

Decision
of the
Chairman of the FIFA Appeal Committee

on 28 May 2019

in the case:

Carmine Raiola, intermediary [ITA]

(Decision 190313 APC ITA ZH)

regarding:

Appeal lodged by the intermediary Carmine Raiola against the decision passed by the Chairman of the FIFA Disciplinary Committee on 10 May 2019

I. Inferred from the file

1. Below is a summary of the main relevant facts and allegations based on the documents pertaining to the file. Although the Chairman of the FIFA Appeal Committee (hereinafter, *the Chairman*) has considered all the facts, legal arguments and evidence submitted by Mr Carmine Raiola (hereinafter, *the Appellant*), it refers in his decision only to submissions and evidence it considers necessary to explain his reasoning.
2. On 9 May 2019, the Federazione Italiana Giuoco Calcio (hereinafter, *FIGC*) informed the secretariat to the FIFA Disciplinary Committee that the Intermediaries Committee of FIGC (*Commissione Procuratori Sportivi*) had suspended the Appellant for a period of three (3) months until 9 August 2019.
3. On 10 May 2019, the Chairman to the FIFA Disciplinary Committee passed the decision 190313 EXT ITA ZH (hereinafter, *the Appealed Decision*) ruling as follows:
 1. *The intermediary Carmine Raiola (date of birth: 6 November 1967) is suspended worldwide for a period of three (3) months, in accordance with the decision passed by the Intermediaries Committee of FIGC (Commissione Procuratori Sportivi) on 17 April 2019.*
 2. *This decision will follow the outcome of any possible appeal lodged against the decision passed by the Intermediaries Committee of FIGC (Commissione Procuratori Sportivi) as long as the decision on appeal complies with the regulations of FIFA.*
 3. *The procedural costs are not to be borne by the intermediary Carmine Raiola.*
4. The terms of the Appealed Decision were notified to the Appellant, FIGC and UEFA on the same date. The grounds of the decision were subsequently notified, upon request of the Appellant, on 17 May 2019.
5. On 19 May 2019, the Appellant informed about his intention to appeal and requested to be provided with a copy of all communications between FIFA and FIGC as well as with the copy of the terms of the decision of the Intermediaries Committee of FIGC
6. On 20 May 2019, the secretariat to the FIFA Appeal Committee provided the Appellant with the full case file.
7. On 22 May 2019, the Appellant submitted his reasons for appeal, which can be summarized as follows. This summary does not purport to include every single contention put forth by the Appellant. However, the Chairman has thoroughly considered in his discussion and deliberations any and all evidence and arguments submitted, even if no specific or detailed reference has been made to those arguments in the following outline of his positions and in his ensuing discussion on the merits:

The Chairman of the FIFA Disciplinary Committee was not in a position to conclude that the infringement committed by the Appellant was serious

- The Appellant underlines that the grounds of the decision of the Intermediaries Committee of FIGC were not available to the Chairman of the FIFA Disciplinary Committee when he passed the Appealed Decision. Additionally, FIGC did not inform FIFA about which provisions had been breached by the Appellant and solely disclosed that he had been suspended for a period of three months.
- On 10 May 2019, the secretariat to the FIFA Disciplinary Committee requested FIGC to provide a copy of the motivated decision as soon as this was notified. The Appellant claims that this shows how the secretariat to the FIFA Disciplinary Committee considered the motivated decision to be of relevance to the issue of whether a worldwide extension should be ordered.
- In this context, there is simply no way that the Chairman of the FIFA Disciplinary Committee could conclude that the Appellant's infringement was serious.
- The Appellant claims that the FIFA Disciplinary Code (FDC) classifies a "serious" infringement as behaviour of the very worst kind, for example match fixing, doping or forgery.

In any event, the infringement committed by the Appellant was not serious within the meaning of art. 136 of the FDC

- The Appellant refers to CAS' jurisprudence where it was underlined that if the infringement is serious, then the suspension will be extended. Therefore, according to the Appellant, an infringement must be serious before a worldwide extension can be imposed.
- Art. 136 of the FDC provides a list of examples of serious infringements: doping, unlawfully influencing match results, misconduct against match officials, forgery and falsification, violation of the rules governing age limits. Additionally, the Appellant is aware that FIFA has also extended suspensions referred to the following infringements: serious breaches of ethical codes by officials of national associations; forbidden betting on matches; an off-the-ball assault on another player, conspiracy to defraud and/or fraud.
- In this context, in order for a misconduct to constitute a serious infringement it must have been a misconduct of the worst kind.
- In any case, the Appellant's infringement is not serious. This is confirmed by the fact that the Chairman of the FIFA Disciplinary Committee has never previously extended a worldwide on an agent or intermediary.

- Furthermore, the Appellant claims that the Chairman of the FIFA Disciplinary Committee did not compare the seriousness of the infringement committed by the Appellant with either i) the infringements foreseen under art. 136 par. 1 of the FDC or ii) any other previous cases in which a worldwide extension was imposed. It is not clear which criterion was followed by the Chairman of the FIFA Disciplinary Committee to establish the seriousness of the infringement.
- Additionally, the reasoning under para. II.12-13 of the Appealed Decision is irrelevant. It cannot be correct that, because FIFA has decided to give the competence on intermediaries to its member associations, any sanction imposed against intermediaries shall be extended worldwide.
- Moreover, the Appellant disagrees that any contravention of the principles of loyalty, integrity, sportsmanship and fair play corresponds to a serious infringement, since this would mean that any foul awarded against a player for lack of fair play would correspond to a serious infringement.

The Chairman of the FIFA Disciplinary Committee was not in a position to conclude that the decision of the Intermediaries Committee of FIGC complies with the FIFA regulations; which is anyways not the case

- The Chairman of the FIFA Disciplinary Committee had no information whatsoever on how the decision was reached. For example, he could not establish if the Intermediaries Committee took into account all circumstances of the case (as established under art. 39 of the FDC) or if the charge had been brought within the limitation period set down in art. 42 of the FDC.
- The Appellant refers to FIFA's submission in the CAS proceedings 2015/A/4148, where FIFA explained that the Chairman of the FIFA Disciplinary Committee verifies "*whether the behavior for which the player was sanctioned at national level also constitutes a violation of the regulations of FIFA*". This position was then accepted by CAS in that case, since the deciding Panel ruled that "*an appropriate test appears to be to examine whether the act committed by the person sanctioned also violates the regulations of FIFA*".
- It is inarguable that any provision (if any) of the FIGC Regulation on Sports Service Agents that the Appellant was sanctioned in respect of is not enshrined in the FIFA regulations. Therefore, the Appellant considers that the Appealed Decision should be set aside.

The Appealed Decision violates the Appellant's legitimate expectation and the right to equal treatment

- The Appellant claims that FIFA has never extended a suspension against intermediaries. Therefore, by passing the Appealed Decision, FIFA contravened its established practice.
- This change of practice violates the Appellant's legitimate expectations, since FIFA has never extended a sanction imposed against an intermediary. Therefore, the Appellant considers that the Appealed Decision should be set aside.
- Alternatively, since the Appellant's legitimate expectation was violated, the Appealed Decisions should be set aside because it conflicts "*public order and accepted standard of behaviour*" and therefore does not respect art. 137 lit. e) of the FDC.
- Furthermore, the Appellant claims that he was treated completely differently to every other intermediary. Also for this reason, the Appealed Decision should be set aside.

The application of art. 136 of the FDC in the context of intermediaries is invalid and unenforceable

- Given the total lack of guidance provided by art. 136 of the FDC as to the "*serious*" criterion in relation to infringements by intermediaries, there is a risk of unequal, and thus unfair, treatment. Therefore, the application of art. 136 of the FDC (at least as regards intermediaries) is dependent on a subjective analysis, and thus is random, unforeseeable and arbitrary. In this context, the application of art. 136 of the FDC in the context of intermediaries shall be held invalid and unenforceable, and the Appealed Decision shall be therefore set aside.
- Moreover, for the reasons explained above, the application of art. 136 of the FDC to intermediaries contradicts the principle of legal certainty.

Requests for relief

- The Appellant requests the FIFA Appeal Committee to set aside the Appealed Decision, and thus to lift the worldwide suspension.
- Furthermore, in the event that his request for provisional measures and/or the appeal on the merits are successful, the Appellant respectfully requests FIFA to publicise the respective decisions as soon as possible, in the same manner that the Appealed Decision was publicised.

- Finally, and in all events, the Appellant respectfully requests that this appeal is subject of an expedited procedure given its urgency.

II. and considered

A. COMPETENCE OF THE CHAIRMAN OF THE FIFA APPEAL COMMITTEE AND ADMISSIBILITY OF THE APPEAL

1. According to art. 79 of the FDC, the Chairman is authorized, in his capacity as single judge, to rule on appeal against a decision to extend the sanction pronounced by a confederation, an association or other organizing sports bodies to have worldwide effect.
2. Pursuant to art. 141 par. 1 of the FDC, the provisions of arts. 119 ff. of the FDC, subject to par. 2 of this article, shall apply to any appeal lodged against a decision passed in accordance with art. 139 of the FDC.
3. In this sense, art. 120 par. 1 of the FDC, any party intending to appeal must inform the FIFA Appeal Committee of its intention to do so in writing within three days of notification of the decision.
4. Furthermore, reasons for the appeal must be given in writing within a further time limit of seven days. This seven-day period begins after the first deadline of three days has expired, in accordance with art. 120 par. 2 of the FDC. Within the same time limit, the person wishing to lodge an appeal shall transfer an appeal fee of CHF 3,000 to FIFA's bank account, in accordance with art. 123 par. 1 of the FDC.
5. The Chairman takes note that on 17 May 2019, the grounds of the Appealed Decision were duly notified, among others, to the Appellant.
6. Likewise, the Chairman takes note that the Appellant informed about his intention to appeal on 19 May 2019, and paid the appeal fee of CHF 3,000 on 20 May 2019. Moreover, the Appellant submitted his reasons for appeal on 22 May 2019.
7. Consequently, the Chairman deems that he is competent to decide on the present appeal and that all the aforementioned procedural requirements have been fulfilled by the Appellant and, thus, declares the appeal admissible.
8. Having established the foregoing, the Chairman will now analyze the arguments submitted by the Appellant.

B. MERITS

9. The Chairman considers that, in order to decide on this case, there are four questions that need to be answered:
 - a. *Is the application of art. 136 of the FDC to intermediaries invalid?*

- b. Was the Chairman of the Disciplinary Committee in a position to establish whether the infringement was serious and, if so, was the infringement serious?*
 - c. Is the decision of the Intermediaries Committee of FIGC in line with the FIFA regulations?*
 - d. Does the Appealed Decision violate the Appellant's legitimate expectation and right of equal treatment?*
- 10. The Chairman will now analyze the arguments and submissions brought forward by the Appellant, in the light of the aforementioned questions.
 - a. Is the application of art. 136 of the FDC to intermediaries invalid?*
- 11. First and foremost, the Chairman considers that it is important to clarify whether the application of art. 136 of the FDC to intermediaries is valid or not.
- 12. The Chairman agrees with the reasoning of the Chairman of the FIFA Disciplinary Committee, and believes that the creation of a different framework in 2015 was an important step made by FIFA in order to regulate intermediaries' activities, to protect players and clubs from being involved in unlawful practices and to enhance transparency in the football market.
- 13. The new legal framework, which came into force on 1 April 2015, required all member associations of FIFA to play a vital role in controlling intermediaries' activities and ensuring compliance with the regulations. In this sense, it must be underlined that – due to the international nature of the players' transfer market - intermediaries generally carry out their activities in different countries and within different associations. It is therefore crucial to ensure that an intermediary that has been suspended by an association because of his wrongdoing is prevented from performing his activities within the jurisdiction of other associations. A different approach would deprive the system of any effectiveness and any sanction imposed by associations would inevitably become toothless.
- 14. The importance to ensure that intermediaries do not circumvent the sanctions imposed against them is confirmed by the content of art. 9 par. 2 of the Regulations on Working with Intermediaries, according to which each member association has the obligation to inform FIFA of any disciplinary sanction taken against intermediaries, so that the FIFA Disciplinary Committee can then decide on the extension of the sanction to have worldwide effect.
- 15. In the light of the foregoing, the Chairman considers that the application of art. 136 of the FDC to intermediaries is perfectly valid and is in line with the relevant FIFA regulations. The Appellant's arguments in this respect are therefore rejected.

- b. Was the Chairman of the Disciplinary Committee in a position to establish whether the infringement was serious and, if so, was the infringement serious?*
16. The Chairman takes note of the Appellant's position in this respect. In a nutshell, the Appellant claims that i) the Chairman of the FIFA Disciplinary Committee did not have the grounds of the decision of the Intermediaries Committee of FIGC and hence was not in a position to establish the seriousness of the infringement; ii) the infringement was anyways not serious.
17. With respect to the first argument, the Chairman refers to the case file and notes that the Chairman of the FIFA Disciplinary Committee had at his disposal the following documents:
- FIGC's letter dated 14 March 2019, by means of which the Appellant was informed about the charges pressed against him;
 - Appellant's submission dated 11 April 2019;
 - Minutes of the hearing before the Intermediaries Committee of FIGC;
 - Terms of the decision of the Intermediaries Committee of FIGC.
18. In this respect, the Chairman takes note that the content of the FIGC's letter dated 14 March 2019 is unequivocal and describes in details the charge pressed against the Appellant, namely having negotiated the transfer of a player without having any mandate and besides the fact that another intermediary had signed a valid mandate to represent the player.
19. Moreover, the Chairman takes note that this is the only infringement that the Appellant was accused of having committed. Therefore, the Chairman is of the opinion that the Chairman of the FIFA Disciplinary Committee did not need to be provided with the motivated decision of the Intermediaries Commission of FIGC in order to establish the seriousness of the infringement.
20. Indeed, the Chairman considers that, being the Appellant charged for one infringement only, there was no doubt that the suspension imposed against him referred to that infringement. Therefore, the Chairman of the FIFA Disciplinary Committee had all necessary documents and information in order to evaluate whether the infringement was serious or not. This is corroborated by the fact that the Appealed Decision contains a detailed and extensive analysis of the infringement committed by the Appellant.
21. After having established the foregoing, the Chairman will now proceed with the analysis of the infringement committed by the Appellant.
22. In this respect, the Chairman has no doubt that the infringement committed by the Appellant is serious. Indeed, the Chairman has no doubt that the Appellant's unlawful behavior is a serious infringement.

23. Indeed, this type of behavior corresponds to a direct threat to the system, since it undermines the transparency of the transfer market, and represents one of those unethical and illegal practices that the new legal framework is aimed at tackling, as thoroughly explained in the Preamble of the Regulations on Working with Intermediaries.
24. In this sense, the Chairman wishes to add that the existence of a representation contract between an intermediary and a club or player is one of the minimum standards enshrined in the FIFA Regulations on Working with Intermediaries. Indeed, art. 5 of those regulations clearly establishes that the relationship between a player or club and an intermediary shall be reflected in the representation contract.
25. Therefore, the Appellant's misbehavior represents a serious and direct infringement of this core principle of the legal system concerning intermediaries.
26. Taking into account the foregoing, the Chairman confirms the findings of the Chairman of the FIFA Disciplinary Committee with respect to the seriousness of the infringement, and rejects the Appellant's arguments in that sense.
 - c. *Is the decision of the Intermediaries Committee of FIGC in line with the FIFA regulations?*
27. The Appellant claims that the Chairman was not in a position to establish whether decision of the Intermediaries Committee of FIGC is in line with the FIFA regulations, and argues that this was anyways not the case.
28. The Chairman notes that the Appellant based his position on the fact that, by not having a copy of the motivated decision of the Intermediaries Committee of FIGC, it was impossible for the Chairman to the FIFA Disciplinary Committee to establish if the FIFA regulations were respected, for instance if the Intermediaries Committee of FIGC had taken into account all facts and circumstances or if the charge had been brought within the relevant limitation period.
29. In this regard, the Chairman considers that the arguments brought forward by the Appellant must be rejected, since they clearly refer to the merits of the decision of the Intermediaries Committee of FIGC. In fact, according to art. 139 of the FDC, the Chairman of the FIFA Disciplinary Committee could not review the substance of the decision.
30. Additionally, the Appellant claims that, since any provision of the FIGC Regulation on Sports Service Agent breached by the Appellant is not enshrined in any FIFA regulations, the requirement under art. 137 lit. d) of the FDC was not met.
31. In this respect, the Chairman clarifies that, following the delegation of competence concerning intermediaries to the member associations, FIFA stopped regulating the intermediaries' activity directly. Indeed, the FIFA Regulations on Working with Intermediaries provide member associations with minimum standards/requirements that must be implemented by each association at national

level, the latter having the possibility of further adding thereto. Therefore, these rules are not aimed at regulating any single aspect of the work carried out by intermediaries.

32. Therefore, the Chairman considers that Appellant is stretching the meaning of art. 137 lit. d) of the FDC in a way that would contradict the entire legal framework currently in place. Indeed, following the Appellant's position, FIFA would not be able to extend worldwide any sanction imposed against an intermediary for the violation of a provision that is not foreseen in the FIFA Regulations on Working with Intermediaries.
33. It must be recalled once again that the FIFA Regulations on Working with Intermediaries provides member associations with minimum standards only, and encourage them to implement further rules. In other words, this set of rules is not aimed at regulating in full the intermediaries' activity.
34. In this context, the Chairman is of the opinion that limiting the possibility to extend sanctions worldwide only to cases in which a provision enshrined in the FIFA Regulations on Working with Intermediaries was violated would deprive the entire system of any effectiveness and would allow intermediaries to easily circumvent sanctions imposed against them. Moreover, this approach is in clear contradiction with art. 9 par. 2 of the FIFA Regulations on Working with Intermediaries, which specifically foresee the possibility for the Chairman of the FIFA Disciplinary Committee to extend sanctions imposed against intermediaries.
35. For these reasons, the Chairman rejects the Appellant's arguments concerning the lack of compliance with the FIFA regulations.
36. Finally, the Chairman notices that according to the Appealed Decision, the decision of the Intermediaries Committee of FIGC was duly published by FIGC, in compliance with art. 9 par. 2 of the FIFA Regulations on Working with Intermediaries. Consequently, the Chairman rules that the requirement under art. 137 lit. d) of the FDC was met.

d. Does the Appealed Decision violate the Appellant's legitimate expectation and right of equal treatment?

37. The Chairman further notices that according to the Appellant, his legitimate expectation and right of equal treatment were violated, since no other suspension against an intermediary was allegedly ever extended worldwide.
38. In this respect, it is important to underline that this is not the first case in which a sanction imposed against an intermediary by a member association has been extended worldwide, in line with FIFA's practice in this respect. Therefore, the Chairman is fully convinced that the Appellant's right of equal treatment was not violated in the present case.
39. Additionally, the Chairman wishes to clarify that the Appellant's lack of awareness of previous cases involving intermediaries does not exempt him from his

responsibilities. In other words, the Appellant cannot claim that his legitimate expectation was violated because he did not know about such previous cases.

40. In the light of the foregoing, the Chairman finds that the appeal lodged by the Appellant shall be dismissed and the decision of the Chairman of the FIFA Disciplinary Committee confirmed in its entirety.
41. The Chairman decides based on art. 105 par. 1 of the FDC that the costs and expenses of these proceedings amounting to CHF 3,000 shall be borne by the Appellant.
42. In this sense, the Chairman notes that the Appellant has already paid the appeal fee of CHF 3,000 and decides that the aforementioned costs and expenses of the proceedings are set off against this amount.

III. therefore decided

1. The appeal lodged by the intermediary Carmine Raiola is dismissed and the decision passed by the Chairman of the FIFA Disciplinary Committee on 10 May 2019 is confirmed in its entirety.
2. The costs and expenses of the proceedings amounting to CHF 3,000 are to be borne by the intermediary Carmine Raiola. This amount is set off against the appeal fee of CHF 3,000 already paid by the intermediary Carmine Raiola.

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Thomas Bodström
Chairman of the FIFA Appeal Committee

Note relating to the legal action:

According to art. 58 par. 1 of the FIFA Statutes, 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.

The full address and contact numbers of the CAS are the following:

Avenue de Beaumont 2
1012 Lausanne
Switzerland
Tel: +41 21 613 50 00
Fax: +41 21 613 50 01
e-mail: info@tas-cas.org
www.tas-cas.org