

Decision of the FIFA Appeal Committee

passed on 01 February 2024

DECISION BY:

Mr. Neil EGGLESTON, USA (Chairperson)

ON THE CASE OF:

Marc Overmars (Netherlands)

(Ref. FDD-17320)

AGAINST:

**Decision of the Deputy Chairperson of the FIFA Disciplinary Committee notified
on 9 January 2024 (Ref. FDD-16754)**

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 Chairperson of the FIFA Appeal Committee (**the Committee**) has thoroughly considered any and all evidence and arguments submitted, even if no specific or detailed reference has been made in the present decision.

A. Proceedings before the FIFA Disciplinary Committee

2. On 23 November 2023, the *Disciplinary Committee of the Sport Jurisdiction Institute* (**the 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 Appellant**) *"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 was *"of the opinion that has become sufficiently plausible that [the Appellant] 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. 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 Appellant; ii) the relevant power of attorney concluded between the Appellant and the aforesaid legal representative, and; iii) a copy of an e-mail dated 23 November 2023 by means of which the Appellant was informed that KNVB would submit the sanction to FIFA for a worldwide extension.
6. On 9 January 2024, the Appellant was notified that the Deputy Chairperson of the FIFA Disciplinary Committee (**the Disciplinary Committee** or **the first instance**) had decided to extend the sanction imposed on him so as to have worldwide effect in accordance with art. 70 of the FIFA Disciplinary Code (**FDC**).
7. Upon request of the Appellant, the grounds of the aforementioned decision were communicated on 19 January 2024 (**the Appealed Decision**).

B. Proceedings before the FIFA Appeal Committee

8. On 19 January 2024, the Appellant notified the Secretariat to the FIFA Appeal Committee (**the Secretariat**) about his intention to appeal the above decision and provided proof of payment of the appeal fee.
9. On 26 January 2024, the Appellant submitted his appeal brief.
10. On 01 February 2024, the Secretariat informed the Appellant that the present matter had been referred to the FIFA Appeal Committee for consideration and that the relevant decision would be communicated in due course.

II. APPELLANT'S POSITION

11. The position of the Appellant can be summarized as follows:

A. Preliminary issue

a. Decision issued by the ISR

12. The Appellant claimed that the Disciplinary Committee should not have extended the Decision on the grounds that art. 70 (1) FDC only allows for the worldwide extension of sanctions imposed by associations, confederations and other organising sports bodies.
13. In fact, as the KNVB requested the worldwide extension, the sanction should have been imposed by the KNVB itself in order for it to be considered for worldwide extension.

b. No recognition of any kind of jurisdiction of CAS

14. The Disciplinary Committee could not exercise its jurisdiction over the Appellant as he does not recognise any form of jurisdiction of the Court of Arbitration for Sport (**CAS**). However, FIFA recognises CAS as its highest court of appeal and such recourse to this arbitral tribunal does not originate in the freely expressed will of parties.
15. Moreover, the Appellant submitted that judicial bodies of any International Sports Association do not have the authority to impose sanctions in their decision that would infringe EU law.

B. Legal basis

a. Absence of a serious infringement:

16. The Appellant pointed out that art. 70 FDC is only applicable if the Disciplinary Committee can conclude that the infringement is serious. However, the ISR did not rule that there was a serious infringement, nor did it rule that the Appellant committed acts of sexual harassment. The ISR rather concluded that the Appellant had merely failed to act in accordance with art. 6.10 of the ISR's Sexual Harassment Policy.
17. As such, the Appellant considered that the Disciplinary Committee was prevented from extending the Decision to have worldwide effect since the offence committed was not serious enough.

b. The Appealed Decision conflicts with the principle of proportionality and "Public Order"

18. The first instance must consider whether the worldwide extension of the sanction does not conflict with public order and the principle of proportionality, but it failed to do. In this regard, the Appellant argued that extending the sanction imposed in the Decision to the entire world is a clear violation of the principle of proportionality.
19. The worldwide extension imposed is also contrary to "public order" in the light of the protection afforded by art. 6 of the European Convention on Human Rights (**ECHR**), as the Appellant has not been given the opportunity to be heard by the FIFA Disciplinary Committee, has not been given the opportunity to defend himself before the said judicial body, and has suffered undue delay during the proceedings.
20. In addition, the Appellant submitted that the Appealed Decision was contrary to "public order", taking into account the protection stemming from art. 7 ECHR and art 49 of the Charter of Fundamental Rights of the European Union (**CFREU**). In this regard, the Appellant argued that the Disciplinary Committee should have applied the 2019 edition of FDC, since the facts initially reviewed by the Decision occurred in January 2022. Considering that the 2019 edition of the FDC did not include the notion of "sexual abuse or harassment" in the provision relating to worldwide extension of decisions, the Disciplinary Committee should not have extended the Decision.

C. Conclusion

21. In view of the above, the Appellant concluded that:
 - The Disciplinary Committee should have declared the request of the KNVB inadmissible or declared itself incompetent to grant the request;
 - The violation of art. 6 (10) of the ISR Regulations does not qualify as a serious infringement; and

- The Appealed Decision is in breach of art. 6 & 7 ECHR.

D. Prayers and requests

22. The Appellant requested the Appeal Committee to:

- *“Overturn/overrule the Appealed Decision;*
- *Subsidiarily to amend the Appealed Decision. Such amendment should consist of a worldwide extension for a shortened period (with respect to the unconditional period of one year) which will end at 16 March 2024 at the latest, or another (significantly) shortened duration which will be ruled upon by the appeal committee in all “reasonableness and fairness”.*

III. CONSIDERATIONS OF THE APPEAL COMMITTEE

23. In view of the circumstances of the present matter, the Committee first decided to address some key procedural aspect, including its competence to hear the present appeal and the admissibility of the said appeal, before entering into the substance of the case at stake.

A. Competence of the FIFA Appeal Committee

24. First, the Committee recalled that the procedural aspects of the matter at stake were governed by the 2023 edition of the FDC, in particular considering that the Appellant lodged the present appeal on 24 January 2024, *i.e.*, while the 2023 FDC was applicable.

25. In this context, the Committee pointed out that, on the basis of art. 70 FDC, the first instance decided to extend the sanction imposed on the Appellant so as to have worldwide effect.

26. In light of the above, the Committee considered that, in accordance with art. 60 FDC in conjunction with art. 61 FDC, it was competent to hear the appeal presented by the Appellant against the decision notified by the first instance on 9 January 2024.

27. This having been established, the Committee acknowledged that:

- i. The grounds of the Appealed Decision were notified on 19 January 2024;
- ii. The Appellant communicated his intention to appeal – together with the proof of payment of the appeal fee – on 19 January 2024;
- iii. The Appellant submitted his appeal brief on 24 January 2024;
- iv. FIFA received the appeal fee.

28. In view of this, the Committee held that the requirements of art. 60 (3), (4) and (6) FDC were met, and therefore declared the present appeal admissible.

B. Applicable law

29. In continuation, the Committee observed that the Disciplinary Committee had applied the 2023 edition of the FDC to present matter.
30. However, the Committee acknowledged that the Appellant contended that the first instance had made an (alleged) retroactive application of the 2023 edition of the FDC. Indeed, the Appellant submitted that it was the 2019 edition of the FDC that should have applied given that the facts for which he had been sanctioned by the ISR had occurred in 2022.
31. Against this background, the Committee noted the following chronology of events:
- i. the 2023 edition of the FDC came into force on 1 February 2023¹;
 - ii. the Decision was issued by the ISR on 23 September 2023, *i.e.*, almost 8 months after the entry into force of the 2023 edition of the FDC; and
 - iii. KNVB's request for worldwide extension was submitted to FIFA on 24 September 2023.
32. As a result, the Committee endorsed the Appealed Decision as regards the edition of the FDC applicable to the present matter. Indeed, considering that i) the Decision was issued after the entry into force of the 2023 edition of the FDC, and ii) logically, the KNVB's request to extend the said Decision was filed on the FIFA Legal Portal when the 2023 edition of the FDC was already in force, the Committee was comfortably satisfied that this edition was the relevant one of the FDC that should apply to both the procedural and substantive aspect of the case.
33. The above clarified, the Committee made special attention to art. 70 FDC as being of relevance in assessing the current matter, this without prejudice that other rules may also be at stake.
34. Bearing the above in mind, art. 70 FDC constitutes the relevant provisions to assess the present issue as it provides the applicable framework for "[e]xtending sanctions to have worldwide effect". This provision reads as follows:

"1.

If the infringement is serious, in particular but not limited to discrimination, manipulation of football matches and competitions, misconduct against match officials, or forgery and falsification, as well as sexual abuse or harassment, the associations, confederations, and other organising sports bodies shall request that the Disciplinary Committee extend the sanctions they have imposed so as to have worldwide effect (worldwide extension).

(...)

¹ Cf. art. 76 FDC.

3

The request shall be submitted in writing and enclose a true copy of the decision. It shall show the name and address of the person who has been sanctioned and that of the club and the association concerned as well as evidence that the person concerned has been informed that the sanction will be submitted for a worldwide extension.

(...)

5

A worldwide extension will be approved if:

- a) the person sanctioned has been cited properly;*
- b) he has had the opportunity to state his case (...);*
- c) the decision has been communicated properly;*
- d) the decision is compatible with the regulations of FIFA;*
- e) extending the sanction does not conflict with public order or with accepted standards of behaviour.*

6

The Chairperson of the Disciplinary Committee takes their decision, in principle, without deliberations or orally hearing any of the parties, using only the file.

(...)

8

The Chairperson is restricted to ascertaining that the conditions of this article have been fulfilled. They may not review the substance of the decision

9

The Chairperson shall either grant or refuse to grant the request to have the sanction extended.

(...)

11

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."

35. This means that for a decision sanctioning a serious infringement to be extended worldwide, (i) a written request from the relevant body must be received and (ii) the FIFA Disciplinary Committee – or at a later stage the Appeal Committee – must verify that the conditions listed in art. 70 (5) FDC are met.

36. However, the relevant FIFA judicial body is restricted to ascertaining whether the conditions under art. 70 (5) FDC have been fulfilled and may not review the substance of the decision

requested to be extended (art. 70 (8) FDC). In particular, CAS already clarified that the recognition of the merits of a national decision is based on a mutual trust, which would be undermined if FIFA was required to undertake a complete and de novo review of the decision to be extended².

37. Put differently, the *ratio legis* of the analysis of the five conditions contained in art. 70 (5) FDC is to protect and safeguard the rights of the sanctioned person, including, evidently, the right of the latter to a due process.
38. In this regard, a distinction can be made between the literals (a), (b) and (c) on the one hand, and (d) and (e) on the other hand, as CAS pointed out that “[w]hereas the first three conditions relate to the procedure before the hearing body that has issued the sanction (...), the last two relate to the decision itself (...)”³.
39. In particular, CAS further stated that FIFA is not entitled to review every single aspect of the procedure leading up to the decision. To the contrary, literals (a), (b) and (c) limit FIFA’s procedural review to the basic question whether the right to be heard has been respected by the body having rendered the decision to be extended. As regards literals (d) and (e), CAS found that these elements are properly to be interpreted as relating to a legal review only, and they should be limited to issues of fundamental importance that raise serious matters of a certain gravity⁴.
40. This being established, the Committee subsequently turned its attention to the merits of the present case.

C. Merits of the case

41. On reading the Appealed Decision as well as the Appellant’s appeal brief, the Committee observed that the present case related to the extension of the sanction imposed by the ISR against the Appellant to have worldwide effect.
42. In this context, the Committee took note that the Disciplinary Committee considered that the requirements listed in art. 70 (5) FDC were fulfilled, namely that the Appellant’s right to be heard had been respected by the ISR (cf. art. 70 (5) (a), (b) and (c) FDC) and that the Decision complied with the relevant FIFA regulations and did not conflict with public order or with accepted standards of behaviour (cf. art. 70 (5) (d) and (e) FDC).
43. In particular, the Committee acknowledged from the Appealed Decision that the first instance considered that:

² CAS 2015/A/4184 Jobson Leandro Pereira de Oliveira v. FIFA

³ CAS 2015/A/4184 *op. cit.* – In this award, CAS referred to art. 137 of the previous edition of the Disciplinary Code (*i.e.* the 2011 edition). However, the Committee considered this award to be fully relevant given that the elements listed in art. 70 (5) of the [2023 edition] FDC remained identical to those listed in art. 137 of the [2011 edition] FDC.

⁴ CAS 2015/A/4184 *op. cit.*

- i. *"The Official had 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)⁵, 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 information⁶. 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 proceedings⁷;*
 - *He could present his position and arguments during the proceedings through his legal representative⁸;*
 - *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 Appellant, as demonstrated by an email sent to his legal representative⁹;
 - iv. The Decision complies with the relevant FIFA regulations and does not conflict with public order or with accepted standards of behaviour.
44. Having acknowledged the main elements contained in the Appealed Decision, the Committee subsequently focused on the position submitted by the Appellant in the course of the present appeal proceedings. In particular, the Committee noted that the Appellant claimed that:
- The Disciplinary Committee should have declared the request of the KNVB inadmissible or declared itself incompetent to grant the request;
 - The violation of art. 6 (10) of the ISR Regulations does not qualify as a serious infringement.
 - The Appealed Decision is in breach of arts. 6 & 7 ECHR.
45. In view of the above, the Committee considered that it had to answer the questions below in deciding this appeal:
- a. Was the Disciplinary Committee competent to extend the sanction?

⁵ CF. par. 4 and 7.2 of the Decision.

⁶ CF. par. 9 of the Decision.

⁷ CF. par. 4 of the Decision.

⁸ CF. par. 4 and 7.2 of the Decision.

⁹ The Appealed Decision referring to an "e-mail sent to his legal representative containing the Decision dated 16 November 2023".

- b. Can the infringement committed by the Appellant be considered as a “serious infringement”?
- c. Was the right to be heard of the Appellant violated?

a. Was the Disciplinary Committee competent to extend the sanction?

46. To begin with, the Committee recalled the actions of the ISR as the judicial body of the KNVB in relation to sexual harassment disputes, as confirmed in the Appeal Brief submitted by the Appellant, who pointed out that the ISR is an *“independent authority that deals with all types of disciplinary cases in relation to 80 sports bodies in the Netherlands, including the KNVB (...) which has entered into such an agreement with the ISR in relation to disciplinary proceedings concerning sexual harassment”*.
47. More specifically, the Committee stated that, in view of the above delegation, the ISR is to be considered as the competent body to pass decisions on behalf of the KNVB in relation to sexual harassment, and, by way of consequence, it was the responsibility of the KNVB (as the relevant organising body as per art. 70 (1) FDC) to submit the request for a worldwide extension of the sanction, also considering that they hold the necessary access to the FIFA Legal Portal, *i.e.*, the relevant platform where such requests must be submitted as per the FDC.
48. In addition and for the sake of clarity, the Committee emphasised that art. 30 (5) FDC establishes that *“the confederations and associations shall immediately inform FIFA of any sanctions imposed by their respective judicial bodies in relation to serious infringements (including, but not limited to, doping, manipulation of football matches and competitions, sexual abuse or harassment)”*. In *casu*, the KNVB complied with this obligation by informing FIFA and requesting the extension of the Decision.
49. This being said, the Committee found that the procedure followed in the present matter respected the provisions enshrined in the FDC, so that the first instance was entitled to proceed with the request of KNVB.

b. Can the infringement committed by the Appellant be considered as a “serious infringement”?

50. The above being established, the Committee subsequently drew its attention to the “serious infringement” concept.
51. In relation thereto, the Committee pointed out that the FDC made it clear that *“If the infringement is serious, **in particular but not limited to** discrimination, manipulation of football matches and competitions, misconduct against match officials, or forgery and falsification, as well as sexual abuse or harassment (...)”* (emphasis added).
52. Considering the wording of this provision, the Committee noted that the FDC does not provide a closed definition for “serious infringement”. Moreover, the Decision revealed that the infringement committed by the Appellant related to some form of sexual harassment – which is explicitly listed as an example of serious infringement under art. 70 (1) FDC –, particularly

considering that he was sanctioned in relation to an alleged breach of the Sexual Harassment Regulations, specifically by sending sexually suggestive messages and/or photos and videos to sportspersons and/or staff members.

53. In view of the above, the Committee held that the infringement committed by the Appellant was serious enough to be extended in order to have worldwide effect. In addition, the Committee further noted that its view was also confirmed by the severity of the sanction imposed on the Appellant at national level, namely a two-year ban.

c. Was the right to be heard of the Appellant violated?

54. The Appellant argued that the Disciplinary Committee had violated his right to be heard by issuing the Appealed Decision without having first heard or given the possibility to the latter to defend himself before FIFA.
55. Contrary to this position, the Committee recalled that art. 70 (6) FDC clearly states that *“The chairperson of the Disciplinary Committee takes their decision, in principle, **without deliberations or orally hearing any of the parties**, using only the file”* (emphasis added).

In other words, the Committee emphasised that, in so-called “worldwide extension cases”, the Disciplinary Committee can take its decision without the need of a hearing or the submission of any documents from the person sanctioned, as no review of the decision to be extended is made. For the sake of clarity, the Committee stressed that the Disciplinary Committee’s duty is only to grant or reject the request to extend the sanction if the prerequisites of art. 70 (5) FDC are met.

56. In view of the above provision, the Committee found that the first instance had not violated the Appellant’s right to be heard given that there is no statutory obligation in this respect included in art. 70 FDC. In any event, the Committee wished to point out that in appeal proceedings, both the facts and the law can be reviewed by the Appeal Committee in accordance with art. 63 (2) FDC. Thus, even if the Appellant’s right to be heard had not been respected by the first instance (*quod non*), any defect is remedied by the present appeal proceedings, since the Appellant had the opportunity to contest the fulfilment of the conditions listed in art. 70 (5) FDC.
57. Therefore, the Committee considered that the Appellant’s right to be heard had not been violated by FIFA’s Judicial Bodies in the scope of these “worldwide extension” proceedings.

D. Conclusion

58. As a result, the Committee concluded that the present appeal should be rejected, and the decision of the Disciplinary Committee be confirmed in its entirety.

E. Costs

59. The Committee decided, based on art. 60 (1) FDC, that the costs and expenses of these proceedings amounting to CHF 1,000 shall be borne by the Appellant.
60. In this sense, since the Appellant has already paid the appeal fee of CHF 1,000, the costs and expenses of the proceedings are set off against this amount.

IV. DECISION OF THE APPEAL COMMITTEE

- 1. The appeal lodged by Mr Marc Overmars against the decision notified by the Deputy Chairperson of the FIFA Disciplinary Committee on 9 January 2024 is dismissed. Consequently, said decision is confirmed in its entirety.**
- 2. The costs and expenses of these proceedings in the amount of CHF 1,000 are to be borne by Mr Marc Overmars. The amount is set off against the appeal fee of CHF 1,000 already paid.**

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Neil Eggleston

Chairperson of the FIFA Appeal Committee

LEGAL ACTION

According to art. 57 (1) of the FIFA Statutes reads together with art. 52 FDC, this decision may be appealed against before the Court of Arbitration for Sport (**CAS**). The statement of appeal must be sent to the 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 the CAS.