

Decision of the FIFA Disciplinary Committee

notified on 9 January 2024

DECISION BY:

Anin YEBOAH (Ghana), Deputy Chairperson

ON THE CASE OF:

Marc Overmars (Netherlands)

(Decision FDD-16754)

Regarding the decision passed by the *Disciplinary Committee of the Sport Jurisdiction Institute (ISR)* on 16 November 2023

Art. 70 of the FIFA Disciplinary Code (ed. 2023) - *Extending sanctions to have worldwide effect*

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 Deputy Chairperson of the FIFA Disciplinary Committee (**the Committee**) has thoroughly considered any and all evidence submitted, even if no specific or detailed reference is made to particular elements of the former.
2. On 23 November 2023, the *Disciplinary Committee of the Sport Jurisdiction Institute (ISR)* rendered a decision (**the Decision**), by means of which it decided to impose a ban on the official Mr. Marc Overmars (**the Official** or **the Respondent**) *"on exercising any position within the Association or affiliated organisations as referred to in Article 1, paragraph 25 of the Regulations, for a period of two years, of which one year is suspended and with an operational period of two years from the date of this decision"*.
3. In particular, the Decision revealed that the *ISR Disciplinary Committee* was *"of the opinion that has become sufficiently plausible that [the Respondent] is guilty of a violation of Article 6, paragraph 10 of the Regulation"* by having failed to *"abstain from sexual intimacies through any means of communication"*.
4. On 24 November 2023, the Royal Netherland Football Association (**KNVB**) lodged a request *via* the FIFA Legal Portal, requesting the FIFA Disciplinary Committee to extend the Decision to have worldwide effect, including an English translation of the Decision. In the extension request, the KNVB pointed out that *"this case concerns the question whether Overmars is guilty of violating the Sexual Harassment Regulations because he allegedly sent sexually suggestive messages and/or photos and videos to sportspersons and/or staff members of Ajax. In the disciplinary committee's opinion, Overmars violated the Regulations, as Overmars failed to adhere to the rule that he should abstain from sexual intimacies through any means of communication whatsoever. Therefore, the committee sanctioned Overmars."*
5. Upon request of the Secretariat to the FIFA Disciplinary Committee, the KNVB clarified on 11 December 2023 that the two-year suspension imposed on the Official would start as from the date of the judgement (16 November 2023) and that the unconditional part of the exclusion was 1 year meanwhile the conditional part was 1 year with a probationary period of two years, emphasizing that the unconditional exclusion will end as per 16 November 2024. In addition, the KNVB pointed out that *"until today an appeal has not been lodged"*.
6. The aforementioned association also submitted further documentation, namely i) a copy of an email dated 16 September 2023 by means of which the Decision was notified to the legal representative of the Official; ii) the relevant power of attorney concluded between the Official and the aforesaid legal representative, and; iii) a copy of an e-mail dated 23 November 2023 by means of which the Official was informed that KNVB would submit the sanction to FIFA for worldwide.

II. CONSIDERATIONS OF THE DISCIPLINARY COMMITTEE

7. In view of the circumstances of the case at hand, the Committee decided to first address the procedural aspects of the present proceedings, namely, its jurisdiction and the applicable law, before entering into the substance of the matter and assessing whether the request submitted by the Royal Netherland Football Association for the worldwide extension of the sanction(s) imposed on the Official could be granted.

A. Jurisdiction and applicable law

8. First of all, the Committee recalled that, in accordance with art. 51 (2) of the FIFA Statutes, it may pronounce the sanctions described in these Statutes and the FIFA Disciplinary Code (**FDC**) on members associations, clubs, officials, players, intermediaries and licensed match agents.

9. In this context, the Committee subsequently recounted that in accordance with art. 57 (1) FDC, the Chairperson of the FIFA Disciplinary Committee can rule alone, acting as a single judge and may delegate his/her function(s) to another member of the Committee, *in casu* the Deputy Chairperson. In particular, in accordance with art. 57 (1) (e) FDC, the latter may take a decision on extending a sanction so as to have worldwide effect, as *in casu*.

10. In view of the above, the Committee stressed that the specific procedure(s) related to the extension of sanctions to have worldwide effect (so-called *worldwide extension*) is/are foreseen under art. 70 FDC.

11. More specifically, for serious infringements (in particular, but not limited to, discrimination, manipulation of football matches and competitions, misconduct against match players or forgery and falsification, as well as sexual abuse or harassment), the associations, confederations, and other organising sports bodies shall request the FIFA Disciplinary Committee to extend the sanction(s) which they have imposed so as to have worldwide effect (cf. art. 70 (1) FDC). Put differently, (a) worldwide extension is applicable to any serious infringement – this, whilst keeping in mind that the list of infringements referred to as “serious” pursuant to the aforementioned provision is not an exhaustive list, as demonstrated by the clear and unequivocal wording used therein (“*in particular but not limited to*”).

12. In continuation, the Committee observed that the request (for worldwide extension) shall be submitted in writing *via* the FIFA Legal Portal and shall enclose a true copy of the decision.

13. With the foregoing in mind, the Committee pointed out that, in principle, it takes decisions on worldwide extensions without deliberations or orally hearing any of the parties, and using only the file (cf. art. 70 (6) FDC) – this whilst keeping in mind that it would either grant or refuse to grant the relevant request to have the sanction extended (cf. art. 70 (9) FDC).

14. Against such background, the Committee subsequently underlined that, upon deciding on a worldwide extension, it may not review the substance of the decision (to be extended) – *in casu* the

decision of the *Disciplinary Committee of the Sport Jurisdiction Institute (ISR)* – but was restricted to ascertaining whether the conditions of art. 70 FDC had been fulfilled (art. 70 (8) FDC).

15. Against such background and in consideration of the above, the Committee was mindful that, pursuant to art. 70 (5) FDC, the worldwide extension would be approved in the event that the following conditions had been cumulatively met:

- i. the person sanctioned was cited properly (lit. a);
- ii. the person had the opportunity to state his/her case (with the exception of provisional measures) – (lit. b);
- iii. the decision was communicated properly (lit. c);
- iv. the decision complies with the regulations of FIFA (lit. d);
- v. extending the sanction would not be in conflict with public order or with accepted standards of behaviour (lit. e).

B. Analysis of the request submitted by the Royal Netherland Football Association in light of art. 70 FDC

16. As a starting point, upon its reading of the Decision, the Committee *inter alia* noted that the Official had been sanctioned for having infringed a “sexual harassment” related provision.

17. As such, the Committee was comfortably satisfied that the infringement at stake was serious and therefore undoubtedly fell within the scope of art. 70 FDC.

18. In continuation and upon its analysis of the documentation submitted by the KNVB in light of art. 70 (5) FDC, the Committee wished to emphasise that:

- i. The Official has been cited properly, as evidenced by the fact that he was given the opportunity to submit his defence through his legal representative during the proceedings before the *Institute of Sports Jurisdiction (ISR)*¹, as well as the opportunity to appeal against the Decision, as evidenced by the e-mail of 16 November 2023 informing him of this possibility. The Committee further noted that the Decision itself provided the Official with this information.² Lastly, the Committee noted there were no elements that indicated in any way or manner that the Official had not been cited properly.
- ii. The Official had had the opportunity to state his case, in so far that:
 - He was invited to the proceedings;
 - He was represented during said proceedings³;
 - He could present his position and arguments during the proceedings through his legal representative⁴;

¹ CF. par. 4 and 7.2 of the Decision

² CF. par 9 of the Decision

³ CF. par 4 of the Decision

⁴ CF. par 4 and 7.2 of the Decision

- He had the opportunity to file written statements before the *Appeals Body of the Sports Jurisdiction Institute (ISR)* (as denoted *supra*)
- iii. The Decision was communicated properly to the Official, as demonstrated by the copy of the e-mail sent to his legal representative containing the Decision dated 16 November 2023;
 - iv. The Decision was compatible with the regulations of FIFA in so far that it “*can coexist with these regulations [of FIFA] and does not result in regulatory conflicts*”⁵.
 - v. The Decision did not conflict with public order or with accepted standards of behaviour, keeping in mind that said assessment shall be limited to the question as to whether said decision is consistent with public order, *i.e.* whether it violates fundamental principles of law⁶, including but not limited to the principles of legality and typicality, the principles of proportionality, liability and culpability, the principles of independence, impartiality and good faith or the basic rules of conduct or morality⁷. In fact, upon analysing the Decision, the Committee was settled in its opinion that none of those fundamental principles or basic rules had been breached.
19. In view of the foregoing, the Committee was comfortably satisfied that the (cumulative) conditions for a worldwide extension, as stipulated under art. 70 (5) FDC, had been met.

C. Conclusion

20. Summarising its above considerations, the Committee considered that all the conditions foreseen under art. 70 FDC for a worldwide extension of the sanction imposed by the Decision upon the Official had been fulfilled.
21. Consequently, the Committee decided to extend the sanction imposed on the Official by the *Disciplinary Committee of the Sport Jurisdiction Institute (ISR)* on 16 November 2023 so as to have worldwide effect. More specifically, in accordance with the Decision and keeping in mind the principles enshrined under art. 70 (10) FDC, the Official is therefore banned from exercising any position within a Member Association or affiliated organisations for a period of two years as from 16 November 2023, of which one year is suspended for a period of two years.
22. Finally, for the sake of completeness, the Committee recalled that, pursuant to art. 70 (11) FDC, should the Decision not yet be final in a legal sense, the present decision shall follow the (final) outcome of the Decision.

⁵ CAS 2021/A/7650 Club Atlético de Madrid S.A.D. v. FIFA - free translation from Spanish

⁶ CAS 2015/A/4184 Jobson Leandro Pereira de Oliveira v. FIFA and SFT 4A_18/2008.

⁷ CAS 2021/A/7650 *op. cit.* - free translation from Spanish.

III. DECISION OF THE DISCIPLINARY COMMITTEE

1. The request submitted by the Royal Netherlands Football Association to extend the sanction imposed by the *Disciplinary Committee of the Sport Jurisdiction Institute (ISR)* on 16 November 2023 to have worldwide effect is granted.
2. In accordance with the above decision, the official Marc Overmars is banned worldwide from *“exercising any position within [a Member Association] or affiliated organisations (...) for a period of two years [as from 16 November 2023], of which one year is suspended (...) [for a] period of two years (...)”*.

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Anin Yeboah (Ghana)

Deputy Chairperson of the FIFA Disciplinary Committee

NOTE RELATING TO THE LEGAL ACTION:

This decision can be contested before the FIFA Appeal Committee (art. 61 FDC, edition 2023). Any party intending to appeal must announce its intention to do so in writing via the FIFA Legal Portal within three (3) days of notification of the grounds of the decision. The appeal brief must then be given in writing via the FIFA Legal Portal within a further time limit of five (5) days, commencing upon expiry of the first-time limit of three (3) days (art. 60 (4) FDC). The appeal fee of CHF 1,000 is payable on the submission of the appeal brief at the latest (art. 60 (6) FDC).

The appeal fee of CHF 1,000 is payable on the submission of the appeal brief at the latest (art. 60 (6) FDC) 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 number above mentioned.

NOTE RELATING TO THE EXTENSION WORLDWIDE OF THE DECISION:

A sanction imposed by an association or a confederation has the same effect in each association of FIFA, in each confederation and in FIFA itself as if the sanction had been imposed by any one of them (art. 70 (10) FDC). If a decision that is not yet final in a legal sense is extended to have worldwide effect, any decision regarding extension shall follow the outcome of the association's or confederation's current decision (art. 70 (11) FDC).

NOTE RELATING TO ANY OUTCOME OF THE EXTENDED DECISION:

A worldwide-extended decision shall follow the outcome of any possible appeal lodged against the decision passed by the association or confederation (Art. 70 (11) FDC).