

Decision of the adjudicatory chamber of the Ethics Committee

passed on 29 July 2022

DECISION BY:

Vassilios Skouris (Greece), Chairperson

ON THE CASE OF:

Mr Orphé Mickala, Gabon

(Decision FED-275)

REGARDING:

Request of the Chairperson of the Investigatory Chamber of the FIFA Ethics Committee to extend the provisional sanctions (FDD-275 PRV)

I. FACTS OF THE CASE

1. In December 2021, the Fédération Internationale des Associations de Footballeurs Professionnels (**FIFPRO**) alerted FIFA of the series of concerning allegations of sexual abuse in Gabonese football, which then became public in several media publications in the newspaper *The Guardian* which directly accused a former coach of Gabon's under-17 team coach, Mr Patrick Assoumou Eyi, of allegedly raping and sexually abusing young football players.
2. On 30 and 31 December 2021, the Gabonese Football Association (**FEGAFOOT**) informed FIFA that two other coaches of Gabonese clubs, Mr Orphé Mickala and Mr Triphel Mabicka had been arrested by the national police and were charged for paedophilia. Moreover, according to local media reports, Mr Triphel Mabicka was caught on 25 December 2021 by the judicial police in the act of sexual abuse.
3. On 17 January 2022, the Investigatory Chamber of the FIFA Ethics Committee (**Investigatory Chamber**) requested FEGAFOOT to provide the names of officials being prosecuted, as well as any measures taken by FEGAFOOT following receipt of the above allegations.
4. On 19 January 2022, FEGAFOOT informed the Investigatory Chamber that various Gabonese coaches, including Mr Orphé Mickala, were being investigated by the FEGAFOOT Ethics Committee.
5. On 30 March 2022, FEGAFOOT informed the Investigatory Chamber that the former Secretary General of the National Association of Professional Footballers of Gabon (**ANFPG**), Mr Stephan Nenguema, had publicly accused the president of ANFPG, Mr Remy Ebanega, of having offered to falsely present himself as a victim of Mr Patrick Assoumou Eyi in exchange for leaving the country with his family for a golden exile.
6. On 8 April 2022, the Chairperson of the Investigatory Chamber (**IC Chairperson**) informed FEGAFOOT that in view of the foregoing, an investigation by FEGAFOOT was not possible, and therefore took over the investigation process in application of art. 30 (2) of the FIFA Code of Ethics (**FCE**). In that regard, FEGAFOOT was requested to submit the complete file of the investigation proceedings.
7. On 28 April 2022, taking account of the relevant information and documentation obtained throughout the preliminary stage of the investigation, and pursuant to arts. 60 and 62 (1) FCE, the IC Chairperson determined that there was a *prima facie* case and opened formal investigation proceedings against Mr Orphé Mickala for possible violations of arts. 13, 23 and 25 FCE.
8. On 3 May 2022, the IC Chairperson imposed on Mr Orphé Mickala a provisional ban from taking part in any kind of football-related activities for a period of 90 days in accordance with art. 84 (1) FCE. In particular, the IC Chairperson considered that this provisional suspension was necessary to ensure the normal course of the proceedings, *i.e.* that

testimony is given freely, without pressure, fear or reprisals and that there is no interference in the ongoing procedure, based on:

- The seriousness of the allegation reported by the media, namely possible cases of paedophilia in Gabonese football;
 - Mr Mickala had been arrested on charges of rape and sexual abuse of minors;
 - A decision on the merits of the present case could not be taken soon enough.
9. On 25 July 2022, pursuant to art. 85 (1) FCE, the IC Chairperson requested the Chairperson of the Adjudicatory Chamber of the FIFA Ethics Committee (**the Chairperson**) to extend the provisional measures taken against Mr Mickala for an additional period of 90 days. In his request, the former wished to draw the Chairperson's attention to the following elements:
- The present matter is part of a complex investigation that includes several Gabonese football officials, who allegedly abused (minor) football players over a long period of time;
 - Difficulties in locating witnesses and whistleblowers as well as complications in establishing a direct line of communication with the Prosecutor General in Libreville have unfortunately delayed the investigations and made it particularly difficult to collect evidence and other relevant elements during the first provisional suspension.
 - The ongoing investigation suggests that Mr Mickala has potentially committed one of the most serious breaches of the FCE, namely engaging in sexual offences, potentially with minor players.
 - Mr Mickala is currently in jail, but should he be released and returned to his position as football coach, this could potentially interfere with the ongoing investigation.
10. Finally, two letters from FIFPRO were attached to the aforementioned request, providing the Investigatory Chamber, *inter alia*, with a list and contact details of potential whistleblowers and witnesses willing to be interviewed by FIFA in the context of the investigation into sexual abuse in Gabonese football.

II. CONSIDERATIONS OF THE ADJUDICATORY CHAMBER

A. ADMISSIBILITY

11. Pursuant to art. 85 (1) FCE, provisional sanctions may be extended by the Chairperson upon the request of the IC Chairperson for an additional period not exceeding 90 days. Art. 85 FCE does not contain any additional procedural requirement, condition, or deadline.
12. In the present case, the Chairperson considered that the request of the IC Chairperson has been submitted in compliance with art. 85 FCE.

B. AS TO THE MERITS

13. As a preliminary remark, the Chairperson noted that art. 85 (1) FCE provides that provisional sanctions may be extended “[i]n exceptional circumstances”.
14. Notwithstanding the above, the Chairperson held that such provision needs to be read in conjunction with art. 84 (1) FCE. As a matter of fact, in a former case before the Court of Arbitration for Sport (**CAS**), a Panel, called upon to rule on an appeal against a decision to extend a provisional suspension issued pursuant to art. 85 (1) FCE, considered that “[i]t cannot, in the context of the review to be conducted, completely disregard the reasons which led the Chairperson of the Investigatory Chamber to adapt the provisional measure, even though the latter was not appealed by the Appellant”¹.
15. As such, the Chairperson deemed that a two-step analysis was required in order to possibly grant the request for an extension of the provisional suspension for another 90 days, that is to say (i) analyse the reasons having led to the initial imposition of the provisional sanctions (art. 84 (1) FCE), and (ii) the existence of “exceptional circumstances” (art. 85 (1) FCE).
16. In this regard, the Chairperson briefly turned his attention to art. 84 (1) FCE and observed that, under the terms of this provision, provisional sanctions may be imposed by the IC Chairperson:
 - i. *“to ensure that investigation proceedings are not interfered with”*or, alternatively
 - ii. *“when a breach of this Code appears to have been committed and a decision on the merits of the case may not be taken early enough.”*

¹ Cf. TAS 2020/A/7371.

17. In view of the foregoing, the Chairperson pointed out that he had to analyse whether or not one of the two abovementioned conditions had been met, before turning to the requirement of art. 85 (1) FCE.
18. After a careful reading of the first decision issued on 3 May 2022 provisionally suspending Mr Mickala, the Chairperson noted that the suspension was essentially based on (i) the allegations against Mr Mickala, (ii) the fact that he was arrested on charges of rape and sexual abuse of minors, (iii) media reports, (iv) the fact that a decision on the merits of the case may not be taken soon enough, (v) the fact that the proceedings needed to be conducted without any interference and (vi) the fact that testimony needed to be given freely, without any kind of pressure, fear or reprisal.
19. In view of all the above, the Chairperson was comfortably satisfied with the conclusion reached by the IC Chairperson on 3 May 2022, namely that:
 - there was at least a *prima facie* indication that Mr. Mickala had committed violations of the FCE, in particular arts. 13, 23 and 25; and
 - it seemed obvious that, at the time of the provisional suspension imposed on Mr Mickala, a decision on the merits could not be " *taken early enough* " in view of the complexity of the present investigation, and in particular the difficulty of contacting the victims and other whistleblowers.
20. Having determined that the requirements of art. 84 (1) FCE were fulfilled, the Chairperson subsequently focused on the existence of "exceptional circumstances" within the meaning of art. 85 (1) FCE.
21. In this regard, the Chairperson noted that the IC Chairperson put forward a number of elements, which would allow the circumstances of the case to be characterized as exceptional, so that the provisional suspension could be extended.
22. As a matter of fact, based on the information and documentation received by the Chairperson, the case of Mr Mickala appears to be part of a complex investigation involving several Gabonese football officials, who allegedly abused (minor) football players over a long period of time. In addition, some difficulties have apparently arisen in locating and contacting witnesses and whistleblowers, thus delaying the investigation process. The Chairperson also pointed out that, as previously emphasised, the case file suggested that Mr Mickala had potentially sexually abused (minor) players.
23. As such, the above could already be considered exceptional, not least because of the type of allegations made against Mr Mickala, but also because of the fact that the Investigatory Chamber has to contact and interview whistleblowers and witnesses who may be subject to reprisals according to FIFPRO's correspondences, so that absolute caution must be exercised by the said chamber, thereby further delaying the investigation.

24. Finally, the Chairperson observed from the information on file that Mr Mickala is currently in jail, but if released, he could potentially return to his position as a football coach and affect the ongoing investigation.
25. Therefore, considering (i) that the allegations made in the present case are of an extremely sensitive and serious nature, (ii) that the interests at stake concern the physical and mental integrity of (minor) football players and (iii) that Mr Mickala, upon his release from jail, could return to his position as a coach, the Chairperson deemed these circumstances to be exceptional within the meaning of art. 85 (1) FCE.
26. Furthermore, the Chairperson would like to reiterate that in the present case, the interest of FIFA in protecting the integrity and reputation of football in the context of the on-going ethics proceedings (concerning one of the most severe infringements in the FCE, which involves acts of sexual harassment and abuse, that would profoundly damage the image of football, FIFA and the physical and psychological well-being of players who were potentially minors at the time of the incident) prevails the potential adverse effects caused by the provisional sanction on Mr Mickala.
27. Accordingly, the provisional suspension of Mr Mickala for a further 90 days should be granted, as it would clearly fulfil a preventive function in light of the above circumstances. Therefore, in order to prevent any interference with the ongoing investigation and bearing in mind that the decision on the merits may not be taken early enough, the Chairperson decided to grant the request of the IC Chairperson and to provisionally suspend Mr Mickala for a further period of 90 days, starting upon the expiry of the initial 90-day period imposed on 3 May 2022.

III. DECISION OF THE ADJUDICATORY CHAMBER

The provisional sanctions imposed by the Chairperson of the Investigatory Chamber of the FIFA Ethics Committee on Mr Orphé Mickala on 3 May 2022 are extended for an additional period of 90 days, which shall start upon the expiry (or in continuation) of the initial 90-day period.

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Vassilios Skouris

Chairperson of the adjudicatory chamber
FIFA Ethics Committee

LEGAL NOTE:

In accordance with art. 82 (1) FCE and art. 58 (1) of the FIFA Statutes, this decision can be appealed against to the Court of Arbitration of Sport (“CAS”) in Lausanne, Switzerland (www.tas-cas.org). The statement of appeal must be sent directly to CAS within 21 days of notification of this decision. Within another ten (10) days following the expiry of the time limit for filing the statement of appeal, the appellant shall file with CAS a brief stating the facts and legal arguments giving rise to the appeal (see art. R51 of the Code of Sports-related Arbitration).