

Decision of the FIFA Disciplinary Committee

passed on 26 August 2023

DECISION BY:

Mr Jorge Ivan Palacio (Colombia), Chairperson

ON THE CASE OF:

Mr Luis Rubiales Bejar (Spain)

(Decision FDD-15763)

REGARDING:

Article 51 FIFA Disciplinary Code (FDC) - *Provisional measures*

Article 13 FDC – *Offensive behaviour and violations of the principles of fair play*

I. FACTS OF THE CASE

1. On 20 August 2023, the final match of the FIFA Women's World Cup Australia and New Zealand 2023™ between the representative teams of Spain and England (**the Match**) took place in Sydney (Australia – Attendance 75,784 spectators – Final score 1-0).
2. During the Match, Mr Luis Rubiales Bejar (**the Respondent**), president of the Spanish Football Federation (**RFEF**), was, amongst others, seen celebrating the Spanish victory by grabbing his crotch/genitals in the VIP area and then carrying the Spanish player Athenea del Castillo over his shoulder during the post-Match celebrations on the field of play.
3. 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 Respondent. In particular, when Ms Hermoso was facing the Respondent 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 Incident**).
4. 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 Incident, saying "I did not like it".
5. The Incident was widely reported in the media and condemned, *inter alia*, by the players' unions concerned, FUTPRO and FIFPRO respectively.
6. After the Match, the Respondent commented the Kiss during an interview with a *COPE* journalist and said, *inter alia*, that "it was a kiss between two friends celebrating somethings" suggesting that those who saw this Incident differently were "idiots and stupid people"².
7. Later, in a video published by RFEF, the Respondent 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 Respondent 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
8. On 23 August 2023, RFEF urgently convened an Extraordinary General Assembly for Friday 25 August 2023 in connection with the Incident.

¹ Free translation from Spanish.

² Free translation from Spanish.

³ Free translation from Spanish.

9. On 24 August 2023, disciplinary proceedings were opened against the Respondent for potential breaches of arts. 13.1, 13.2.a and 13.2.d of the FIFA Disciplinary Code (**FDC**).
10. On 25 August 2023, the Respondent 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 Respondent 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.
11. On the same day, FUTPRO issued an official statement stating, *inter alia*, that "Given the statements made by [the Respondent], Jennifer Hermoso wants to emphasise that she did not give consent to [the Respondent] 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 Respondent] 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".
12. On the same day, 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 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. The day after, 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."*
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."

15. Given these extraordinary circumstances, on 26 August 2023, Ms Hermoso was invited to confirm the content of her public statements and the accusations made against the Respondent. She confirmed the statement by way of an email addressed to this Disciplinary Committee on the same day.

II. CONSIDERATIONS OF THE DISCIPLINARY COMMITTEE

A. JURISDICTION AND APPLICABLE LAW

16. First of all, the Chairperson of the FIFA Disciplinary Committee (**the Chairperson**) found it worthwhile to emphasise that, on the basis of art. 2 (1) FDC read together with arts. 55 and 56 FDC, he was competent to evaluate the present case. The Chairperson also stressed that on the basis of art. 51 (2) of the FIFA Statutes, he may pronounce the sanctions described in the Statutes and the FDC on member associations, clubs, officials, players, football agents and match agents.
17. In addition, the Chairperson recalled that pursuant to art. 51.1 FDC, the Chairperson of the relevant FIFA judicial body is entitled to issue provisional measures where these are deemed necessary to ensure the proper administration of justice, to maintain sporting disciplinary or avoid irreparable harm, or for reasons of safety and security.
18. In this respect, the Chairperson noted that, in line with the aforementioned provision, read in conjunction with art. 57.2.g FDC, he was competent to issue provisional measures, provided that the aforementioned requirement(s) were met.
19. Having clarified the above, the Chairperson turned to the merits of the case.

B. AS TO THE MERITS

20. As a preliminary remark, the Chairperson pointed out that under the terms of art. 51 (1) FDC, provisional measures may be imposed:
 - i. to ensure the proper administration of justice;
 - ii. to maintain sporting discipline;
 - iii. to avoid irreparable harm; or
 - iv. for reason of safety and security.

21. For the sake of completeness, the Chairperson further stressed that under art. 51.1 FDC, he was not obliged to hear the parties before issuing provisional measures.
22. With this in mind, the Chairperson then turned to the case at hand and observed that the present case related to the Respondent's conduct during the final Match of the FIFA Women's World Cup 2023 in Sydney, and, when it comes to this specific decision, it relates to the Kiss between the Respondent and Ms Hermoso. In particular, the Chairperson noted from publicly available information and various statements that both protagonists had different interpretations of the Kiss and the events surrounding it.
23. While it will be up to the FIFA Disciplinary Committee (i) to shed full light on the various incidents that occurred during the Match, (ii) to assess any potential violations of FIFA Regulations and (iii) to impose sanctions, if necessary, the Chairperson felt that each party should be free to present and defend its own positions and interpretations during the course of these proceedings.
24. However, in view of the latest developments following the RFEF's Extraordinary General Assembly and in particular the statements published by FUTPRO and the Player on 25 August 2023, containing serious allegations against the Respondent, as well as the reaction to the latter by RFEF published the following day, the Chairperson considered that provisional measures should be taken insofar as the four circumstances described in art. 51(1) FDC were met, whereas only one would have already justified the implementation of these provisional measures.
25. In this respect, the Chairperson first found that, as a result of the latest statements issued by RFEF, the proper administration of justice with regard to the disciplinary proceedings initiated against the Respondent by FIFA on 24 August 2023 could no longer be guaranteed. Obviously, threatening the Player with legal action(s) because she is merely expressing her position with regard to the Kiss, or, even more serious, allegedly pressuring the Player and/or her entourage to speak in favour of the Respondent – as Ms Hermoso confirmed by means of her statement and by her personal email sent to this Disciplinary Committee on 26 August 2023 – cannot be tolerated and amounts to obstructing the aforementioned disciplinary proceedings. As such, the imposition of provisional measures on the Respondent will ensure that the ongoing disciplinary proceedings against him are conducted without any interference, particularly so that potential testimonies could be given freely and without any type of pressure, fear or reprisals from the Respondent, particularly given his predominant position towards Ms Hermoso, other players or RFEF officials as President of the RFEF.
26. Secondly, the Chairperson emphasized that FIFA had more than just an interest in protecting the integrity and reputation of football, which had been significantly affected by the Incident and the ongoing disciplinary proceedings. Indeed, given FIFA's statutory objective to promote and develop Women's football worldwide, FIFA also has a duty to protect it as well as those involved in women's football, in particular female players. In this regard, the Chairperson considered that the imposition of provisional measures on the Respondent would be justified for the following reasons:

- Ms Hermoso will not be in contact with the Respondent in the exercise of her profession as a football player or any related activity, thereby ensuring her safety and preserving her mental integrity.
 - This will guarantee, on the one hand, sporting discipline so that the Spanish players can consider returning to the Spanish national teams if called up and, on the other hand, that they will not be exposed to the Respondent when selected for the national team.
 - This will also ensure that no further irreparable harm is done to football, as the Incident clearly tarnished not only Spain's success, but also the FIFA Women's World Cup 2023 at global level. In other words, the Incident undermined, among others, FIFA's statutory objective of "*promot[ing] the development of women's football and the full participation of women at all levels of football governance*" (art. 2 (f) of the FIFA Statutes).
27. In addition, the Chairperson found that the RFEF's statements published on 26 August 2023 aiming at defending the Respondent, not only put pressure on Ms Hermoso to respond favorably to a possible call-up to the national team, but in view of the current situation resulting from the Respondent's actions during the Match and his subsequent actions, either by himself or the RFEF, such a statement tends to create a needless feeling of pressure on the various female players who have refused to play for the Spanish national team under the current leadership. Consequently, and given all these circumstances, a provisional measure against the Respondent will, as already explained, provide a better and safer environment for all players in the Spanish national team.
28. Finally, it seemed clear to the Chairperson that a decision on the merits could not be taken early enough given the sensitivity and particularly serious nature of the allegations levelled against the Respondent in this case, so that provisional measures had to be imposed on the Respondent for the aforementioned reasons, which, given all the circumstances taken into account, clearly outweigh the potential adverse effects that such a measure could cause to the Respondent.
29. As a result, the Chairperson decided to provisionally suspend the Respondent from taking part in any football-related activities as of the notification of the present decision. In line with art. 51(3) FDC, the provisional suspension is for an initial period of 90 days, pending the disciplinary proceedings opened against the latter on 24 August 2023.
30. In addition to the above, and in order to guarantee Ms Hermoso's fundamental rights and to ensure that she, her family and close entourage are not subjected to any undue pressure, the Chairperson has decided, pursuant to art. 7 FDC, to add the following directives to the provisional suspension:
- The Respondent shall refrain from contacting or attempting to contact, directly or indirectly (including through third parties), Ms Hermoso and/or her close environment.
 - RFEF and its officials and employees shall refrain from contacting directly or indirectly Ms Hermoso and/or her close environment.

31. In particular, the Chairperson considered that the 90-day provisional suspension, together with the implementation of the directives, constitute a reasonable period of time to allow this FIFA Disciplinary Committee to complete adequately the ongoing disciplinary proceedings initiated on 24 August 2023, and to adjudicate this matter without causing an unreasonable prejudice to the Respondent's rights.

III. DECISION OF THE DISCIPLINARY COMMITTEE

1. **Mr. Luis Rubiales Bejar is provisionally suspended from exercising any football related activity for 90 days as of the notification of this decision in accordance with Article 51 FIFA Disciplinary Code (FDC).**
2. **To implement the following directives in accordance with Article 7 FDC:**
 - **Mr. Luis Rubiales Bejar shall refrain, though himself or third parties, from contacting or attempting to contact the player Jennifer Hermoso or her close environment.**
 - **The Spanish Football Federation (RFEF) and its officials or employees, directly or through third parties, are ordered to refrain from contacting the player Jennifer Hermoso or her close environment.**

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Jorge Palacio

Chairman of the FIFA Disciplinary Committee

LEGAL NOTE:

This decision can be contested before the FIFA Appeal Committee (art. 51.2 of the FDC). However, and in accordance with this provision, the appeal must reach FIFA writing via the FIFA Legal Portal and with grounds within three days of notification of the contested measure, without the condition of payment of any appeal fee.