to submissions and evidence he considers necessary to explain his reasoning.
2. On 15 November 2019, the Appellant filed a motion for recusal concerning amongst others, the members of the Investigatory Chamber as well as of the Adjudicatory Chamber (Ethics Committee as a whole) in accordance with art. 35 par. 4 of the FIFA Code of Ethics (FCE) [ed. 2019]. The motion in question can be summarised as follows:
 - i. The Appellant considers that "*[t]he individual members of the FIFA Ethics Committee and the FIFA Ethics Committee as a whole are not impartial or independent*", mainly because of their "*closeness to and vested interests in FIFA*";
 - ii. Regarding the Chairperson of the Investigatory Chamber (Mrs Rojas), the latter considers that she "*is a confidante of Gianni Infantino and, therefore (in general as well as particularly in the present proceedings), does not possess the necessary independence and impartiality*";
 - iii. Regarding the Chief Investigation of the case (Mr De Vita), the Appellant *inter alia* considers that his right to be heard was not respected therefore demonstrating that Mr De Vita (1) "*does not have the slightest interest in carrying out the investigation in an objective manner or to seek and take into account aggravating and mitigating evidence*" and (2) "*does not possess the necessary independence and impartiality*";
 - iv. Regarding the Chairperson of the Adjudicatory Chamber (Mr Skouris), the Appellant considers that the latter is lacking independence due to Mr Infantino's involvement on the drafting of the new FCE.
3. On 27 November 2019, the Secretariat to the FIFA Appeal Committee (hereinafter, *the Secretariat*) invited both the Investigatory and the Adjudicatory Chamber to file their position on the Appellant's statement.
4. On the same day, the Chairperson of the Adjudicatory Chamber provided his position to the Secretariat, claiming that the request for recusal should be dismissed as he is "*in now way biased, dependent or impartial in the current case*" and there are "*no indications that [he] would not be able to chair these (...) proceedings independently and impartially*". In particular, the procedure towards the Appellant has been handled in and "*transparent and swift manner*" and, as such, the allegations on the lack of independence are "*unsubstantiated (...) and, in any case, irrelevant*".
5. In the same line, by means of a letter dated 28 November 2019, the Chairperson of the Investigatory Chamber, Mrs Rojas, deemed that the request for recusal is baseless and should be dismissed, particularly considering that:
 - i. She has "*never participated in the investigation proceedings since the investigations have been carried out separately and independently (...) nor [has she] ever acted as chief of the investigation in the current proceedings against [the Appellant]*";
 - ii. "*[T]here are no serious grounds to question [her] impartiality*" as she has "*no direct interest in the outcome of the matter*", she is "*not personally biased or have any*

prejudice towards [the Appellant]”, she “never expressed an opinion concerning the outcome of the proceedings”, she has “no relation whatsoever with [the Appellant]”, she does “not share the same nationality with [the Appellant]”, and she has never “dealt before with a case that involved allegations against [the Appellant]”.

6. Finally, on 1 December 2019, the Chief of Investigation argued that the allegations on the lack of *“independence and impartiality are (...) without foundation”*, particularly considering that the Appellant’s right to be heard has not been affected during the proceedings

II. and considered

1. First and foremost, the Chairman pointed out that, in accordance with art. 35 par. 5 of the FCE, he is competent to decide on the objection against a member of the Ethics Committee.
2. This having been established and as a preliminary remark, the Chairman wanted to recall that, in line with art. 34 par. 4 of the FCE, such objection can only be addressed at individuals and not at the Committee as a whole.
3. In continuation, the Chairman found it worthwhile to emphasise that, contrary to art. 34 par. 4 of the FCE, the Appellant failed to substantiate his allegations by any documentary evidence demonstrating the lack of independence of the objected members.
4. Having said that, after a careful analysis of the motion on the hand, and of the relevant positions, the Chairman considered that there are no grounds for questioning the impartiality and/or the independence of the members of both the Investigatory Chamber and the Adjudicatory Chamber.
5. In particular, the Appellant failed to demonstrate that the conditions for a recusal as set for under art. 35 par. 2 of the FDC are met. More fundamentally, the Chairman held that, on the basis of the documents at his disposal, there is no basis for concluding that any of the individuals cited has:
 - i. *either “a direct interest in the outcome of the case”;*
 - ii. *“a personal bias or prejudice concerning [the Appellant]; or personal, first-hand knowledge of disputed evidentiary facts material to the proceedings; or has expressed an opinion, other than as part of the proceedings in question, concerning the outcome of the proceedings; or when the immediate family of the member is a party to the subject matter in controversy, is a party to the proceedings or has any other interest that could be substantially affected by the outcome of the proceedings and his impartiality”;*
 - iii. *“the same nationality” as the Appellant;*
 - iv. *or “already dealt with the case in a different function other than his function as a member of the Ethics Committee”.*
6. As a result of the above considerations, the Chairman concluded that the request for recusal of the members of the Investigatory Chamber as well as of the Adjudicatory Chamber (Ethics Committee as a whole) had to be dismissed.

III. therefore decided

The objection submitted by Mr Kattner against the members of the Investigatory Chamber as well as of the Adjudicatory Chamber (Ethics Committee as a whole) is rejected.

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Thomas Bodström
Chairman of the FIFA Appeal Committee