

Decision of the adjudicatory chamber of the Ethics Committee

passed on 18 October 2023

DECISION BY:

Mr Vassilios SKOURIS (Greece), Chairperson

Ms Maria Claudia ROJAS (Colombia), Deputy Chairperson

Mr Stefan Buontempo (Malta), Member

ON THE CASE OF:

Mr Jonathan Bukabakwa

(Decision FED-363)

REGARDING:

Art. 24 of the FIFA Code of Ethics, 2023 edition (FCE) – *Protection of physical and mental integrity*

I. FACTS

A. Overview of the Case

1. The case related to serious allegations of sexual abuse of minors within the Congo DR Football Association (**FECOFA**), which have been reported on several media platforms. In particular, various football coaches from different regions and leagues in Congo DR, including Mr Jonathan Bukabakwa (**Mr Bukabakwa** or **the Accused** or **the Respondent**), have been accused of abusing minor players.
2. In particular, the investigatory chamber of the FIFA Ethics Committee (**Investigatory Chamber**) considered that it had gathered evidence indicating that Mr Bukabakwa had breached art. 24 (*protection of physical and mental integrity*) of the FIFA Code of Ethics (ed. 2023)¹ (**FCE**) by sexually abusing an eleven-year-old (male) player (**the Victim**)² in July 2021.

A. Proceedings before the Investigatory Chamber

1. Procedural background and communications with the parties

a. *The Respondent*

3. Mr Bukabakwa, born on 23 September 1994 in Kinshasa (Congo DR), was a football player as well as a coach active in Congo DR who used to train the “*Urban Ententes of Malebo, Lipopo and Limete from 2012 until his imprisonment in 2021*”.

b. *Preliminary investigations and opening of formal investigation proceedings*

4. On 3 November 2022, serious allegations related to a system of paedophilia within FECOFA were made in a media article issued by [Sport News Africa](#). Several football coaches of different regions and leagues within Congo DR were named and accused of having abused minor players, which had been considered as part of the usual “sacrifices” that a football player has to encounter in their career. Among those mentioned in this publication was Mr Bukabakwa.
5. On 4 November 2022, FECOFA issued a letter addressed to the Confederation of African Football (**CAF**) through which it forwarded an official communication relating to a meeting carried out by the FECOFA Executive Committee after having become aware of the allegations. Among other things, the said communications stated that the FECOFA Executive Committee had mandated that an independent Commission of Inquiry be established in order to gather the necessary information and take disciplinary measures if needed.

¹ The alleged offences occurred in 2021, when the 2020 edition of the FIFA Code of Ethics was in force. However, FIFA's formal investigation was conducted under the 2023 edition of the FIFA Code of Ethics. Therefore, the Code referred to in this decision is the 2023 edition, unless explicitly stated otherwise (cf. para. 58 *infra*).

² The Final Report prepared by the Investigatory Chamber was anonymised. However, on the basis of the evidence gathered and submitted to the Adjudicatory Chamber, the Victim's name could be identified by the latter.

6. On 8 November 2022, a joint call between FECOFA, CAF, the FIFA Member Associations Department and the Secretariat to the Investigatory Chamber took place. During the meeting, FECOFA verbally informed that even though they have tried to establish an independent Commission of Inquiry, they have realized that they do not have under their own Statutes an institutionalized disciplinary body which has investigatory or decision-making powers. Therefore, any investigation or decision made by FECOFA would not have any legal basis and could be overruled by the Court of Arbitration for Sport (**CAS**). Consequently, FECOFA asked the FIFA Ethics Committee to support them with the investigation.
7. On 10 November 2022, FECOFA officially stated that, since they did not have an established disciplinary body and was unable to properly investigate the case further, it agreed that the FIFA Ethics Committee takes over the investigation forthwith based on art. 30 (2) FCE [ed. 2019].
8. On 11 November 2022, FECOFA informed the Investigatory Chamber that Mr Bukabakwa had been arrested and was in prison since 2021 for having sexually abused a minor.
9. On 21 December 2022, the Investigatory Chamber requested FECOFA to provide the complete criminal file against Mr Bukabakwa.
10. On 13 February 2023, FECOFA forwarded several documents related to the criminal case against Mr Bukabakwa and further pointed out that Mr Bukabakwa had been released from prison on 18 January 2023 after having served his 18-month sentence for having abused a minor football player.
11. Based on the above, the Chairperson of the Investigatory Chamber instructed the Secretariat to the Investigatory Chamber to initiate preliminary investigations into any potential breaches of the FCE by Mr Bukabakwa.
12. On 16 February 2023, as the preliminary investigations and documentation collected revealed a *prima facie* case that Mr Bukabakwa had committed violations of the FCE, the latter was informed, through FECOFA, of the opening of formal investigation proceedings against him for a potential breach of art. 24 FCE³. The Accused was also informed that Mr Bruno De Vita had been designated by the Chairperson of the Investigatory Chamber as Chief of Investigation in accordance with art. 65 FCE.
13. Considering the information contained in the criminal file and the fact that Mr Bukabakwa had been released from prison, on 17 February 2023, the chief of investigation requested the Adjudicatory Chamber of the FIFA Ethics Committee to impose provisional sanctions on Mr Bukabakwa.
14. On 20 March 2023, the Chairperson of the Adjudicatory Chamber decided to grant the request and provisionally suspended Mr Bukabakwa for 5 months from all football-related activities.

³ Since the Investigatory Chamber was not able to establish direct communications with Mr Bukabakwa, it requested FECOFA to forward all correspondences to the former pursuant to art. 43 (3) FCE. From the date of the opening of the formal investigation until 25 April 2023, the Investigatory Chamber maintained communication with Mr Bukabakwa via FECOFA.

15. On 19 April 2023, the investigation proceedings were closed and Mr Bukabakwa was provided with a summary of the main charges with the possibility to submit any observation or comment within ten days. The same notification was forwarded to FECOFA, which was required to ensure that it reached Mr Bukabakwa in a timely manner. However, no reply was received from the Accused.
16. On 10 May 2023, the Final Report on the investigations (**the Final Report**) was transmitted by the Investigatory Chamber to the Adjudicatory Chamber.

2. Factual findings of the Investigatory Chamber

17. The present section aims at summarising the case file constituted by the Investigatory Chamber as well as the related findings contained in the Final Report.
18. In particular, the Investigatory Chamber collected the following evidence during the investigations:

- Criminal file opened against the Accused by the Public prosecutor's office of the province of Kinshasa, including the report from the Officer of the Judicial Police dated 26 July 2021;
- Judgement of the District Court of Kinshasa/Matete issued on 22 October 2021;
- Decision of the Court of Appeal of Kinshasa/Matete issued on 24 January 2022.

a. Criminal file and investigation carried out by the Officer of the Judicial Police

19. From the report of the Officer of the Judicial Police dated 26 July 2021 (**the Officer Report**), the Investigatory Chamber noted the following:
 - On 24 July 2021 around 14:00, the mother of an 11-year-old male player (the Victim) filed a complaint before the Public Prosecutor of the Province of Kinshasa.
 - She accused Mr Bukabakwa of having raped her son on Friday 23 July 2021 after training. She testified that her son had confirmed this to her after she saw him walking in an odd manner and questioning him.
 - On 24 July 2021 at 19:00, the officer of the Judicial Police of the District of Kinshasa (**the Officer**), interviewed the Victim who confirmed having been raped by Mr Bukabakwa.
 - On the same day, at around 19:30, Mr Bukabakwa was interrogated by the police. In his statement, he admitted knowing the Victim since "*He's one of my players*". Mr Bukabakwa also admitted having sexual intercourse with the Victim on the previous day.
 - On 26 July 2021, the Officer requested a medical examination of the Victim to the Director of the Hospital Omeco Matete.
 - Also on 26 July 2021, the Officer Report was submitted to the Public Prosecutor's Office of the Province of Kinshasa, and included the following conclusions:

"We would like to bring to the attention of the Officer at the Public Prosecutor's Office that, on 24/07/2021 at 14:00, we received the complaint by [the Victim's mother] (...) against Mr BUKABAKWA JONATHAN ALIAS MESSI (...) for rape, an offence recognised and punishable under Article 170 of Criminal Code II; Decree-Law No. 78/015.

Indeed, on Friday, 24/07/2021 [sic] at around 18:00, after the football match, the trainer (coach), Mr BUKABAKWA JONATHAN ALIAS MESSI, aged 27 years, took one of his players, [the Victim], aged 11 years, on a motorcycle to his house to make love to him. He promised to give his player a pair of new boots and a training jacket in exchange for anal sexual intercourse, adding to the minor that this is what the great players of the world do. Once they arrived at his house, in the living room, MR MESSI undressed [the Victim], and, without a condom, he inserted his penis into the anus of the minor, ejaculating sperm into it.

After their sexual intercourse, the coach, BUKABAKWA alias Messi, gave CDF 1000 (one thousand Congolese Francs) to [the Victim], for motorcycle transport.

In the evening, the victim's mother noticed that her son was not walking properly and asked him to take off his trousers. She noticed that her child's anus was open. On being asked what happened to him, the child replied that his coach, (Redacted text), slept with him via the anus. After listening to the victim, he confessed to everything recounted above in the presence of his (Illegible) coach. When accused, the coach, Bukabakwa Jonathan alias Messi confessed that he had slept with his player, who is a minor, via the anus because it gives him the (Truncated).

Since this act of sexual intercourse took place without a condom, we made a requisition to the physician and expert, (...).

Lastly, we maintained that the coach, Mr (Redacted text) alias (Redacted text), committed the offence of RAPE, which is recognised and punishable under Article 170 of Decree-Law No. 78/015. We submit to you, Officer at the Public Prosecutor's Office, the minutes and the Defendant, BUKABAKWA JONATHAN alias Messi for jurisdiction and assessment."

- On 27 July 2021, a medico-legal expert report of the Victim was issued by a physician working at the "Centre Hospitalier Mere et Enfant de Ngaba". The report described injuries sustained by the Victim, including physical lacerations, and concluded that there were signs of recent trauma which were consistent with the description of the facts given by the Victim.

b. Judgement of the District Court of Kinshasa

20. From the Judgement of the District Court of Kinshasa issued on 22 October 2021, the Investigatory Chamber noted the following:

- Despite the fact that Mr Bukabakwa retracted his confession and pleaded not guilty, the District Court of Kinshasa found him guilty of the offence of rape and sentenced him to five

years' imprisonment and imposed a fine of CDF 800,000. Mr Bukabakwa was also ordered to pay the Victim *"the equivalent in Congolese francs of \$ 1,000 as damages for all losses"*.

- Mr Bukabakwa appealed this decision to the Court of Appeal of Kinshasa.

c. Decision of the Court of Appeal of Kinshasa

21. From the aforementioned Decision issued on 24 January 2022, the Investigatory Chamber noted the following:

- During the proceedings, Mr Bukabakwa claimed that the sentence handed down by the first instance was disproportionate and asked the Court of Appeal to reduce it in view of the mitigating circumstances, or to acquit him outright, as the facts of which he was accused had not been proven.
- In its analysis, the Court of Appeal considered that the sanctions handed down by the first instance were not disproportionate, but in view of Mr Bukabakwa's lack of criminal record, it decided to reduce the period of imprisonment from five years to 18 months and the fine from CDF 800,000 to CDF 500,000.
- On 18 January 2023, Mr Bukabakwa was released from prison after serving his 18-month sentence.

3. Legal assessment of the Investigatory Chamber

22. In view of the above evidence, the Investigatory Chamber considered as established that Mr Bukabakwa had infringed art. 24 (4) FCE by i) promising advantages to the Victim and ii) by sexually abusing him.

23. Indeed, the Investigatory Chamber held that the offences listed in art. 24 (4) FCE – namely threats, promise of advantages, coercion, sexual abuse, harassment and exploitation – are all autonomous acts that are independently prohibited and sanctioned.

a. Promise of advantages

24. In order to convince the Victim to visit his house, Mr Bukabakwa promised certain advantages to the former, such as new training shoes and a jacket.

25. Consequently, it was clear that Mr Bukabakwa promised these advantages to the Victim with the intention of having the opportunity to be alone with him and possibly having sexual intercourse with him.

b. Sexual abuse

26. According to the Oxford Dictionary, rape *"is the crime of forcing somebody to have sex when they do not want it or are not able to agree to it"*.

27. The definition of sexual abuse or rape includes the intentional penetration of another's vagina, anus or mouth with a penis or other object, without the other person's consent. Based on these definitions, it is clear that the key element of sexual abuse (rape) is the absence of consent.
28. Consent means that a person agrees to what is happening by choice, having the freedom and ability to make that choice. An individual will certainly not have the freedom to make a choice when he is being threatened, forced or coerced, nor will he have the ability to agree where he is in a particularly vulnerable position as a minor or notably because of a mental physical disability or situation of dependence.
29. A child's consent is obviously different from an adult's, as children are incapable of giving legal consent because of their minor status. Consequently, it is clear that the Victim, being eleven-year-old at the time of the act, was not legally capable of providing any kind of consent.

4. Conclusions of the Investigatory Chamber

30. After careful analysis of the gathered information and documentation at its disposal, the Investigatory Chamber concluded that Mr Bukabakwa had breached art. 24 FCE by promising advantages to the Victim and sexually abusing him.
31. The aforementioned chamber also emphasized the severity of the conduct committed by Mr Bukabakwa. In particular, it pointed out that sexually abusing a child causes deep and irreparable harm to the victim and its effects can be life-long. All forms of sexual abuse are abhorrent. Abuse of this nature is especially disturbing when the abuser is someone who has been placed or has placed himself in a position of power and trust. The Investigatory Chamber found that Mr Bukabakwa's behaviour was inexcusable and contemptible and appropriate sanctions should therefore be imposed by the FIFA Ethics Committee.

B. Proceedings before the Adjudicatory Chamber

1. Opening of adjudicatory proceedings and communications with the Respondent

32. On 23 May 2023, adjudicatory proceedings were opened against Mr Bukabakwa *via* the FIFA Legal Portal. In particular, the Respondent was provided with the Final Report and the related exhibits.
33. On 22 June 2023, the Secretariat to the Adjudicatory Chamber (**the Secretariat**) sent a "*courtesy*" communication by email to Mr Bukabakwa as well as to FECOFA. The latter was *inter alia* advised that "*any further communication(s) on the part of the Secretariat and/or the adjudicatory chamber of the FIFA Ethics Committee will be shared exclusively via the Portal*" and that "*all the information and documentation constituting the case file is accessible within the Portal under the case-reference as mentioned above*".

34. Moreover, the secretariat also drew the Respondent's attention to art. 40 (3) FCE, pursuant to which the adjudicatory chamber may appoint a pro bono counsel *in absentia* in cases where the respondent cannot be reached, especially in situation "*when the adjudicatory chamber has tried to submit the final report by email through the member association and no response has been received 15 days following the notification to the member association (...)*".
35. On 28 July 2023, a pro bono counsel *in absentia* was appointed to defend Mr Bukabakwa in light of the lack of reply from the latter.
36. On 4 August 2023, the pro bono counsel *in absentia* requested a hearing to be held.
37. On 13 August 2023, the pro bono counsel *in absentia* submitted the position of Mr Bukabakwa, and further informed the Adjudicatory Chamber that she could establish a contact with the Respondent on 11 August 2023.
38. On 28 August 2023, the request for a hearing was withdrawn, as a result of which the parties were invited to submit their final requests.
39. On 19 September 2023, the pro bono counsel *in absentia* submitted Mr Bukabakwa's final requests.
40. On 10 October 2023, the parties were informed of the date of the meeting of the Adjudicatory Chamber and of the panel that would decide on the case.

2. Mr Bukabakwa's written positions

41. On 13 and 19 September 2023, the pro bono counsel *in absentia*, submitted on behalf of Mr Bukabakwa, his written positions. In essence, the Respondent denied having sexually abused the Victim and claimed that he had been sanctioned at national level despite the absence of conclusive evidence.
42. This said, the main argument(s) contained in the positions presented by the Respondent can be summarised as follow:

a. Unsubstantiated journalistic allegations

- Mr Bukabakwa considered that the allegations made by journalists against him are false and form part of a campaign to denigrate him. In particular, he found himself, for unknown reasons, quoted several times by a malicious journalist about his alleged role in this affair.
- Mr Bukabakwa pointed out that he was a player and then a technical coach, notably at "cadet" and "junior" levels. In other words, the Respondent was not in contact with the very young players (under the age of 14) within FECOFA.
- In this context, Mr Bukabakwa stated that he does not know the Victim and deplored what may have happened to him.

b. No criminal investigation

- Mr Bukabakwa explained that he was interviewed on several occasions by the police. However, he has never made any confession but on the contrary, he has always claimed his innocence.
- Despite claiming his innocence, he was convicted of two criminal offences by the Congolese Courts. However, Mr Bukabakwa deplored the botched criminal proceedings, in which the presumption of innocence was not respected and during which, whether at first instance or on appeal, no confrontation took place. In particular, the decisions were based on the Officer Report, which contained a confession that Mr Bukabakwa did not acknowledge, and the medical report, which proved the violence alleged by the young Victim but did not formally name the perpetrator.
- Mr Bukabakwa was aware of the particular situation in which he finds himself and for which everything points to his guilt. However, this should not result in disproportionate harm to the interests of the Respondent, given his young age and his involvement in football.

c. No sanction issued by FECOFA

- Mr Bukabakwa pointed out that FECOFA did not impose any sanction on him. In particular, on 11 January 2023, FECOFA decided to postpone the ruling on the coaches' provisional sanction.
- Mr Bukabakwa stated that this decision [to postpone the ruling] was taken in light of the additional context provided by the latter.

d. Prayer for relief

- Mr Bukabakwa confirmed that he did not request a hearing in this case.
- Mr Bukabakwa respectfully requested the Adjudicatory Chamber to:
 - Acquit him of any wrongdoing;
 - Reinstate him in his functions.

43. In support of his position, Mr Bukabakwa submitted as exhibit the FECOFA's "decision" dated 11 January 2023 to postpone the ruling on the coaches' provisional sanction.

44. The Adjudicatory Chamber reiterated that it has considered all the facts, allegations, legal arguments and evidence provided by the Respondent, and in the present decision had only referred to those observations and evidence regarded as necessary to explain its reasoning.

II. CONSIDERATIONS OF THE ADJUDICATORY CHAMBER

45. In view of the circumstances of the present matter, the Adjudicatory Chamber first addressed some key procedural aspects, before entering into the substance of the case at stake.

A. Procedural aspects

1. Jurisdiction and competence

46. To begin with, and although its jurisdiction has not been challenged, the Adjudicatory Chamber recalled that the competence of the FIFA Ethics Committee is defined by art. 31 FCE.

47. While the first paragraph of the said article determines the exclusive competence of the FIFA Ethics Committee⁴, the second paragraph provides for a subsidiary competence of the said Committee in cases where the unethical conduct has not been investigated and judged and/or cannot be expected to be investigated and judged by the judicial bodies of the association or confederation concerned. In particular, the FIFA Ethics Committee shall be entitled to investigate and adjudicate the matter where no formal investigation has been initiated by the competent confederation or member association 90 days after the matter became known to FIFA, or where the relevant confederation or member association agrees with FIFA to confer the competence regarding the relevant matter on FIFA.

48. In view of the above, the Adjudicatory Chamber noted that on 4 November 2022, the FECOFA Executive Committee issued a resolution through which it decided to establish an independent Commission of Inquiry with the aim of investigating the allegations of paedophilia within Congolese football. However, a few days later, FECOFA advised FIFA and CAF during a meeting that even though it had established an independent Commission of Inquiry, it did not have under its own Statutes an existing disciplinary body which had investigatory and decision-making powers. Therefore, FECOFA requested support from FIFA in regard to the investigation.

49. Finally, on 10 November 2022, FECOFA confirmed its agreement that the FIFA Ethics Committee takes over the investigation in accordance with art. 30 (2) FCE [ed. 2020], which then opened preliminary investigations against Mr Bukabakwa⁵.

50. In view of the above, especially the fact that FECOFA could not conduct proper proceedings at national level and that it had therefore agreed with FIFA to confer the competence regarding the relevant matter on FIFA, the Adjudicatory Chamber determined that, in accordance with art. 31 (2) FCE, it was competent to assess and adjudicate the present matter.

⁴ Exclusive competence of the Ethics Committee to adjudicate the conduct of all persons bound by the FCE, where such conduct:

a) has been committed by an individual who was elected, appointed or assigned by FIFA to exercise a function;
b) directly concerns their FIFA-related duties or responsibilities; or
c) is related to the use of FIFA funds.

⁵ Currently art. 31 (2) FCE of the 2023 edition.

2. Applicable law

a. Applicability of the FCE *ratione materiae*

51. In continuation, and upon analysis of the conclusions contained in the Final Report, the Adjudicatory Chamber noted that there were several indications of potential immoral and unethical behaviour/conduct by Mr Bukabakwa.
52. As such, the FCE is applicable to the case at stake in line with art. 1 (1) FCE.

b. Applicability of the FCE *ratione personae*

53. The Adjudicatory Chamber subsequently recalled that art. 2 (1) FCE provides that said code shall *inter alia* apply to "officials".
54. To that end, reference shall be made to the FIFA Statutes which define an official as "*any board member (including the members of the Council), committee member, referee and assistant referee, coach, trainer and any other person responsible for technical, medical and administrative matters in FIFA, a confederation, a member association, a league or a club as well as all other persons obliged to comply with the FIFA Statutes (...)*".
55. Against such background, and referring to the football background of Mr Bukabakwa⁶, the Adjudicatory Chamber concluded that, at the time the relevant actions and events allegedly occurred, Mr Bukabakwa was a football official as per the above definition.
56. As a consequence, the FCE was applicable to Mr Bukabakwa pursuant to art. 2 (1) FCE.

c. Applicability of the FCE *ratione temporis*

57. As emphasised in the Final Report, the relevant facts described in the previous sections of this decision allegedly occurred in July 2021, *i.e.*, at a time when the 2020 edition of the FIFA Code of Ethics was in force.⁷
58. In these circumstances, art. 3 FCE however establishes that the current edition of the FCE (*i.e.*, the 2023 edition which entered into force on 1 February 2023) shall apply to conduct whenever it occurred, provided that the relevant conduct contravened the FCE applicable at the time it occurred. In such a situation, the Adjudicatory Chamber can however not impose sanctions exceeding the maximum sanction available under the then-applicable code (principle of *lex mitior*).
59. In the present case, the Adjudicatory Chamber deemed that the legal provisions of the respective article(s) are equivalent in both editions of the FCE (*i.e.*, 2020 and 2023)

⁶ Cf. para. 3 *supra*.

⁷ The 2020 edition entered into force on 25 June 2020.

60. In particular, the Adjudicatory Chamber noted that the spirit and intent of art. 23 FCE [2020 ed.] was duly reflected in the current wording of art. 24 FCE. More specifically, said article of the FCE, namely *Protection of physical and mental integrity* was similar, if not identical in the 2020 edition (art. 23) and 2023 edition (art. 24).
61. In consideration of the above, the Adjudicatory Chamber concluded that the 2020 and 2023 editions of the FIFA Code of Ethics covered the same offense, so that the 2023 edition of the FCE should apply to the procedural aspects and merits of this case pursuant to art. 3 FCE.

3. Burden and standard of proof

62. As a preliminary remark, reference shall be made to art. 51 FCE in accordance with which the burden of proof regarding breaches of provisions of the Code rests on the Ethics Committee (*in casu* on the Adjudicatory Chamber).
63. In continuation, the Adjudicatory Chamber pointed out that, in line with art. 50 FCE, its members shall judge and decide on the basis of their comfortable satisfaction.
64. According to CAS jurisprudence, "*in practical terms [this] means the "personal convictions" of the Panel, having in mind the seriousness of the offence committed and after evaluating all the evidence in the file*"⁸.
65. More specifically, "*the assessment of the evidence contributes significantly to the decision-making based on the "comfortable satisfaction" standard. The [deciding body] needs to have strong evidence that certain facts occurred in a given manner and also the evidence has to satisfy [said body] in the same sense. The relevant circumstances of the case assessed individually and/or combined, commonly known as the context are major elements to reach this conclusion (CAS 2013/3324 and 3369)*"⁹.
66. In so far that the evidence is concerned, the Adjudicatory Chamber recalled that it shall have absolute discretion regarding proof (art. 49 FCE), keeping in mind that any proof that has been obtained by means or ways involving violations of human dignity or that obviously does not serve to establish relevant facts shall be rejected (art. 48 FCE).
67. Having clarified the foregoing, the Adjudicatory Chamber proceeded to consider the merits of the case.

B. Merits of the case

68. As a preliminary remark, the Adjudicatory Chamber pointed out that the matter at stake related to allegations of sexual abuse on a minor player levelled against Mr Bukabakwa.

⁸ CAS 2019/A/6439 Samson Siasia v. FIFA – See also CAS 2019/A/6665 Ricardo Terra Teixeira v. FIFA and TAS 2020/A/7592 Ahmad Ahmad c. FIFA.

⁹ CAS 2019/A/6439 *op. cit.*

69. Furthermore, the Adjudicatory Chamber noted that the Investigatory Chamber concluded that Mr Bukabakwa had breached art. 24 FCE by promising advantages to a minor player and sexually abusing him.
70. In view of the above and taking into account that Mr Bukabakwa denied the allegations made against him, the Adjudicatory Chamber considered that the potential violations mentioned in the Final Report, namely the violation of art. 24 FCE, should be analysed in light of the evidence on file.

1. Did Mr Bukabakwa sexually abuse a minor player?

71. As a starting point, the Adjudicatory Chamber stressed that the case at stake presented serious allegations against Mr Bukabakwa and that the potential consequences for the latter could be severe if the relevant charges would be established. By way of consequence, the Chamber concluded that it *"should have a high degree of confidence in the quality of the evidence"*¹⁰.
72. However, the Adjudicatory Chamber also wished to point out that CAS jurisprudence does not ignore the difficulties of proving some specific infringements. In this respect, CAS awards have already clarified that *"Swiss law knows a number of tools in order to ease the – sometimes difficult – burden put on a party to prove certain facts. These tools range from a duty of the other party to cooperate in the process of fact finding, to a shifting of the burden of proof or to a reduction of the applicable standard of proof. The latter is the case, if – from an objective standpoint – a party has no access to direct evidence (but only to circumstantial evidence) in order to prove a specific fact (SFT 132 III 715, E. 3.1; BK-ZPO/ BRÖNNIMANN, 2012, Art. 157 no. 41; BSK-ZPO/GUYAN, 2nded. 2013, Art. 157 no. 11)."*¹¹
73. While bearing in mind that the allegations levelled against Mr Bukabakwa were extremely serious and could lead to severe sanctions, if proven, the Adjudicatory Chamber recalled that acts of sexual abuse are by their nature concealed and difficult to prove by direct evidence. Therefore, the Adjudicatory Chamber concluded that, in the absence of direct evidence, it could rely on circumstantial/indirect evidence, provided that such evidence has a strong probative value.
74. In those circumstances and given that the Final Report considered that Mr Bukabakwa had sexually abused a minor player (the Victim), the Adjudicatory Chamber wished first to define the notion of "sexual abuse", in order to assess whether or not such a behaviour could fall within the context of art. 24 FCE, as advanced by the Investigatory Chamber.

a. Notion of "sexual abuse"

75. To begin with, the Adjudicatory Chamber recalled that art. 24 FCE relates to the protection of physical and mental integrity and *inter alia* provides the following:

¹⁰ CAS 2018/A/5906 Kyle Cesare v. UEFA.

¹¹ CAS 2019/A/6669 Sayed Ali Reza Aghazada v. FIFA; CAS 2013/A/3256 Fenerbahce SK v. UEFA

“ 3.

Persons bound by this Code must refrain from all forms of physical or mental abuse, all forms of harassment, and all other hostile acts intended to isolate, ostracise or harm the dignity of a person.

4.

Threats, the promise of advantages, coercion and all forms of sexual abuse, harassment and exploitation are particularly prohibited.”

76. Upon reading these paragraphs, the Adjudicatory Chamber noted that the Final Report referred to a specific sexual abuse, namely “rape”, which according to the Oxford Dictionary, “*is the crime of forcing somebody to have sex when they do not want it or are not able to agree to it*”¹². In addition, the Final Report pointed out that the definition of rape includes the intentional penetration of another’s vagina, anus or mouth with a penis or other object, without the other person’s consent.
77. Moreover, the Adjudicatory Chamber turned to previous cases and noted that the notion of sexual abuse had already been addressed in the case involving Mr Rosnick Grant as follows:

*“Sexual harassment can be defined as an unwanted or unwelcome conduct of sexual nature, whether verbal, non-verbal or physical, while **sexual abuse represents unwanted sexual activity, with perpetrators using force, making threats or manipulating victims not able to give consent.**”* (emphasis added)¹³

78. In view of the foregoing, the Adjudicatory Chamber endorsed the above explanations and concluded that art. 24 (4) FCE prohibits “*all forms of sexual abuse*”, which covers, *inter alia*, the practice of sexual activity by one person (the perpetrator) on another (the victim) who does not consent to the act. This lack of consent may result from the perpetrator’s use of force, threats or manipulation, including the promise of advantage to the victim.
79. Having clarified the concept of sexual abuse, the Adjudicatory Chamber then focused on the evidence collected by the Investigatory Chamber and had to analyze whether Mr Bukabakwa had indeed sexually abused the Victim in July 2021.

b. Factual assessment of the evidence on file

80. As starting point, the Adjudicatory Chamber noted that various documents had been collected by the Investigatory Chamber in the course of the investigations.
81. In particular, the criminal file constituted by the Office of the Judicial Police included the following elements:
- The complaint lodged by the Victim’s mother against the Respondent for rape.

¹² https://www.oxfordlearnersdictionaries.com/definition/english/rape_1

¹³ Decision of the Adjudicatory Chamber of the Ethics Committee issued on 22 July 2021 (ref. no 5/2021).

- The Officer Report submitted to the Public Prosecutor's Office of the Province of Kinshasa, which included *inter alia* the following elements: “on Friday 24/07/2021 [sic] at around 18:00, after the football match, the [Respondent] took the [Victim], aged 11 years, on a motorcycle to his house to make love to him. He promised to give [him] a pair of new boots and a training jacket in exchange for anal sexual intercourse adding to the minor that this is what the great players of the world do. Once they arrived at his house, in the living room, [the Respondent] undressed [the Victim] and, without a condom, he inserted his penis into the anus of the minor, ejaculating sperm into it.”
 - The aforementioned report also stated that the Respondent had confessed that he had slept with the Victim.¹⁴
 - A medico-legal expert report of the Victim issued by a physician that described injuries sustained by the Victim, including physical lacerations. Notably, the report concluded that there were signs of recent trauma which were consistent with the description of the facts given by the Victim.
82. The Adjudicatory Chamber further observed that the above facts had been considered as established by two courts in Congo DR, namely the District Court of Kinshasa and the Court of Appeal of Kinshasa, which had sentenced the Respondent to 18 months imprisonment for rape, along with a fine.
83. The Adjudicatory Chamber also acknowledged that the Respondent contested the allegations levelled against him, the latter claiming in particular that i) he had been quoted several times by a malicious journalist about his alleged role in this affair, ii) he does not know the Victim and that iii) during the criminal proceedings, the presumption of innocence was not respected and, whether at first instance or on appeal, no confrontation took place. Moreover, he claimed that the decisions issued at national level were based on the Officer Report, which contained a confession that he did not acknowledge, and the medical report, which proved the violence alleged by the young victim but did not formally name or identify the perpetrator.
84. Against this background, the Adjudicatory Chamber first noted that the present case not only based on allegations of sexual abuse, but also on decisions issued at national level by two courts with regard to the reported facts, which in both cases considered that the Respondent had sexually abused the Victim on Friday 23 July 2021. In particular, the Chamber observed that, apart from contesting the accusation levelled against him, the Respondent did not provide any (concrete) explanation or evidence that could cast doubt on the decisions issued by the relevant courts in Kinshasa in relation to the facts at the basis of the proceedings at hand, or on the conclusions included in the Final Report prepared by the Investigatory Chamber.
85. In other words, the Adjudicatory Chamber was comfortably satisfied that the allegations levelled against the Respondent were corroborated by the indirect evidence, such as the Officer Report, the medico-legal expert report and the decisions handed down in Congo DR. Moreover, the Chamber noted that the Respondent did not provide elements or evidence, including witness statement(s) or contradicting expert reports for instance, that would contradict the

¹⁴ The Chamber noted that in the course of the present proceedings, the Respondent denied having admitted the facts and, on the contrary, insisted on his innocence.

aforementioned indirect evidence and further saw no valid reason to doubt the legitimacy and/or to question the testimony of the Victim's mother, especially as it had led to the criminal conviction of the Respondent at national level.

86. In the same vein and to address the Respondent's argument regarding a possible "cabal" of journalists against him, the Adjudicatory Chamber pointed out that the accusations made against him - and against other coaches in Congo DR - in the "Sport News Africa" article were extremely serious, included several testimonies provided by individuals involved in Congolese football as well as excerpts of WhatsApp and Facebook messages with sexual content allegedly exchanged between young male football players and coaches. In particular, the Chamber noted that while the article published in "Sport News Africa" in November 2022 denounced a system of paedophilia within FECOFA and identified the Respondent as one of the perpetrators of sexual abuse, the latter did not provide any explanation as to why the journalist would have specifically wrongfully targeted him and, on the basis of the file available to the Chamber, no defamation complaint was filed by the Respondent against the journalist for the facts reported in the said article.
87. As a result, the Adjudicatory Chamber considered the aforementioned facts and elements as a *"coherent pieces of a puzzle which came together"*¹⁵ to conclude that Mr Bukabakwa had engaged in the conduct denounced by the Victim and reported in the Officer Report, *i.e.*, the Respondent *"promised to give [the Victim] a pair of new boots and a training jacket in exchange for anal sexual intercourse, adding to [the Victim] that this is what the great players of the world do."*

c. Legal assessment

88. Having established that the above facts had occurred, the Adjudicatory Chamber had to examine whether this conduct amounted to sexual abuse, as reported in the Final Report.
89. In this regard, the Adjudicatory Chamber observed that the Victim was 11-year-old and went to the Respondent's house after the latter promised him pair of new boots and a jacket, but also because he was manipulated by the Respondent who explained that *"this is what great players of the world do"*.
90. Bearing in mind that sexual abuse represents i) unwanted sexual activity, ii) with perpetrators using force, making threats or manipulating victims not able to give consent, the Adjudicatory Chamber considered the abovementioned behaviour to be an unwanted and unsolicited sexualised activity, amounting to sexual abuse in breach of art. 24 (4) FCE.
91. Indeed, by undressing the Victim, inserting his penis into the latter's anus and then ejaculating, the Chamber held that Mr Bukabakwa has engaged in sexually activity with an 11-year-old boy. In addition, and in the Adjudicatory Chamber's view, this sexual act could clearly not have been consented to by the Victim given his very young age, who had also been clearly manipulated by the Respondent, who had promised him advantages and made him believe that the great players in the world did this.

¹⁵ CAS 2019/A/6669 Sayed Ali Reza Aghazada v. FIFA

92. In other words, the Adjudicatory Chamber found that there was no doubt that these sexualised activities – inserting his penis into the Victim’s anus – could in no way be considered as having been consented to by the Victim in view of his age and the circumstances surrounding the events, who had therefore been sexually abused by Mr Bukabakwa.

d. Conclusion

93. In light of the above reasoning, the Adjudicatory Chamber considered that by sexually abusing his Victim, Mr Bukabakwa breached art. 24 FCE.

C. Determination of sanctions

94. The violation of the FCE by Mr Bukabakwa having been established, the Adjudicatory Chamber subsequently considered the sanction(s) to be imposed.
95. According to art. 6 (1) FCE, the Adjudicatory Chamber may pronounce the sanctions described in the FCE, the FIFA Disciplinary Code (**FDC**) and the FIFA Statutes.
96. For the sake of good order, the Adjudicatory Chamber underlined that it was responsible to determine the scope and extent of any sanction and shall take into account all relevant factors of the case, including the nature of the offense, the offender’s assistance and cooperation, the motive, the circumstances, the degree of the offender’s guilt, the extent to which the offender accepts responsibility and whether the person mitigated his guilt by returning the advantage received (art. 9 FCE).
97. In particular, when evaluating the appropriate sanctions to be imposed, the Adjudicatory Chamber should also take into consideration the seriousness of the violation, the endangerment of the legal interest protected by the relevant provisions of the FCE as well as the status of the victim, bearing in mind that any abuse against a minor is considered an aggravating circumstance.
98. Against this background, the Adjudicatory Chamber recalled that the Respondent was found guilty of violating art. 24 FCE by having sexually abused an 11-year-old boy. In particular, the Adjudicatory Chamber found this behaviour inexcusable, abhorrent and a disgrace. In this regard, the Chamber further stressed that Mr Bukabakwa was a football coach and had therefore a special responsibility and a position of trust towards the parents who placed their children with him to practice football.
99. However, Mr Bukabakwa instead of protecting, respecting and safeguarding the integrity and dignity of the Victim, he sexually abused him. The pain and suffering caused to the Victim cannot even be fully comprehended and represents a very dark stain on the image and reputation of football.

100. FIFA, as the international governing body of football, has a direct interest in protecting all participants, while deterring despicable and abhorrent conducts, which undermine the trust placed in the organization by football officials and third parties worldwide. In addition, the Adjudicatory Chamber emphasized that offences relating to art. 24 FCE are among the most serious in the Code, and recalled that FIFA has a zero-tolerance approach to all forms of abuse in football. In particular, the Chamber noted that the world football's governing body has regularly updated its regulatory framework in recent years to provide greater protection to victims of discrimination and sexual abuse or harassment.
101. With regard to the circumstances of the case, the Adjudicatory Chamber considered the infringements committed by Mr Bukabakwa of extreme gravity given that i) he had sexually abused ii) a minor Player iii) who has been manipulated as he followed the Respondent to his house expecting to receive new boots and a jacket. Moreover, the Chamber noted that despite the evidence against him, Mr Bukabakwa showed no remorse or admission of his conduct and did not apologise to his Victim.
102. To sum up, the Adjudicatory Chamber deemed that the guilt of Mr Bukabakwa in the present case was extremely serious.
103. In light of the above, the Adjudicatory Chamber turned to art. 24 (5) FCE which defines the sanctions to be imposed in case of violation of this provision. In particular, this provision provides for a fine of at least CHF 10,000 as well as a ban on taking part in any football-related activity for a minimum of two years, but in cases of sexual exploitation or abuse, or in serious cases and/or in the case of recidivism, the ban to be imposed must be at least of ten years. In this regard, the Adjudicatory Chamber considered that the conduct in the present case undeniably fell into the higher category of art. 24 (5) FCE (case of sexual abuse), so that the minimum sanction to be imposed should be a ban of at least ten years.
104. Having carefully analysed Mr Bukabakwa's conduct, the Adjudicatory Chamber considered that the minimum sanctions provided for serious cases in art. 24 (5) FCE were too lenient given that Mr Bukabakwa sexually abused a minor player. Therefore, having considered all the elements of the case, the Adjudicatory Chamber found that a ban on participating in any football-related activity at national and international level for twenty (20) years was appropriate and proportionate to the offence committed. In particular, the Adjudicatory Chamber considered that this sanction complied with those foreseen under art. 24 FCE and would produce the necessary deterrent effect. For the sake of good order, the Adjudicatory Chamber wished to clarify that the present ban comes into force as soon as the terms of the decision are communicated in accordance with art. 44 (1) FCE.
105. Finally, the Adjudicatory Chamber pointed out that the provision that Mr Bukabakwa violated provides for the imposition of a fine in addition to a ban. Therefore, pursuant to art. 24 (5) FCE, the Adjudicatory Chamber considered that the ban imposed on Mr Bukabakwa should be supplemented by a fine, a financial sanction which has a strictly punitive purpose in this case.
106. Bearing in mind that the amount of the fine may not be less than CHF 10,000 and not more than CHF 1,000,000 in view of arts. 24 (5) FCE read in conjunction with art. 6 (4) FDC, the Adjudicatory

Chamber - taking into account the various circumstances of the case - considered that a fine of CHF 100,000 was appropriate. Accordingly, Mr Bukabakwa was ordered to pay a fine of CHF 100,000.

III. DECISION OF THE ADJUDICATORY CHAMBER

1. Mr Jonathan Bukabakwa is found responsible for having breached art. 24 (Protection of physical and mental integrity) of the FIFA Code of Ethics, in relation to acts of sexual abuse toward a minor football player.
2. Mr Jonathan Bukabakwa is hereby banned from taking part in any kind of football-related activity at national and international level (administrative, sports or any other) for a duration of twenty (20) years, as from the notification of the present decision.
3. Mr Jonathan Bukabakwa is ordered to pay a fine to the amount of CHF 100,000.
4. The fine is to be paid within 30 days of notification of the present decision.

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Vassilios Skouris

Chairperson of the adjudicatory chamber of the FIFA Ethics Committee

NOTE RELATED TO THE LEGAL ACTION:

According to art. 57 (1) of the FIFA Statutes read together with art. 84 of the FCE, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to 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 CAS.

NOTE RELATED TO THE FINANCIAL SANCTION:

The payment of the fine and costs of the proceedings can be made either in Swiss francs (CHF) to account no. 0230-325519.70J, UBS AG, Bahnhofstrasse 45, 8098 Zurich, SWIFT: UBSWCHZH80A, IBAN: CH85 0023 0230 3255 1970 J or in US dollars (USD) to account no. 0230-325519.71U, UBS AG, Bahnhofstrasse 45, 8098 Zurich, SWIFT: UBSWCHZH80A, IBAN: CH95 0023 0230 3255 1971 U, with reference to case no. "FED-20; Adj. ref. no. 5/2021" in accordance with art. 7 let. e) of the FIFA Code of Ethics.

NOTE RELATED TO THE PUBLICATION:

The public may be informed about the reasons for any decision taken by the Ethics Committee. In particular, the chairperson of the adjudicatory chamber may decide to publish the decision taken, partly or in full, provided that the names mentioned in the decision (other than the ones related to the party) and any other information deemed sensitive by the chairperson are duly anonymized (cf. art. 37 (3) FCE).