CAS 2019/A/6326 Chabour Goc Alei v. Fédération Internationale de Football Association

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President:	The Hon. Michael J. Beloff M.A. Q.C, Barrister in London, United Kingdom
Arbitrators:	Prof. Dr. Martin Schimke, Attorney-at-Law in Dusseldorf, Germany
	Mr. Jordi López Batet, Attorney-at-Law in Barcelona, Spain
Ad hoc Clerk:	Ms. Marianne Saroli, Attorney-at-Law in Montreal, Canada

in the arbitration between

Chabour Goc Alei, Republic of South Sudan

Appellant

and

Fédération Internationale de Football Association (FIFA), Switzerland

Represented by Mr. Miguel Liétard, Director of Litigation; Mr. Alexander Jacobs, Legal Counsel; and Ms. Marta Ruiz-Ayúcar, Senior Legal Counsel at FIFA, Zurich, Switzerland

Respondent

I. PARTIES

1. Mr. Chabour Goc Alei ("Mr Alei" or the "Appellant") is a national of South Sudan and former President of the South Sudan Football Association ("SSFA"). He held the position of President of the SSFA from 30 April 2012 to 7 February 2017 and served as a member of the FIFA Fair Play and Social Responsibility Committee from 21 June 2012 to 18 January 2017.

2. The Fédération Internationale de Football Association ("FIFA" or the "Respondent") is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the worldwide governing body of international football and exercises regulatory, supervisory and disciplinary functions over continental confederations, national associations, clubs, officials and players.

II. INTRODUCTION

3. This appeal concerns the decision of the Adjudicatory Chamber of the FIFA Ethics Committee (the "FIFA Ethics Committee") on 11 February 2019 ("the Decision'') whereby the Appellant was found to have offered on different occasions substantial benefits in breach of Article 20 (offering and accepting gifts or other benefits) of the 2018 edition - FIFA Code of Ethics (the "2018 FCE"). He was also found to have misappropriated funds of FIFA on different occasions, directly and indirectly, or in conjunction with, third parties in breach of Article 28 (misappropriation of funds) of the 2018 FCE. As a result, the Appellant was banned for 10 years from taking part in any kind of football-related activity at national and international levels (administrative, sports or otherwise) and was fined CHF 500,000.

III. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations found in the parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. The Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings but refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

A. FIFA Financial Assistance Program funds

5. On 22 November 2013 and 14 December 2014, FIFA issued brochures to its member associations in relation to its Financial Assistance Programme ("FAP") for 2014 and 2015, which described the requirements to access the FAP funds. The associations were informed that, for 2015, each recipient would be entitled to receive an amount of USD 1,050,000 (which included a one-off financial bonus of USD 500,000) and an amount of USD 300,000 for the preparation of and participation in the 2018 FIFA World Cup qualifiers.
6. During the relevant period, it appears that the SSFA received from FIFA, on its dedicated FAP account at the Qatar National Bank, an amount of approximately USD 500,000 and of USD 680,750 in 2015. The SSFA signatories for the respective FAP account of the association at that time were the Appellant, Mr. William Okot de Toby -former General

Secretary of the SSFA- ("Mr. Okot de Toby") and Mr. Abraham Tito - former accountant of the SSFA - ("Mr. Tito"). The signatories could withdraw funds by signing a cheque.

B. FIFA Integrity Department's investigation proceedings

7. By way of mandate letter dated 1 March 2016, FIFA engaged KPMG to review the affairs of SFFA for the 2014-2015 fiscal years.

8. On 1 July 2016, following a forensic investigation into the SFFA, KPMG produced a report (the "KPMG Report") into the SSFA.

9. On 31 August 2016, the Investigatory Chamber of the FIFA Ethics Committee ("the Investigatory Chamber") received the KPMG Report.

10. The KPMG Report identified (i) many irregularities with respect to the FAP during 2014 and 2015, as well as with respect to the GOAL project for the construction of the SSFA headquarters; (ii) several conflicts of interest involving the Appellant as the President of the SSFA; (iii) at least 11 missing documents and information, which could not be obtained during the investigation.

11. The Secretariat to the Investigatory Chamber analysed the KPMG Report and related documentation since those irregularities could constitute potential violations of the FIFA regulations, especially the FCE and other rules concerning FIFA Development Programmes. Consequently, it initiated a preliminary investigation.

12. In the course of the preliminary investigation, the SSFA was requested to provide the relevant missing documentation. Upon this request, Mr. Anthony John Lauro Otto, the General Secretary of the SSFA, ("Mr. Otto") provided limited documentation and information.

13. Also, in the course of the preliminary investigation, the Appellant was invited for an interview on 5 April 2017 at the FIFA headquarters in Switzerland, which was later cancelled namely due the Appellant's visa issues and the availability of the then Chairperson of the Investigatory Chamber, Mr. Cornel Borbély.

14. Nevertheless, in view of the documents and information collected during the investigation, Ms. María Claudia Rojas ("Ms. Rojas"), the Chairperson of the Investigatory Chamber, determined that the preliminary investigation established a *prima facie* case against the Appellant for potentially committing violations of the FCE and that the Investigatory Chamber should open investigation proceedings accordingly.

15. As such, on 3 September 2018, the Appellant was notified that formal investigation proceedings were opened against him for to possible violations of Articles 13 (General Duties), 14 (Duty of Neutrality), 15 (Duty of Loyalty) and 19 (Conflict of Interest) of the 2018 FCE. The Appellant was also informed that the list of possible violations might be supplemented as and when additional information would become available.

16. On 3 September 2018, Ms. Rojas appointed Mr. Jiahong He ("Mr. He") as Chief of Investigation in accordance with Article 63 of the 2018 FCE.

C. The Final Report of the Investigatory Chamber

17. On 17 December 2018, the investigation proceedings concluded, and a final report was referred to the Adjudicatory Chamber in accordance with Articles 65 and 66 of the FCE (the "Final Report").

18. The Final Report alleges *inter alia* that the Appellant (i) mismanaged FIFA funds for his personal benefit and in violation of the principles set forth in FIFA's regulations; (ii) systematically breached his obligations as the person responsible for Association funds; (iii) exploited his position to enrich himself and/or his associates.

i. The factual indications of potential unethical conduct by the Appellant

19. The KPMG Report listed the following irregularities with respect to the use of the FAP and GOAL funds by the SSFA during the years 2014 and 2015, as well as the following potential conflicts of interest involving the Appellant:

FAP funds not used in compliance with the respective budget

20. The Investigatory Chamber analysed the FAP fund budget approved by FIFA in 2014 and found that the SSFA received FAP funds in the amount of USD 500,000 for developing "Youth football" (which had a projected budget of USD 55,000) ; "Women's football" (which had a projected budget of USD 75,000) and "Medical" (which had a projected budget of USD 10,000). Therefore, the total budget approved and allocated by FIFA in these categories was USD 140,000.

21. According to the KPMG Report, less than USD 2,000 was spent by the SSFA from the above-mentioned categories. Instead, the SSFA significantly exceeded the planned budget for the categories of "Others" (more than three times), "Infrastructure" (more than double) and "Event Management" (more than 50%).

22. In its Final Report, the Investigatory Chamber concluded that the FAP fund budget previously approved by FIFA was not respected by the SSFA, and that the distribution of the FAP funds was made in violation of the respective regulations, which stipulated that "*a member association or confederation that has received FAP funds shall use them in compliance with the detailed budget per category which is listed in FAP form [...] and has been approved by the FIFA general secretariat*".

Bank transfers without supporting document from FAP funds

23. In 2014, according to the SSFA FAP bank account statement of the Qatar National Bank, three transfers were ordered for the total amount of USD 375,000, notably:

- On 14 July 2014, a transfer of USD 125,000 to a SSFA bank account at the Central Bank of South Sudan;
- On 3 October 2014, a transfer of USD 150,000 to an unknown bank account and;

- On 3 October 2014, another transfer of USD 100,000 to a "CBSS" (unknown bank account).

24. On an unidentified date but pursuant to the Final Report, the SSFA provided a letter dated 11 July 2014, signed by the Appellant and Mr. de Toby, requesting the transfer on 14 July 2014. From the Final Report, it appears that no documents were provided for the two transactions made on 3 October 2014 and that the disbursement of USD 375,000 from the FIFA FAP funds was not supported by any documentation or explanation. The Final Report indicates that this sum represents approximately 75% of all FAP funds received by the SSFA in 2015 and the recipient of such funds could not be identified or traced.

Flat exchange rate used for FAP funds

25. The Final Report recorded that the SSFA made from its FAP account numerous withdrawals in 2015 for a total of USD 234,000. It also highlighted - on the basis of the KPMG Report - that all the USD amounts withdrew were later exchanged to South Sudanese Pounds (SSP) exclusively through Abyei Exchange Bureau Company Limited ("Abyei Exchange").

26. Abyei Exchange is a foreign exchange broker that offers currency exchanges and a company for which the Appellant has 30% shareholdings. In the course of the investigations, Mr. Lauro confirmed he was not aware that the Appellant partially owned Abyei, as follows:

> "*During the period 2015, the USD amounts received by SSFA in its FAP account were exchanged for SSP at availed rates; we do not know whether it was at the interest of the association or the exchange company. We also realized that all these exchange transactions were done by the same company (Abyei Bureau) to whether the company is related to Alei, we are not sure, but we realized that in the vouches there is his contacts and phone Number: 0955333394*".

27. The Final Report also recorded that the same flat rate (USD 1 to SSP 3.17) was used for all the exchange transactions which took place between 19 January 2015 and 4 June 2015. In this regard, the KPMG Report provided a comparison between the flat exchange rate used and the one prevalent in the market at that time, which resulted in a loss to the SSFA of approximately USD 129,194 due to the unfavourable exchange rate used.

Payments from FAP funds to entities or persons related to the Appellant

28. The Final Report relied upon the KPMG Report, which identified numerous payments made by the SSFA from FAP funds to entities/persons with a connection to the Appellant, notably the following:

1. I-Tech Electronic Commerce and Investment Co. Ltd.

29. According to the KPMG Report, the Appellant is the owner of the company I-Tech Electronic Commerce and Investment Co. Ltd. ("I-Tech"), which is primarily dedicated to retail tech and e-commerce tech.

30. On 17 March 2015, a cheque of USD 200,000 was issued by the SSFA, signed by the Appellant and Mr. Okot de Toby, for I-Tech. On 18 March 2015, the cheque was received. On 19 March 2015, the transfer was made.

31. This transaction does not appear on the FAP 2015 statement of accounts. Mr. Okot de Toby and Mr. Gabriel Geng, the then Chairman of the Board Finance Committee of the SSFA ("Mr. Geng"), claimed to have been unaware of such transaction at the time it occurred.

32. On 4 and 18 May 2015, the SSFA ordered two transfers of USD 35,000 and USD 20,000 to I-Tech.

33. In the course of the investigations, the Appellant stated he approved those transactions to facilitate the exchange of USD to SSP during the South Sudanese civil war. The amount of USD 200,000 was exchanged to SSP, brought to the SSFA headquarters and used to pay for the property on which the SSFA headquarters is located, as well as for customs fees of goods sent by FIFA to the SSFA.

34. According to the Final Report, this statement was contradicted by Mr. Tito, who asserted that the SSP equivalent of the funds was not received at the SSFA but rather paid directly to the seller of the property. The SSFA accounting records demonstrate that the property was purchased for SSP 650,000, with an additional SSP 50,000 paid in legal fees for the transaction. However, the conversion of USD 200,000 was equivalent - at the relevant period - to SSP 634,000.

35. Between March and May 2015, the Appellant approved transactions whereby the SSFA paid over USD 63,000 for the purchase of several electronics such as camera accessories, printer, HP laptops, as well as furniture items to I-Tech.

36. For example:

- On 9 March 2015, an "Internal Supply Agreement" was signed by the SSFA and I-Tech for the supply of various electronic and furniture items (one sofa set, one metallic bed, one laptop and one camera), for the total amount of SSP 41,500. On the same day, an order form was approved by the Appellant for the same amount and placed with the company. On 15 March 2015, a payment voucher approved and signed by the Appellant was issued to I-Tech and, on the same day, a cash receipt and a related invoice for the same amount were issued by I-Tech. Furthermore, the two invoices issued by I-Tech for the purchases dated 9 March and 15 May 2015 mention the private phone number of the Appellant among the contact details of the company.

- On 4 and 18 May 2015, the amounts of USD 35,000 and USD 20,000 were transferred to I-Tech, based on cheques issued on 29 April 2015 and 14 May 2015, signed by the Appellant and Mr. Tito. Yet, the Appellant explained that the transfers were made to facilitate the withdrawal and exchange of USD during the war.

- On 13 May 2015, a payment voucher approved and signed by the Appellant for the amount of USD 62,740 was issued to I-Tech for the purchase of "camera

accessories, printer, HP laptops and inks". On the same day, a cash receipt and an invoice for the related amount were issued by I-Tech. According to the respective invoice, the SSFA purchased one Canon camera and accessories.

2. I-Tech and the company United for General Trade and Investment Co. Ltd

37. In November 2015, the SSFA concluded two different "Internal Supply Agreements" with I-Tech for the supply of air condition systems, TVs and office furniture sets. On 11 and 17 November 2015, SSFA paid USD 25,000 and USD 50,000 to I-Tech, through a company named United for General Trade and Investment Co. Ltd ("United").

38. According to the Final Report, United is connected to I-Tech and the Appellant.

39. On 5 November 2015, an "Internal Supply Agreement" was signed between the SSFA and I-Tech for the supply of ten air condition systems in the amount of USD 25,000. On the same day, an order form was approved by the Appellant for the same amount and placed with United. The supply agreement was signed by Mr. Khalid Musa ("Mr. Musa") on behalf of I-Tech.

40. On 11 November 2015, a payment voucher approved and signed by the Appellant was issued to Mr. Musa. On the same day, a cash receipt and related invoice for the same amount were prepared by Mr. Musa on behalf of United.

41. On 17 November 2015, another "Internal Supply Agreement" was signed between the SSFA and I-Tech for the supply of various electronic and furniture items in the amount of USD 50,000. Again, on 24 November 2015, a payment voucher approved and signed by the Appellant was issued to Mr. Musa while a cash receipt and a related invoice for the amount were made by Mr. Musa on behalf of United.

42. The Final Report concludes that I-Tech and United are related so that United is potentially connected to the Appellant, on the basis that (i) the initial contract was signed by the SSFA with I-Tech; (ii) Mr. Musa appears in all documents on behalf of I-Tech as Managing Director and United as Manager; (iii) the email contact in the United invoice dated 24 November 2015 is the same as in the previous invoices issued by I-Tech on 15 March and 13 May 2015.

3. Payments in favor of the Appellant's brother

43. Between 2014 and 2015, the Appellant approved the use of the FAP Funds for the purchase of a vehicle and software/computer services in the amount of SSP 62,000 for his brother, Mr. Chabour Kuol Akuei ("Mr. Akuei"), as follows:

- On 8 October 2013, the Appellant signed an official SSFA document certifying that Mr. Okot de Toby was delegated on behalf of the association to purchase a vehicle, Toyota Foxy, from Mr. Akuei, the owner of the vehicle. On the document, it was indicated "Appreciate your cooperation with him in the process of acquiring the vehicle". On the same day, Mr. Akuei and the SSFA, represented by Mr. Okot de Toby, signed an "Agreement for sale" for the

vehicle, in the amount of SSP 43,000. On 17 May 2014, the Appellant approved the issuance of a payment voucher to Mr. Akuei in the amount of SSP 43,000.

- On 27 January 2015, a payment voucher to the amount of SSP 19,000 for "Windows installation, Anti-Virus, memory card and computer services" was issued to Technology for Investments Ltd. The voucher was approved by the Appellant, and was issued to Mr. Akuei, who signed for receipt. A cash receipt (in Arabic) for the same amount was also identified in relation with the transaction/purchase.

4. Payments from FAP funds to the Appellant

44. According to the KPMG Report, on 19 July and 12 August 2014 respectively the Appellant received USD 10,000 and USD 2,000 from the SSFA. The transactions contained the description "Loan to SSFA President".

45. In the course of the investigations, Mr. Okot de Toby and Mr. Geng asserted that those transactions were made without the approval of the SSFA Executive Committee and that the Appellant never repaid this alleged loan to the SSFA despite being requested to do so. However, the Appellant alleged that those payments were mistakenly recorded by the former accountant as loans made to him. He contended that they were part settlements of the amounts owed to him by the SSFA.

5. GOAL Project for the construction of the SSFA headquarters

46. The GOAL program's main objective is the funding of essential football projects, including not only football infrastructure and facilities, but also other innovative projects to sustain football development in the associations.

47. GOAL projects were provided usually in the amount of USD 500,000 in financial cycles of 4 years. Member associations were required to meet certain criteria established in the FIFA Goal Regulations to be granted with a GOAL project.

48. In September 2012, FIFA approved a GOAL project for the construction of the headquarters of the SSFA in Juba. However, it appears that the tender procedures for this construction were only initiated in February 2014 while the construction began in May 2015 and was completed in September 2015.

49. The contractor was China Jiangsu International South Sudan Company Limited ("China Jiangsu") and the architect was Alal Engineering Company Limited ("Alal").

50. According to the Final Report, Alal is a company that undertakes structural, architectural or engineering work for building constructions as well as preparation of designs, drawings and specifications for such purposes. Also, it appears that the Appellant holds 50% of shares in Alal while his brother, Mr. Akuei, owns the other 50%.

51. The total cost of the project was USD 990,000, of which USD 900,000 payable to China Jiangsu and USD 90,000 to Alal.

52. It appears that Alal was selected directly by the Appellant. In this context, the SSFA officials confirmed throughout the investigation that they were not aware of the selection process for the architect of the project.

53. Furthermore, the KPMG Report found that the Appellant was paid around USD 72,000 for its services.

ii. The conclusion of the Investigatory Chamber

54. Based on the aforesaid facts, the Investigatory Chamber concluded that the Appellant:

- misappropriated a significant amount of the FAP funds paid to the SSFA in 2014 and 2015.

- was involved in several cases of conflict of interest, related to payments from the FAP funds and the GOAL Project.

- misappropriated FAP/GOAL funds paid to the SSFA in 2014 and 2015, through:

  - the failure to disburse the funds in compliance with the respective budget approved by FIFA;
  - the use of funds for unbudgeted and inadequate payments;
  - the disbursement of funds through bank transactions not supported by any evidence;
  - the use of a flat and detrimental rate to exchange the SSFA FAP funds from USD to SSP, causing an undue profit to the company of the Appellant;
  - the payments made from FIFA funds to entities and persons related to the Appellant or belonging to him personally;
  - the appointment as architect of the headquarters project of his own company Alal, to which was paid a significant amount of FIFA GOAL funds.

iii. The possible violations

55. The Investigatory Chamber considered that likely violations took place in 2014-2015 and at that time, the 2012 edition - FIFA Code of Ethics (the "2012 FCE") was in force. The Investigatory Chamber referred to the general principle of *tempus regit actum* while highlighting that Article 3 of the 2018 FCE departs from the traditional *lex mitior* principle by reversing it so that the new substantive rule applies automatically unless the old rule is more favourable to the accused.

56. Therefore, the Investigatory Chamber concluded that the Appellant breached Article 13 (4) of the 2012 FCE in relation to a potential abuse of position, Article 20 of the 2012 FCE in relation to a potential receipt of benefits and Article 21 (2) of the 2012 FCE in relation to a potential misappropriation of funds, as well as their corresponding provisions in the other respective versions of the FCE. The Investigatory Chamber further concluded that the

Appellant violated Article 19 of the 2018 FCE in relation to a potential conflict of interest, on the basis that this provision was more favourable to the Appellant than Article 19 of the 2012 FCE.

D. Proceedings before the FIFA Ethics Committee

57. On 17 December 2018, the Investigatory Chamber informed the Appellant that it had concluded its investigation proceedings and that it had submitted its Final Report to the FIFA Ethics Committee in accordance with Article 65 of the 2018 FCE.

58. On 18 December 2018, the FIFA Ethics Committee opened adjudicatory proceedings against the Appellant in accordance with Article 68 (3) of the 2018 FCE. A copy of the Final Report and its enclosures were transmitted to the Appellant, who was informed of certain deadlines to provide his response and request a hearing.

59. On 22 December 2018, in view of the absence of a request by the Appellant for a hearing, the FIFA Ethics Committee informed the Appellant that a hearing would not be held and that it would decide the case using the file in its possession pursuant to Article 69 (2) of the 2018 FCE.

60. On the same day, the Appellant requested an extension of the deadlines to request a hearing and to provide his position.

61. On 30 December 2018, the Appellant was provided with an extension of the relevant time limits.

62. On 3 January 2019, the Appellant requested a new extension of the deadlines and to be provided with further information about the findings of the investigation.

63. On 4 January 2019, the Appellant was provided with an exceptional and final extension of the deadlines (15 January and 25 January 2019, respectively) whereas he was also informed that the findings of the investigation were established in the Final Report of the Investigatory Chamber.

64. On 18 January 2019, in view of the absence of the pertinent request, the Chairman confirmed in a letter to the Appellant that a hearing would not be held.

65. On the same day, the Appellant submitted his position to the Chairman.

66. On 22 January 2019, the Appellant was reminded that he was entitled to submit his position and any further information and/or documents that he deemed pertinent for his defense until 25 January 2019.

67. On 8 February 2019, the Appellant produced additional documents relating to an alleged interference of the judicial bodies of South Sudan in the SSFA, *i.e.* 32 files that had allegedly been found on the SSFA Facebook page.

68. On 11 February 2019, the FIFA Ethics Committee issued the Decision:

1. Mr Chabour Goc Alei is found guilty of infringement of art. 28 (Misappropriation of funds) and art. 20 (Offering and accepting gifts or other benefits) of the FIFA Code of Ethics.

2. Mr Chabour Goc Alei is hereby banned from taking part in any kind of football-related activity at national and international level (administrative, sports or any other) for 10 years as of notification of the present decision, in accordance with Article 7 lit. j) of the FIFA Code of Ethics in conjunction with Article 22 of the FIFA Disciplinary Code.

3. Mr Chabour Goc Alei shall pay a fine in the amount of CHF 500,000 within 30 days of notification of the present decision. (...).

4. Mr Chabour Goc Alei shall pay costs of these proceedings in the amount of CHF 1,000 within 30 days of notification of the present decision, which shall be paid according to the modalities stipulated under point 3. above.

5. Mr Chabour Goc Alei shall bear his own legal and other costs incurred in connection with the present proceedings.

6. This decision is sent to Mr Chabour Goc Alei. A copy of the decision is sent to the CAF and to the SSFA, as well as to the Chief of the Investigation, Mr Jiahong He.

69. On 24 May 2019, the grounds of the Decision were notified to the Parties. The relevant points developed by the FIFA Ethics Committee in the Decision, read as follows:

47. The adjudicatory chamber points out that Mr Alei in his position as president of the SSFA, and as signatory/approval authority of all the relevant transactions in relation to FIFA funds, was personally responsible for the decisions taken in respect of the FIFA development projects, in particular the use of the respective funds. In the present case it has been established that Mr Alei has mismanaged a significant amount of the FAP and GOAL funds received by the SSFA in 2014 and 2015, through his conduct as described in what follows.*

A. FAP funds not used in compliance with the respective budget and bank transfers without supporting document

48. The adjudicatory chamber notes that of the total projected budget for the categories of Youth Football, Women's Football and Medical, i.e. USD 140,000, less than USD 2,000 was used by the SSFA from the earmarked FAP funds paid by FIFA. Instead, the SSFA significantly exceeded the planned budget for other categories, as for example " Event Management" (more than 50%), which are not directly related to the development and promotion of youth football and/or women football (cf. para. 16 and 1 7 above).

49. Furthermore, in relation to the bank transfers of July and October 2014 (cf. para. 18 and 1 9 above), the adjudicatory chamber notes that Mr Alei himself signed the letter of 11 July 2014, in which he requested the Qatar National Bank to transfer

USD 125,000 to another bank account of the federation (Bank of South Sudan). Regarding the bank transfers of 3 October 2014, for a total amount of USD 250,000, Mr Alei did not provide any supporting documents in this respect.

50. Furthermore, despite the substantial amount of FAP funds involved in the referred transactions (USD 375,000), representing approximately 75% of all FAP funds received by the SSFA in 2015 Mr Alei did not provide any explanation for such transfers (two of which were made to an unknown account/beneficiary).

51. Equally, Mr Alei failed to involve, consult or seek prior approval by SFFA's competent bodies, i.e. executive committee. Mr Alei decided alone to approve the transfer of such amounts to another bank account of the federation (not designated for the FAP funds), as well as, to an unknown bank account without the knowledge of the members of the SSFA executive committee.

52. In this line, it is stressed that Mr Alei had a special responsibility as SSFA president (and FIFA committee member) to safeguard the FIFA FAP funds.

53. Consequently, Mr Alei did not perform his duties in the best interests of the SSFA and neither of FIFA: the adjudicatory chamber therefore concludes that the relevant FAP funds have not been used in accordance to their objective (or even in relation to any projects of the SSFA). Mr Alei, as a president of the SSFA, acted in clear violation of the respective FIFA development regulations and did not respect the agreed distribution of the FAP funds.

B. Flat exchange rate used for FAP funds

54.As mentioned previously (par. 20 to 24 above), the SSFA made a significant loss by using exclusively Mr Alei's company Abyei for exchanging the FAP funds (received in USD) into SSP with a detrimental/low exchange rate. Consequently, the company of Mr Alei made a potential gain of approximately USD 1 29,194 (corresponding to the respective loss of the federation).

55. The adjudicatory chamber notes that Mr Alei was one of the three signatories to the FAP account (and thus authorized to withdraw amounts from such account), and, indeed he authorized the FAP transactions of the federation.

56.In view of the above, Mr Alei gave his own company a financial advantage with those transactions, e.g. only between 19 January 2015 and 4 June 2015, Abyei made a potential gain of approximately USD 1 29,1 94, which caused a substantial loss to the SSFA. In light of the above, the adjudicatory chamber concludes that Mr Alei misappropriated a significant amount of the FAP funds paid to the SSFA.

57. Furthermore, the adjudicatory chamber considers that Mr Alei, using his position as SFFA President and Abyei shareholder, influenced the relationship between the federation and Abyei. Mr Alei found himself in a conflict of interest situation; in particular, it is stressed that Mr Alei conducted this business without the approval of the SFFA competent bodies (and without informing them of his relation to or interest in Abyei).

C. Payments from FAP funds to Mr Alei and persons or entities related to him

58. As described above, the following bank transfers were made by the SSFA, with the express approval of Mr Alei, in favour of I-Tech: (i) on 19 March 201 5, a transfer of USD 200,000; and, (i) on 4 and 18 May 201 5, respectively, the amounts of USD 35,000 and USD 20,000.

59. The adjudicatory chamber notes that such transactions were not recorded on the respective FAP statement of accounts, as well as the fact that different SSFA officials, for example the former General Secretary and the chairperson of the board finance committee of the SSFA, were unaware of such transfers.

60. The adjudicatory chamber notes that there was no legal basis for such transactions and, especially, that Mr Alei failed to explain why those payments were made (in favour of his own company). In this regard, to simply state that the payments were made to facilitate the exchange of USD to SSP during the war, without providing any solid justification, is not sufficient to reverse the adjudicatory chamber's impression that those transactions represent a misappropriation of funds.

61. Furthermore, between March and May 201 5, Mr Alei approved the payment of over USD 63,000 in favour of I-Tech, in relation to the purchase of material (i.e. various electronic and furniture items). In this sense, the adjudicatory chamber notes that Mr Alei failed to give a rational or proper justification why those materials were purchased to his own company, in particular, without the approval of the SSFA executive committee.

62. Moreover, on 1 1 and 17 November 2015, the SSFA paid USD 75,000 to the company United, by virtue of two "Internal Supply Agreement" concluded by the SSFA with I-Tech. The adjudicatory chamber notes, on the one hand, that Mr Khalid Musa signed (i) the "internal supply" agreements as Managing Director of I-Tech and (ii) the invoice and cash receipts of United as a Manager; on the other hand, note is taken that the email contact of the company United is the same as the email address used by I-Tech (maniar2003@yahoo.com). In light of the above, the adjudicatory chamber is comfortable satisfied that I-Tech and United are related entities, and thus United is a company connected to Mr Alei, who approved such transactions.

63. Therefore, it is clear that Mr Alei proceeded to conduct several businesses with his own company without the approval of the SSFA competent bodies.

64. In view of all of these considerations, after having considered the submissions of the accused, the adjudicatory chamber concludes that at least USD 393,000 from the FAP fund were spent without any justification and approval from the relevant SSFA bodies, and that the respective amount was paid to and received by companies related to Mr Alei.

65. In this line, Mr Alei personally approved the use of FAP funds for the purchase of his brother's car without the approval of any SSFA governing body (cf. para 34 above).

66. With respect to the amounts of USD 10,000 and USD 2000 (described as "Loan to SSFA President) received by Mr Alei from the SSFA, the adjudicatory chamber is bound to note that several indicators show that neither of those payments from FIFA FAP funds were loans.

67. Likewise, the adjudicatory chamber does not share the argument of the accused that these transactions were mistakenly recorded by the SSFA former accountant as loans made to him, when they were, in fact, settlements of the amounts owed to him by the SSFA.

68. In this regard, the adjudicatory chamber notes that the alleged loans and/or settlements are not supported by any written evidence, and in particular by no contract where the conditions - e.g. interest rate, reimbursement date, securities provided - of such transactions would be established by the parties (SSFA and the accused). Moreover, different SSFA officials, including the former General Secretary and the chairperson of the board finance committee, confirmed that those transactions were made without the approval of the SSFA Executive Committee.

69. In addition, the adjudicatory chamber finds that several years have already passed since the alleged payments took place, and, to date, Mr Alei has not repaid them to SSFA, despite being requested to do so by the federation (cf. para. 36 above).

70. All in all, there is no evidence showing that the amounts received were an actual loan and neither settlements of the amounts owed to him by the SSFA. In view of the above, the adjudicatory chamber concludes that the two payments from SSFA to Mr Alei, approved by the latter, of the total amount of USD 12,000 from FAP funds did not have a proper basis - neither a contractual nor a legal one nor justification, and thus were misappropriated.

D. GOAL Project for the construction of the SSFA headquarters

71. The adjudicatory chamber notes that the company Ala' was selected directly by Mr Alei as the architect for the GOAL project (construction of the headquarters of the SSFA in Juba) approved by FIFA in 2012.

72. During the investigation, SSFA officials confirmed that they were not aware of the selection process of Alal (or even of an open invitation to bid for the position), which entails that. Mr Alei proceeded to conduct business with his own company without the approval of the SSFA competent bodies (and without informing them of his relation to or interest in Alal). In this context, it is highlighted that the SSFA made a considerable payment of approximately USD 72,000 (at least) to Alat for its services.

73. Indeed, Mr Alei ordered payments from the SSFA — its FIFA GOAL funds — to AlaE, a private company which he owned and was a partner in with his brother, By this conduct, Mr Alei helped his company — and thus, himself — to gain financial benefits from SSFA/GOAL funds. He was involved and had financial interests on three different sides. He was both the payer and the payee of several substantial payments and involved himself in acts of self-dealing. In view of the above, Mr Alei without any doubt gained advantages for Alal — and hence, for himself — from the SSFA.

74. Mr Alei proceeded accordingly despite knowing that there were potential frictions of said relationship SSFA and Alal and, thus, he sought disclose it to the SSFA and FIFA. Any governing body of the federation as well as FIFA were not informed of the special relationship between Mr Alei and Alal. Thus, Mr Alei failed to involve, consult or seek prior approval by SSFA and FIFA's competent bodies. Mr Alei decided alone to enter into the agreement with Alal without having duly informed the members of the executive committee of this conflict of interest. Therefore, there was no proper basis nor justification for Alal being designated the architect and being paid with FIFA GOAL funds.

75. On top of that, Mr Alei attempted to justify his behaviour by claiming that he had sold his shares in said company, but the adjudicatory chamber notes that he has failed to provide any evidence in this respect.

76. Therefore, the adjudicatory chamber concludes that Mr Alei by selecting his own company without justification and prior information of the relevant SFFA and FIFA bodies, and by unilaterally approving payments from FIFA GOAL funds to his (and his brother) private company, misappropriated a significant amount of the FIFA GOAL funds paid to the SSFA.

("the FIFA Ethics Committee's substantive findings")

70. The relevant points developed by the FIFA Ethics Committee in the Decision with respect to the sanctions, read as follows:

96. First, the adjudicatory chamber would like to highlight that officials must behave honestly, worthily, respectably and with integrity. It is evident that in exercising his functions at SSFA and FIFA, Mr Alei disregarded those ethical principles for purposes such as obtaining a benefit for himself and related parties.

97. As a president of the SSFA and a FIFA Committee member, Mr Alei held a crucial position in association football both at national and international level. As such, he had a special responsibility to serve as a role model. Yet, Mr Alei has been found guilty of misappropriation of FIFA funds, as well as offering benefits, repeatedly over different periods. In addition, not acts of mere negligence are at stake here but deliberate actions (see art. 6 par. 2 of the FCE). By the same token, the relevant acts are not merely attempted acts but have been completed by Mr Alei. In view of all these circumstances, Mr Alei's degree of guilt must be regarded as very serious.

98. The adjudicatory chamber stresses that the accused acted in an intentional manner, Mr Alei's actions were deliberate actions, which involved private and personal interests (financial benefits) of himself and/or of his family.

99. The adjudicatory chamber further notes the absence of remorse or confession during the present proceedings. On the other hand, Mr Alei has not showed any intention to repay the above-mentioned misappropriated amounts to the SSFA or FIFA.

100. With regard to the type of sanction to be imposed on Mr Alei, the adjudicatory chamber deems — in view of the serious nature of his misconduct (cf. par. 11.15 et seqq. above) - only a ban on taking part in any football-related activity to be appropriate in view of the inherent, preventive character of such sanction in terms of potential subsequent misconduct by the official. In the light of this, the adjudicatory chamber has chosen to sanction Mr Alei by banning him from taking part in any football-related activity (art. 7 par, I(j) of the FCE; art. 56 par, 2(f) of the FIFA Statutes; art. 11 (f) and art. 22 of the FDC). In addition, in relation to the scope and duration of the ban (see art. 9 par. 2 and 3 of the FCE), after having taken into account all relevant factors of the case, the adjudicatory chamber deems that a ten year ban is adequate for the is adequate for the seriousness of the infringements of the FCE committed by Mr Alei. Furthermore, considering that the breaches took place while Mr Alei served as president of the SSFA and FIFA committee member, and that FIFA funds are at stake, the adjudicatory considers that only a worldwide scope would be appropriate.

101. Mr Alei made significant profits by misappropriating funds of FIFA to himself or persons/entities related to him. The adjudicatory chamber thus considers a fine of CHF 500,000 to be proportionate.

102. In conclusion, Mr Alei is hereby banned for ten years from taking part in any football related activity (administrative, sports or any other) at national and international level. The ban shall come into force as soon as the decision is communicated (art. 42 par. 1 of the FCE).

103. In addition, Mr Alei shall pay a fine of CHF 500,000.

("the FIFA Ethics Committee's sanctions findings")

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

71. On 12 June 2019, the Appellant filed his Statement of Appeal, including exhibits with the CAS against the Decision in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (the "Code"). In his Statement of Appeal, the Appellant nominated Mr. Clifford J. Hendel, Attorney-at-Law in Madrid, Spain, as an arbitrator.

72. On 17 June 2019, the Appellant sent a letter to the CAS Court Office, requesting an extension of time to file its Appeal Brief by 28 June 2019.

73. On 18 June 2019, the CAS Court Office acknowledged receipt of the Appellant's Statement

of Appeal and noted that he requested an extension of time to file its Appeal Brief by 28 June 2019. On behalf of the CAS Secretary General and pursuant to Article R32 (2) of the Code, the CAS Court Office granted the Appellant's request.

74. On that same date, the CAS Court Office informed the Appellant that Mr. Clifford J. Hendel was no longer a member of the CAS list of arbitrators. He was requested to nominate a new arbitrator from the list of CAS arbitrators within ten (10) days, failing which the proceedings shall be terminated. More specifically, the CAS Court Office informed the Appellant as follows:

> *I note that the Appellant's nomination of Mr Clifford J. Hendel, Attorney-at-law in Madrid, Spain, as an arbitrator. However, the Appellant is advised that Mr Clifford J. Hendel is no longer a member of the CAS list of arbitrators. Therefore, the Appellant is requested to nominate another arbitrator from the list of CAS arbitrators published on the CAS website (www.tas-cas.org), within ten (10) days from receipt of this letter by email.*
>
> *If the above mentioned requirement is not fulfilled within the limit granted, the present arbitration shall be terminated in accordance with Article R36 of the Code.*
>
> *Further to the designation of a new arbitrator by the Appellant, the Respondent will then benefit from a similar time limit to appoint its arbitrator.*

75. On 27 June 2019, the Appellant filed his Appeal Brief, with exhibits, in accordance with Article R51 of the Code. In his Appeal Brief, the Appellant requested to be granted a second round of submissions.

76. On 1 July 2019, the CAS Court Office informed the Parties of the following:

> *I refer to my letter of 18 June 2019 whereby the Appellant was invited to nominate a new arbitrator as replacement of Mr Clifford J. Hendel, who is no longer member of the CAS.*
>
> *According to our records, the 10-day time limit to proceed with the nomination of the new arbitrator expired on 28 June 2019. To date, the CAS Court Office did not receive any information from the Appellant in this respect.*
>
> *The Appellant is therefore invited, within three (3) days upon receipt of this letter by email, to provide the CAS Court Office with a proof of notification of the arbitrator, failing which the present proceedings shall be terminated.*

77. On 1 July 2019 and further to the CAS Court Office letter, the Appellant nominated Prof. Dr. Martin Schimke, Attorney-at-Law in Dusseldorf, Germany, as arbitrator.

78. On the same date, and in response, the CAS Court Office acknowledged the Appellant's letter of 1 July 2019 and noted that the Appellant nominated Prof. Schimke. The CAS Court Office informed the Parties that the 10-day time limit to nominate the new arbitrator elapsed on 28 June 2019 and therefore, the nomination of Prof. Schimke was late. Nevertheless, FIFA was invited to file its comments on this issue, as necessary, within a 2-day deadline.

In particular, the CAS Court Office informed the Parties as follows:

> *I acknowledge receipt of the Appellant's letter of today, a copy of which is enclosed for the Respondent's attention.*
>
> *I note that the Appellant nominates Dr Martin Schimke, attorney-at-law in Düsseldorf, Germany, as an arbitrator in the matter at stake.*
>
> *Notwithstanding the above, the Appellant is reminded of the content of my letter sent on 18 June 2019:*
>
> > *I note the Appellant's nomination of Mr Clifford J. Hendel, Attorney-at-law in Madrid, Spain, as an arbitrator. However, the Appellant is advised that Mr Clifford J. Hendel is no longer a member of the CAS list of arbitrators. Therefore, the Appellant is requested to nominate another arbitrator from the list of CAS arbitrators published on the CAS website (www.tas-cas.org), within ten (10) days from receipt of this letter by email.*
> >
> > *If the above mentioned requirement is not fulfilled within the limit granted, the present arbitration shall be terminated in accordance with Article R36 of the Code.*
> >
> > *Further to the designation of a new arbitrator by the Appellant, the Respondent will then benefit from a similar time limit to appoint its arbitrator.*
>
> *Such letter was sent to and received by the Appellant on 18 June 2019 (see email delivery). In light of the foregoing, the 10-day time limit to nominate the new arbitrator elapsed on 28 June 2019. Consequently, the nomination of Dr Schimke is late.*
>
> *Yet, the Respondent is invited to file its comments, within two (2) days from receipt of this letter by email. The Respondent's silence will not be considered as an agreement. In case of objection, the present proceedings shall be terminated in accordance with Article R36 of the CAS Code.*

79. Also on 1 July 2019, and further to a letter he had sent earlier that day nominating Prof. Schimke, the Appellant sent a second letter to the CAS Court Office requesting an extension of time until 1 July to nominate his arbitrator. In his letter, the Appellant noted that the removal of Mr. Clifford J. Hendel from the CAS list was not publicly announced. He also submitted to the CAS Court Office the award CAS 2017/A/5019 whereby a CAS Panel confirmed the admissibility of an appeal despite the late payment of the CAS Court Office fee by the appealing party.

80. On 2 July 2019, the CAS Court Office acknowledged receipt of the Appellant's second letter of 1 July 2019 and noted his request for an extension of time by 1 July to nominate his arbitrator. The CAS Court Office reminded the Appellant that the time limit to nominate his arbitrator elapsed on 28 June 2019. In particular, the CAS Court Office informed the Parties as follows:

I acknowledge receipt of the Appellant's letter of 1 July 2019, a copy of which is enclosed for the Respondent's attention.

I note that the Appellant requests an extension of time by 1 July to nominate his arbitrator. The Appellant is reminded of Article R-32 (2) of the CAS Code which provides that "[U]pon application on justified grounds and after consultation with the other party (or parties), either the President of the Panel or, if she/he has not yet been appointed, the President of the relevant Division, may extend the time limits provided in these Procedural Rules, with the exception of the time limit for the filing of the statement of appeal, if the circumstances so warrant and provided that the initial time limit has not already expired." (emphasis added).

As mentioned in my letter of 1 July 2019, the Appellant's time limit to nominate his arbitrator elapsed on 28 June 2019. Therefore, any request for extension of time should have been submitted by such date at the latest. In light of the foregoing, the Respondent is invited, by 3 July 2019, to state whether it agrees with the Appellant's late request for extension of time.

Besides, it is correct that the removal of Mr Clifford J. Hendel from the CAS list was not publicly announced. This is particularly the reason why the undersigned Counsel drew to the Appellant's attention that Mr Hendel was not a CAS arbitrator anymore and invited him to nominate a new arbitrator (see CAS Court Office's letter of 18 June 2019).

Finally, I take note of the arbitral award submitted by the Appellant. The Respondent, if it so wishes, may file its comments within the above-mentioned time limit. I remain at the parties' disposal for any further information.

81. On 3 July 2019, FIFA filed its comments with respect to the extension of time for the nomination of the Appellant's arbitrator. The Respondent disagreed with the Appellant's request for an extension of time to nominate a new arbitrator chiefly for the following reasons:

- The Appellant's request was done after the expiration of the initial deadline and was not justified on any grounds. In this respect, Article R32 of the Code clearly stipulates that time limits may be extended if the party's application is based on justified grounds, if the circumstances of the case so warrant, and if the initial time limit has not yet expired.

- With respect to the award CAS 2017/A/5019 referred to by the Appellant, FIFA was not a party to the proceedings in CAS 2017/A/5019 unlike the Appellant's counsels and is not aware of the detailed factual background of this case. Even so, from the content of par. 23 and 49 of the award, it appears that the appealing party in said case proactively took steps to meet the deadline to pay the CAS Court Office fee. In the present case, the Appellant did not take any steps to nominate a new arbitrator within the time limit granted by the CAS Court Office and did not undertake the necessary measures to comply with the requirements of Article R36 of the Code.

- The Appellant nominated a replacement of the arbitrator only after being requested by the CAS Court Office to provide it with a proof of notification of the arbitrator (failing which the proceedings would be terminated).

- This Panel could only follow the approach adopted by the CAS Panel in CAS 2017/A/5019 if the Appellant would have nominated another arbitrator not included in the football list during the additional time limit given on 18 June 2019. But, this is not the case here as the Appellant remained silent. Hence, the decision taken by the CAS Panel in CAS 2017/A/5019 is not comparable to the present case and does not set any binding point of reference for this Panel.

- The present proceedings shall be terminated since the Appellant filed his request after the original deadline and therefore, no extension can be granted in such context.

82. On 5 July 2019, the CAS Secretary General recognized that the CAS letter of 18 June 2019, setting the time limit for the Appellant to nominate a new arbitrator, was not sent in accordance with Article R31 of the Code as it was sent by email only and not in a manner which allows the sender to check when the message was uploaded and read. Therefore, in the absence of any proof of receipt, the CAS was not in position to establish with proper evidence the date and time when the letter of 18 June 2019 was actually received by Counsel of the Appellant. As Prof. Schimke was nominated on 1 July 2019, the CAS considered that such nomination was not late and could be validated. More specifically, the CAS Secretary General advised the Parties of the following:

> *By letter of 2 July 2019, the CAS Court Office noticed that the nomination of Prof. Martin Schimke in replacement of Mr. Clifford Hendel was untimely ("the Appellant's time limit to nominate his arbitrator elapsed on 28 June 2019"). However, after an internal review of this matter, it appears that the CAS letter dated 18 June 2019, setting the time limit for the Appellant to nominate a new arbitrator, has not been sent in accordance with Article R31 of the CAS Code ("All arbitration awards, orders, and other decisions made by CAS and the Panel shall be notified by courier and/or by facsimile and/or by electronic mail but at least in a form permitting proof of receipt").*
>
> *Given the unusual and exceptional circumstances linked to the replacement of the arbitrator initially appointed (due to his non-renewal on the CAS list after the nomination by the Appellant took place) and the importance of the decision requesting the Appellant to nominate a different arbitrator, Article R31 of the CAS Code is clearly applicable in the present situation.*
>
> *The CAS letter of 18 June 2019 was sent by e-mail only and not in a manner which allows the sender to check when the message was uploaded and read. Therefore, in the absence of any proof of receipt, the CAS is not in position to establish with proper evidence the date and time when the letter of 18 June 2019 was actually received by Counsel for the Appellant. In particular, it cannot exclude the possibility that the letter was received on 19 June 2019, which would mean that the 10-day time limit for the nomination of the new arbitrator by the Appellant would have elapsed on 1 July 2019.*

As Prof. Martin Schimke was nominated on 1 July 2019, the CAS considers that such nomination is not late and can be validated. We trust that all parties and the CAS administration acted in good faith in this matter. On behalf of the CAS, I apologize for the present confusion, mainly caused by the unusual circumstances surrounding the replacement of the arbitrator initially selected by the Appellant.

The arbitration procedure shall therefore resume, and so the constitution of the Panel.

83. On 15 July 2019, FIFA nominated Mr. Jordi López Batet, Attorney-at-Law in Barcelona, Spain, as arbitrator.

84. On 7 August 2019, following an agreed-upon extension of time, FIFA filed its Answer in accordance with Article R55 of the Code. In its Answer, FIFA disputed the admissibility of the appeal, claiming that the Appellant failed to nominate an arbitrator from the CAS list within the deadline stipulated by the CAS Court Office.

85. On 9 August 2019, FIFA notified the CAS Court Office that it preferred this appeal to be decided solely on the Parties' written submissions, without the need to hold a hearing.

86. On 14 August 2019, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, confirmed the appointment of the Panel as follows:

President:	The Hon. Michael J. Beloff M.A. Q.C, Barrister in London, United Kingdom
Arbitrators:	Prof. Dr. Martin Schimke, Attorney-at-Law, Dusseldorf, Germany
	Mr. Jordi López Batet, Attorney-at-Law in Barcelona, Spain

87. On 16 August 2019, the Appellant notified the CAS Court Office of his preference for a hearing to be held in this procedure.

88. On 21 August 2019, the CAS Court Office, on behalf of the Panel, notified the Parties that the Panel would proceed with a hearing.

89. On that same day, the CAS Court Office informed the Parties of the appointment of Ms Marianne Saroli, Attorney-at-Law, Montreal, Canada as *ad hoc* clerk.

90. On 27 August 2019, the Panel took note of the objection to the admissibility of the appeal raised by FIFA in its Answer of 7 August 2019. The Appellant was then invited by the CAS Court Office to file his comments to such objection within ten (10) days from receipt of this letter and the Respondent to respond within ten (10) days of receipt of the Appellant's comment.

91. On that same date, the Panel dismissed the Appellant's request to be granted a second round of submissions in his Appeal Brief as it found no exceptional circumstances pursuant to Article R56 of the Code to allow such a second round.

92. On 29 August 2019, the CAS Court Office, on behalf of the Panel, called the Parties and their witnesses to appear at a hearing scheduled for 18 November 2019 in Lausanne, Switzerland.

93. On 9 September 2019, FIFA and the Appellant respectively, signed and returned the order of procedure in this appeal. Both the Appellant and FIFA specified on their respective order of procedure that their signature was without prejudice to the issue relating to the admissibility of the appeal.

94. On 10 September 2019, the Appellant filed his comments on the admissibility objection raised by FIFA, together with additional documents.

95. On 23 September 2019, FIFA responded to the Appellant's comments.

96. On 7 October 2019, the CAS Court Office sent an invitation letter to the Swiss Embassy, mentioning that a hearing was scheduled for 18 November 2019 and that the attendance of the Appellant was requested.

97. On 9 October 2019, FIFA requested the production of documents, *i.e.* the original email message in *msg* format including the letter of 18 June 2019 which was sent to the parties by the CAS Court Office on 18 June 2019 at 12:25 pm.

98. On 16 October 2019, the Appellant provided his comments on FIFA's request to produce documents.

99. On 1 November 2019, further to a review of the Parties' submissions on the Respondent's request for production of documents, the Panel considered that the document requested by FIFA, *i.e.* the original email message in *msg* format including the letter of 18 June 2019 which was sent to the parties by the CAS Court Office on 18 June 2019 at 12:25 pm, was likely to exist and to be in the Appellant's possession, or at least of his counsel. The Panel also considered that the production of such document was necessary to resolve the issue of the admissibility of the appeal. The Appellant was therefore requested to produce, by 8 November 2019, the original email message in *msg* format including the letter of 18 June 2019 which was sent to the parties by the CAS Court Office on 18 June 2019 at 12:25 pm.

100. On 8 November 2019, the Appellant submitted a PDF printed copy of the email that was sent by the CAS Court Office on 18 June 2019 at 12:25 pm, acknowledging that said electronic correspondence indicated when it was sent, not when it was received.

101. On 11 November 2019, the Appellant requested adjournment of the hearing of 18 November 2019 and selection of a new date, providing the following explanations from his then legal counsel Mr. Paolo Torchetti ("Mr. Torchetti") for his request to the CAS Court Office:

> *We write on behalf of the appellant and further to the oral hearing of this matter set to be heard the 18 November 2019. The Appellant has advised that he has yet to have received their visas for entry to Switzerland. The airplane tickets have been purchased (attached) however it is unclear when the visas will arrive. The main issue is that both passports are still at the embassy and that international travel is impossible. We also note that the Appellant is set to travel on Wednesday, and it*

was indicated that the visa has not been delivered yet. For the sake of planning the Appellant requests that the oral hearing is suspended and a new date is selected. We are terribly sorry for this inconvenience however at this point the embassy was unable to say when the visas will be ready.

102. On 12 November 2019, on behalf of the Panel, the CAS Court Office invited i) the Respondent to comment on the Appellant's request to postpone the hearing; and ii) the Appellant to provide more information about the visa process – especially the date of the application – and to produce a copy of the visa application to the Swiss Embassy. The Parties were invited to provide the requested comments, information and documents no later than 13 November 2019.

103. On 13 November 2019, the Appellant provided the CAS Court Office with a copy of his visa application form and stressed that the quality of the internet connection in South Sudan would make it difficult to secure a connection to communicate via Skype.

104. On that same date, the Respondent sent to the CAS Court Office the following comments with respect to the Appellant's request to postpone the hearing:

- The Appellant informed the Panel and the Respondent of his visa issues only six days before the hearing.

- The hearing date had been set since 29 August 2019 while arrangements had been made by the Respondent and the Panel to attend.

- Neither the Appellant nor his witness needed to physically attend the hearing, as they could participate via videoconference.

- The Appellant was represented and assisted by a legal counsel.

- Should the Appellant's postponement request be granted by the Panel, the Respondent reserved its right to reimbursement for the costs it incurred to attend the 18 November 2019 hearing, notably for transportation and accommodation.

- The Appellant did not comply with the Panel's evidentiary request of 1 November 2019 as he did not send the email of 18 June 2019 in *msg* format. According to the Respondent, the Appellant filed the PDF printed version of the 18 June 2019 email to argue in bad faith that it did not contain the date of receipt.

105. On 14 November 2019, the Panel noted that i) the Appellant was offered a proper opportunity to present his case to the CAS; ii) the Appellant agreed on 29 August 2019 to the hearing being scheduled for 18 November 2019; iii) the CAS invitation letter was sent to the Swiss Embassy on 7 October 2019; iv) according to the document provided by the Appellant on 13 November 2019, it appeared that he only applied for his visa on 5 November 2019 and; v) the Respondent objected to the Appellant's request to postpone the hearing. Bearing the aforesaid in mind, the Panel advised the Parties that the hearing

scheduled on 18 November 2019 was confirmed and made the following consequential observations:

- Pursuant to Article R44.2 of the Code, a party or a witness may be heard by telephone conference, enabling the Appellant to present his case by those means if no other.

- Neither the Respondent, nor the Panel should unnecessarily bear the consequences of the Appellant's lack of diligence in applying for his visa sufficiently in advance to enable him to travel for the hearing.

- The Appellant had failed to comply with the Panel's evidentiary order to provide *"the original email message in msg format including the letter of 18 June 2019 which was sent to the parties by the CAS Court Office on 18 June 2019 at 12:25 pm"*.

106. On that same day, the Appellant's legal counsel at that time – Mr. Torchetti – submitted to the CAS Court Office the email message in *msg* format including the letter of 18 June 2019 which was sent to the parties by the CAS Court Office on 18 June 2019 at 12:25 pm. Mr. Torchetti asserted that it was not the Appellant's intention to evade the Panel's evidentiary order as he had previously responded with what he thought was the correct format. Mr. Torchetti further informed the CAS Court Office that he was no longer representing the Appellant.

107. On 15 November 2019, the Appellant requested to postpone the hearing on the basis of Mr. Torchetti's withdrawal from his case and of "technical issues with the Swiss embassy" regarding his visa application.

108. On that same date, the Panel – in light of that latest request and the information provided by the Appellant, *i.e.* the late withdrawal of his legal counsel, felt compelled to cancel the hearing on 18 November 2019 in the interests of fairness to the Appellant and informed the Parties that it would suggest new dates shortly.

109. On 20 November 2019, the Parties were advised that the Panel would be available for a hearing on 4, 19, 20 February 2020.

110. On 22 November 2019, the Appellant informed the CAS Court Office that he was available on 20 February 2020, noting as follows:

> *Dear Sir/Madam*
>
> *I acknowledge receipt of your email and thank you for it.*
> *After discussion with my lawyers we have chosen the date 20th February 2020 for the hearing and I shall be there with my lawyers on time.*
>
> *Thank you very much for your collaboration and giving me a new chance for hearing*
>
> *Your sincerely*

Chabur Goc Alei

111. On 25 November 2019, Prof. Dr. Martin Schimke made an updated disclosure to the Parties as follows:

> ***TO WHOM IT MAY CONCERN***
>
> *I am impartial, and independent of each parties, and intend to remain so, however, I wish to call the parties' attention to the following fact:*
>
> *I have just been informed that partners at Bird & Bird have been instructed by FIFA on a commercial matter, which involves advising FIFA on international broadcast and advertising regulation. It is purely a commercial matter for FIFA and does not relate to any of FIFA's sports regulatory or player-related functions whatsoever. In no way am I, or will I be, involved in this work, and assure that I have no access to the matter files whatsoever.*

112. On 26 November 2019, the CAS Court Office forwarded Prof. Schimke's email to the Parties. The CAS Court Office reminded the Parties that, pursuant to Article R34 of the Code, an arbitrator may be challenged if the circumstances give rise to legitimate doubts over his independence. The CAS Court Office also reminded the Parties that a challenge shall be brought within seven (7) days after the ground for the challenge has become known. No objection being raised in relation to Prof. Schimke's independence, neither party has challenged his continued appointment as arbitrator within the prescribed deadline.

113. On 27 November 2019, the Respondent informed the CAS Court Office that it would be available on 19 and 20 February 2020 for a hearing.

114. On that same date, the CAS Court Office informed the Parties that the hearing would be held on 20 February 2020 at the Offices of the CAS Anti-Doping Division.

115. On 22 January 2020, the CAS Court Office informed the Parties that the time limit to issue the arbitral award had been extended by 15 April 2020.

116. On 3 February 2020, the CAS Court Office informed the Parties as follows:

> *I refer to my letter of 27 November 2019 whereby the Parties were invited to provide the CAS Court Office with their list of participants by 31 January 2020.*
>
> *Please note that I received no communication in this regard within the prescribed time limit.*
>
> *The Parties are therefore invited to communicate their list of attendees no later than 7 February 2020.*

117. On 3 February 2020, the Appellant sent the following email to the CAS Court Office:

Dear Secretary

We received a communication that the case is postponed to 15th April 2020, in this regard I want to know when will be the final date of sending the list of the people that will be accompany me

With thanks & best regards

Chabur Goc

118. On that same date, the CAS Court Office acknowledged receipt of the Appellant's email and advised him as follows:

I acknowledge receipt of the Appellant's email of today, a copy of which is enclosed for the Respondent's attention.

The Appellant is advised that the purpose of my letter 22 January 2020 was to inform the Parties that the time limit to communicate the Arbitral Award had been extended until 15 April 2020.

Therefore, for sake of clarification, the hearing fixed on 20 February 2020 is maintained and the Parties' time limit to submit the list of attendees at such hearing expires on 7 February 2020.

119. On 4 February 2020, the Appellant sent the following email to the CAS Court Office:

Dear Secretary

I received three different communications One was on 22nd January 2020 in which The case was extended for the date of 15th April 2020.

Yesterday I received two different letters saying the hearing will be on 20th February 2020 and we should send the names of the people that can attend the hearing on 7th February 2020.

Please can you clarify?

Chabur Goc

120. Later on 4 February 2020, in response to the Appellant's email, the CAS Court Office informed the Parties as follows:

I acknowledge receipt of the Appellant's email of today, a copy of which is enclosed for the Respondent's attention.

The Appellant is advised of the following:

-According to my letter of 27 November 2019 (see attached), the hearing in this matter will be held on 20 February 2020 (9:30 am) at the CAS Anti-Doping Offices, Avenue de Rhodanie 60, 1007 Lausanne, Switzerland;

-By 7 February 2020, the Parties are invited to announce the names of the members of their delegation who will attend the hearing of 20 February 2020, i.e. counsel, witness (es), expert (s), if any;

-By 15 April 2020, the Panel shall render the Arbitral Award (decision), bearing in mind that the aforesaid time limit may be extended pursuant to Article R59 of the Code.

Finally, the Appellant is requested to always refer to the case at hand, i.e. CAS 2019/A/6326 Chabour Goc Alei v. FIFA, in all correspondence with the CAS Court Office.

121. In the Panel's view, even if (*quod non*) there be any doubt as to the procedural significance of the date of 15 April 2020 arising from earlier correspondence sent to the Appellant in January and February 2020 from the CAS Court Office, it was removed by the letter of 4 February 2020 which provided no basis whatsoever for the Appellant not to prepare for and attend a hearing (as in the event he did) on the adjourned date of 20 February 2020. The date of 15 April 2020 was clearly the then stipulated time limit for the Panel to render its award, not the date of the adjourned hearing.

122. On 4 February 2020 also, the Respondent provided the CAS Court Office with its list of attendees at the hearing.

123. On 7 February 2020, the Appellant sent to the CAS Court Office the following email:

Dear Secretary,

Below are the names of the people that will accompany me for the hearing.

As I stated in previous emails I was totally confused about the letter of extension for 14th April 2020.

Am afraid the embassy will not give us the visa on time in case we can't get the visa on time we shall ask for at least more 15 days to get it done or do the hearing at the mentioned date of 15th April 2020.

We shall need a visa letter to the Swiss Embassy in Ethiopia so they can urgently give us the visa within the time will allow us to catch up with the date of the hearing on 20th February 2020. And the names are as follows:

1- Chabur Goc Alei KUOL
2- Mr Abraham Tito
3- Mr Leek Panchol
4- Mr Paolo TORCHETTI Laywer (no need visa)

With thanks

Chabur Goc

South Sudan - Juba

124. On 7 February 2020, in response to the Appellant's email, the CAS Court Office advised the Parties as follows:

> *In order to send the visa requests to the Swiss Embassy in Ethiopia, the Appellant is requested, no later than 10 February 2020 to provide the CAS Court Office with a copy of the passports of all persons who will be attending the hearing scheduled on 20 February 2020.*

125. On 11 February 2020, the Appellant informed the CAS Court Office that he had sent the letter of invitation to the Swiss Embassy. He also forwarded to the CAS Court Office an email from the Cooperation Office, Embassy of Switzerland in Hai Jerusalem, Juda, South Sudan, which stated the following:

> *Dear Chabur,*
>
> *As mentioned on our website, visa applications need to be submitted at least 15 working days prior to the intended travel date.*
>
> *Best regards,*
> *Visa section*

126. On 13 February 2020, the CAS Court Office responded to the Appellant's email of 11 February 2020 and sent to the Parties the following correspondence:

> *I refer to the Appellant's email of 11 February 2020 enclosing an email form the Swiss Embassy in Ethiopia informing that "visa applications need to be submitted at least 15 working days prior to the intended travel date".*
>
> *For the avoidance of doubts, and as clearly mentioned in the CAS letter of 27 November 2019 (see attached), the Appellant is reminded that the hearing in this matter will be held on 20 February 2020 at 9.30 am (CET) at the Offices of the CAS Anti-Doping Division, Avenue de Rhodanie 60, 1007 Lausanne, Switzerland.*
>
> *Should the Appellant not be in a position to travel to Lausanne, please note that he may attend the hearing by video or telephone conference in accordance with Article R44.2 (4) of the Code.*

127. On 14 February 2020, the CAS Court Office added as follows:

> *I refer to my letter of yesterday, 13 February 2020, in this matter.*
>
> *On behalf of the Panel, the Appellant is requested to inform the CAS Court Office, no later than 17 February 2020, of his intentions regarding the hearing scheduled on 20 February 2020, i.e. whether either (a) he and his witness(es) will personally attend such hearing, or (b) he requests to participate by video (Skype) or telephone conference, or (c) he will not attend the hearing at all.*

128. On 18 February 2020, the CAS Court Office further noted:

> *I refer to my letter of 14 February 2020 whereby the Appellant was invited to inform the CAS Court Office of his intentions regarding the hearing scheduled on 20 February 2020.*
>
> *As I received no communications in this respect within the prescribed time limit, and on behalf of the Panel, the Parties are advised of the following:*
>
> - *The hearing scheduled on 20 February 2020 at 9.30am (CET) is confirmed and will be held at the Offices of the CAS Anti-Doping Division, Avenue de Rhodanie 60, 1007 Lausanne, Switzerland;*
> - *The Appellant and his witness(es) are allowed to attend the hearing by video (Skype) or telephone conference in accordance with Article R44.2 (4) of the Code; and*
> - *The Appellant is requested to provide the CAS Court Office with his phone number and his Skype details no later than 19 February 2020 at 2.00 pm (CET).*
>
> *Finally, I draw to the Parties' attention that, pursuant to Article R57 (4) of the Code, "[I]f any of the parties, or any of its witnesses, having been duly summoned, fails to appear, the Panel may nevertheless proceed with the hearing and render an award."*

129. On that same date, the Respondent informed to the CAS Court Office that Mr. Leek Panchol ("Mr. Panchol") – an individual named in the Appellant's email of 7 February 2020 requesting a visa from the Swiss Embassy in Ethiopia – was neither mentioned in the Appellant's Appeal Brief nor in any other previous correspondences. Should Mr. Panchol be called as a witness at the hearing, the Respondent informed the CAS Court Office that it would object to the admissibility of his testimony.

130. On 18 February 2020, the Appellant explained that *"Mr. Leek is not just a witness he is also my lawyer in The Republic of South Sudan so to be included is a part of my defense team while we are facing some difficulties with getting hired Mr Paolo again to represent us at the court but we are still in contact with him to accomplish his mission, till then we will correspond you our final status by today afternoon."*

131. On 19 February 2020, the Appellant submitted to the CAS Court Office his phone number and skype details.

132. On 20 February 2020, a hearing was held in the present appeal. The Panel was assisted by Mr. Fabien Cagneux, CAS Counsel, Ms. Marianne Saroli, *ad hoc* Clerk to the Panel, and joined by the following:

> For Mr. Alei:
>
> Mr. Chabour Goc Alei, via telephone
> Mr. Leek Panchol (Legal Counsel), via telephone

Mr. Abraham Tito (Witness), via telephone

For the FIFA:

Mr. Miguel Liétard (Director of Litigation), in person
Mr. Alexander Jacobs (Legal Counsel), in person
Ms. Marta Ruiz-Ayúcar (Senior Legal Counsel), in person

133. With respect to the Respondent's objection to the admissibility of Mr. Panchol's testimony, the Appellant confirmed at the Hearing that Mr. Panchol was acting as his legal counsel, not as a witness. Hence, the Panel allowed the participation of Mr. Panchol at the hearing in that capacity.

134. At the outset of the hearing, the Parties confirmed that they had no objection as to the constitution of the Panel. At the conclusion of the procedure, no objection was made to the fairness of the hearing during which the Panel heard from both the Appellant and Mr. Panchol as well as from Mr. Miguel Liétard, Mr. Alexander Jacobs and Ms. Marta Ruiz-Ayúcar, and from Mr. Tito, the witness proposed by the Appellant.

V. SUBMISSIONS OF THE PARTIES

A. The Position of the Appellant

135. In his Statement of Appeal, the Appellant requested the following relief:

1. *To accept the Appellant's appeal.*

2. *To issue an award allowing the appeal and vacating the Decision declaring that the Appellant did not violate the FCE as follows:*

   a. *to find that he is not restricted from taking part in football related activities in any manner whatsoever; and*

   b. *to completely vacate the fine of 500,000 CHF and any other procedural costs requested in relation to the FIFA procedure.*

3. *Independently of the type of the decision to be issued, the Appellant requests the Panel:*

   a. *to fix a sum of 15,000 CHF to be paid by the Respondent to the Appellant to contribute to the payment of his legal fees and costs; and*

   b. *order the Respondent to pay the entirety of the administration costs and fees.*

4. *The Appellant reserves the right to amend the request for relief in the filing of the appeal brief*

136. The Appellant's submissions, in essence, may be summarised as follows:

i. FIFA applied the incorrect regulations

- The FIFA Ethics Committee wrongly applied the 2018 FCE to events that allegedly occurred in 2014 and 2015.

- FIFA accordingly violated the principle of *nulla poena sine lege praevia.*

ii. *Lex mitior* and Swiss Public Policy

- The FIFA Ethics Committee applied the 2018 FCE to the case and referred to Article 3 of the 2018 FCE without offering any analysis or attempting to apply the above principles in any way.

- In point of law, a code of ethics cannot be retroactively applied to substantive matters, and is a violation of Swiss public order; see Article 190 (2) (e), which concerns the necessity for an award to be compatible with Swiss public policy ("*ordre public*"). Moreover, the Swiss Federal Tribunal ("SFT") retains procedural and potentially substantive jurisdiction on an appeal.

- The *lex mitior* principle is protected in the 2012 FCE and 2018 FCE while it is part of public policy.

iii. Comparison between the 2012 FCE with the 2018 FCE

- The FIFA Ethics Committee ruled that none of the provisions of the 2012 FCE would be more beneficial to the Appellant, claiming their application would lead to the same result on the basis that the 2012 FCE created the same offences as the 2018 FCE and that the maximum sanctions in the 2018 FCE are equal or less to those in 2012 FCE.

- However, in point of fact the 2018 FCE has mandatory minimum sanctions for each of the relevant sections and is harsher than the 2012 FCE.

- With respect to the offence for misappropriation of funds, Article 21 (2) of the 2012 FCE and Article 28 of the 2018 FCE are different. The 2018 FCE prohibits behavior that "gives rise to the appearance of suspicion" which is not the case with the 2012 FCE. Also, the mandatory minimum fine of "CHF 100,000 as well as a ban on taking part in any football-related activity for a minimum of five years" in the 2018 FCE is not included in the 2012 FCE.

- The FIFA Ethics Committee violated Article 3 of the 2018 FCE by applying the 2018 FCE to this case and automatically imposing to the Appellant a minimum of 5 years prohibition from football activity.

- The same applies to the allegations against the Appellant relating to abuse of position, accepting or receiving benefits and conflicts of interest as each provision imposes a mandatory minimum sanction.

iv. Predictability of the sanctions, contradictory awards and public order

- The principle of predictability is fundamental as the offences and sanctions must be clearly and previously defined by law and must preclude the adjustment of existing rules to enable an application of them to situations or conduct that the legislator did not intend to penalize (*CAS 2014/A/3765*).

- There is a difference between procedural and substantive law when it comes to applying the *lex mitior* principle.

- A contradictory award is a violation of public policy under Article 190(2)(e) of the PILA. The FIFA Ethics Committee not only relies on the wrong statute but refuses to apply the 2012 FCE, which was in force at the time of the relevant events.

- Furthermore, this inability to refer to the correct FCE deprives the Appellant of his right to be heard.

- Under Swiss law, there are limits to the extent to which a person can waive his freedom as his personal rights are protected. Sanctions imposed by a sport federation or association that seriously harm "*the economic development of individuals who practice that sport as a profession are allowed only if the interests of the federation justify the infringement of those individuals' personal rights*" (BGE 123 III 193 at 2c/bb und cc p. 197 ff.)

v. Burden of Proof

- Pursuant to Article 97(3) of the FIFA Disciplinary Code ("FDC") and Article 50 of the 2018 FCE, the evaluation and standard of proof is on the "basis of personal convictions." The CAS has confirmed that it is FIFA's burden to demonstrate a violation of the FCE (CAS 2011/A/2426; CAS 2011/A/2625).

- The CAS pronounced on several occasions that the standard of "personal convictions" is analogous to "comfortable satisfaction", bearing in mind the seriousness of the allegations.

- In this context, FIFA did not meet its burden as it cannot prove to a level of comfortable satisfaction that:

    - the Appellant was the recipient of any benefits;
    - the bank accounts are linked to the Appellant;
    - the amounts to all companies were not for services rendered;
    - the Appellant alone did not have exclusive signing authority over the bank accounts.

- When there are numerous credible interpretations of the facts, the comfortable satisfaction standard cannot be met, even if it is the most plausible interpretation (CAS 2011/A/2625).

vi. Proportionality of the Sanction

- Should the Panel find that the Appellant violated the 2012 FCE or 2018 FCE, he requests that the sanction be reduced as it is disproportionate in all these circumstances.

- In line with the jurisprudence, the suspension for prohibition from football activities and the fine must be further reduced to either a warning or reprimand, or at the most a prohibition of one year, and that the fine to FIFA must be entirely cancelled.

- As a general proposition, the principle of proportionality dictates that the most extreme sanction must not be imposed before other less onerous sanctions have been exhausted (CAS 2011/A/2670).

- In CAS 2013/A/3139, it was established that "*the steady line of CAS jurisprudence provides that the sanctions imposed must not be evidently and grossly disproportionate to the offence (see CAS 2007/A/1217, para. 12.4; CAS 2012/A/2762, para. 122).*"

- The FIFA rules recognize that a sanction must be proportionate to the level of guilt such as Article 9 of the FCE.

- FIFA outlines a wide range of sanctions that are available in 2012 FCE of which the prohibition from taking part in any football related activity is the most severe and harmful. This sanction is a violation of the principle of proportionality particularly in comparison to the sanctions imposed on other persons who have been found to have violated the various codes of ethics:

    - In CAS 2011/A/2426, the CAS declared that a ban from taking part in any football-related activity at the national and international level for a period of three years as well as a fine of CHF 10,000 was proportionate.
    - In TAS 2011/A/2433, the CAS declared that a ban from taking part in any football-related activity at the national and international level for a period of two years.

- The violations in those cases are much more severe than those alleged against the Appellant. This demonstrates the disproportionality of the Appellant's sanction.

- The Appellant also refers to the following cases:

    - In TAS 2016/A/4474, Mr. Platini did not disclose CHF 2,000,000 he received in 2010 during the discussion of the expenses in an annual. The annual financial report was approved and signed by the committee with the 2,000,000 payment effectively concealed. The CAS found that this amount was not paid for work or services and he received a 4-year ban and a fine of 60,000 CHF.

- In CAS 2016/A/4501, Mr. Blatter authorized the payment of CHF 2,000,000 to Mr. Platini without any contractual basis and thus payment could only be construed as an undue gift. He received a 6-year prohibition from football related activities and a CHF 50,000 fine.

- The comparable sanction of a 4- and 6-year ban for this behavior which is more serious than in the present case demonstrates the disproportionality of the ban against the Appellant.

vii. Mitigating Factors

- A ten-year ban in this case will end the Appellant's career in football and is tantamount to a lifetime ban.

- In applying a potential sanction, it is necessary to take into account Article 9 of the 2012 FCE:

> *"1.The sanction may be imposed by taking into account all relevant factors in the case, including the offender's assistance and cooperation, the motive, the circumstances and the degree of the offender's guilt.*
>
> *2.The Ethics Committee shall decide the scope and duration of any sanction.*
>
> *3.Sanctions may be limited to a geographical area or to one or more specific categories of match or competition."*

- This article gives the CAS the legal authority to fix the sanction as it sees fit and to consider mitigating factors.

- The Appellant cooperated with FIFA, attended the audits and provided relevant information.

- The *Matuzalem* argument must be taken into account when considering whether to reduce the fine since a fine of CHF 500,000 deprives the Appellant of the right to work.

B. The Position of the Respondent

137. In its Answer, FIFA requested the following relief:

> *155. To confirm the inadmissibility of the Appellant's appeal;*
>
> *156. Alternatively, to dismiss the Appellant's appeal in its entirety and to confirm the decision rendered by the Adjudicatory Chamber of the FIFA Ethics Committee on 1 1 February 2019;*
>
> *157. In any case, to order the Appellant to bear all costs incurred with the present procedure and to cover all the legal expenses of FIFA related to the present procedure.*

138. FIFA's submissions, in essence, may be summarised as follows:

i. The Appellant's lack of evidence

- The Appellant did not dispute the facts of the case and did not provide any substantive arguments on the breached provisions of the FCE. Instead, he has simply focused on the procedural aspects of the case regarding the applicable FCE and the burden of proof.

ii. FIFA applied the correct regulations

- According to Article 3 of the 2018 FCE, the relevant FCE may be applied before it was enacted and whenever the relevant conduct occurred albeit that it must be shown that the relevant conduct contravened the 2012 FCE at the time of the relevant events between 2014 and 2015 in order for it to be sanctionable under the 2018 FCE. Additionally, the sanction imposed on the basis of the 2018 FCE may not exceed the maximum sanction available under the 2012 FCE. Article 3 of the 2018 FCE does not provide any rule relating to the existence or application of minimum sanctions under the 2018 FCE.

- At the time of the relevant events in 2014 and 2015, the 2012 FCE was in force.

- In the case at hand, Article 28, which corresponds to Article 21 (2) in the 2012 FCE relating to the misappropriation of funds, applies to this dispute as follows:

  Article 21 of the 2012 FCE reads as follows:

  Persons bound by this Code are prohibited from misappropriating FIFA assets, regardless of whether carried out directly or through, or in conjunction with, intermediaries or related parties, as defined in this Code.

  Persons bound by this Code must refrain from any activity or behaviour that might give rise to the appearance or suspicion of improper conduct as described in the foregoing sections, or any attempt thereof.

  Article 28 of the 2018 FCE provides as follows:

  Persons bound by this Code shall not misappropriate funds of FIFA, the confederations, associations, leagues or clubs, whether directly or indirectly through, or in conjunction with, third parties.

  Persons bound by this Code shall refrain from any activity or behaviour that might give rise to the appearance or suspicion of a breach of this article.

- The Appellant only quoted in his Appeal Brief article 21 (2) and failed to cite paragraph 3, thereof which is almost identical to Article 28 (2) of the 2018 FCE:

  Article 21 (3) of the 2012 FCE:

Persons bound by this Code must refrain from any activity or behaviour that might give rise to the appearance or suspicion of improper conduct as described in the foregoing sections, or any attempt thereof.

Article 28 (2) of the 2018 FCE:

Persons bound by this Code shall refrain from any activity or behaviour that might give rise to the appearance or suspicion of a breach of this article.

- Contrary to the Appellant's assertion, the "appearance of suspicion" is included in both FCEs. Moreover, the scope of application is the same with minor variations in the wording of both articles, namely "funds of FIFA" and "FIFA assets"; "intermediaries or related parties" and "third parties". The offence of misappropriation contained in the 2012 FCE is maintained in the 2018 FCE.

- While the Appellant argues that "*a mandatory minimum fine of CHF 100, 000 as well as a ban on taking part in any football-related activity for a minimum of five years*" is not part of the 2012 FCE, he "*ignores the existence of Article 9 par. 2 of the 2018 FCE, which enables the Ethics Committee to impose a lower sanction than the minimum or even impose alternative sanctions (...) The equivalent of the favorable Article 9 of the 2018 FCE did not exist under the 2012 FCE.*"

- Hence, the Appellant is incorrect to claim that the FIFA Ethics Committee violated Article 3 of the 2018 FCE by wrongfully applying the 2018 FCE and imposing a minimum five-year prohibition from football activity. Under the applicable 2012 FCE, there was no maximum limit for the suspension, notably in Article 6. The same applies to the sanction established under the relevant Article 28 (3) of the 2018 FCE.

  Article 28 (2) of the 2018 FCE:

  Violation of this article shall be sanctioned with an appropriate fine of at least CHF 100,000 as well as a ban on taking part in any football-related activity for a minimum of five years. The amount of misappropriated funds shall be included in the calculation of the fine. The sanction shall be increased accordingly where the person holds a high position in football, as well as in relation to the relevance and amount of the advantage received.

- There are no differences in the wording of the relevant provisions, and the maximum sanctions are the same in both editions of the FCE, *i.e.* a life ban.

- The Appellant did not demonstrate to what extent the 2012 FCE was more beneficial to him than the 2018 FCE.

iii. The Burden of proof

- The Final Report and the Decision are exhaustive, clear and conclusive about the Appellant's misconduct and the burden of proof met for the following reasons:

- With respect to the Appellant's allegation that FIFA did not meet the burden of proving that the bank accounts were linked to him, the only references to bank accounts are those in relation to two transfers (USD 150,000 and USD 100,000) executed on 3 October 2014 from the SSFA account to an unknown account. However, the Appellant failed to provide documents or explanations to justify the transfers. For those funds to have been misappropriated by the Appellant, the accounts do not necessarily have to be owned by or linked to the Appellant.

- With respect to the Appellant's allegation that FIFA did not meet the burden of proving that the amount transferred to all companies were for services, FIFA admits that the Appellant's companies may have rendered some "services" to the SSFA. There is nonetheless a potential conflict of interest that was never mitigated by the approval of the SSFA executive committee. Indeed, Abyei Exchange offered a very low exchange rate to the SSFA for its exchanges from USD to SSP, leading to a significant USD 129,194 loss for the SSFA and giving the Appellant's company a significant financial advantage. The same happened with the Appellant's other companies - I-Tech and United - which supposedly also provided "services".

- With respect to the Appellant's allegation that FIFA did not meet the burden of proving that he did not have exclusive signing authority, this did not prevent him from exceeding such authority namely by transferring significant amounts to unknown bank accounts. Furthermore, the Appellant failed to establish that the approval was received from the SSFA executive committee for any of his undertakings.

iv. Proportionality of the Sanction

- The sanction imposed by the FIFA Ethics Committee is just and proportionate. The FCE establishes minimum and maximum limits for certain infringements, but not such maximum limit exists for the most serious infringements.

- Misappropriation is one of the most serious offences under the FCE and the FIFA Ethics Committee can impose bans from taking part in any football-related activity from five years up to a lifetime ban considering the principle of proportionality and all circumstances of the case, while keeping in mind that the sanction must serve both a repressive and preventive purpose.

- Notwithstanding its power to review a case *de novo* in accordance with Article R57 of the Code, the Panel can only amend a disciplinary decision of a FIFA judicial body in cases in which it finds that the relevant FIFA judicial body has exceeded the margin of discretion accorded to it by the principle of association autonomy.

- FIFA takes a strong stance against any potential unethical act, especially of misappropriation, which is very damaging to the good governance, integrity and viability of football. FIFA must apply a zero-tolerance policy, against any conduct, from any football stakeholder worldwide, directly or indirectly, of misappropriation of funds.

- A violation of the FIFA's Regulations, particularly of misappropriation, cannot go unsanctioned and must be dealt with accordingly while the importance of Articles 20 and 28 of the 2018 FCE is validated by the fact that such provisions are binding at national level and must be included without amendments in the association's national regulations.

- In the case at hand, the Appellant, his companies and his brother benefited from the misappropriation of sums totaling approximately USD 900,000.

- The cases cited by the Appellant do not establish that the sanction imposed on the Appellant was disproportionate. The cases CAS 2011/A/2426 and TAS 2011/A/2433 do not concern facts of misappropriation of funds but of bribery and concerned solicitation as opposed to actual receipt of bribes.

- FIFA specifies that the sanction imposed on the Appellant is in line with previous practice of the FIFA Ethics Committee in similar cases related to misappropriation, bribery, offering and accepting gifts or benefits and conflicts of interests, for example the cases of Chuck Blazer (life-ban), Jeffrey Webb (life-ban), Osiris Guzman (ban of ten years), or Tai Nicholas (ban of eight years).

- Lastly, FIFA pinpoints that the Appellant did not collaborate in any way during the proceedings.

VI. JURISDICTION

139. The jurisdiction of the CAS derives from Article R47 of the Code in connection with Article 58 para 1 of the FIFA Statutes.

140. Article R47 of the Code provides as follows:

> *An appeal against the decision of a federation, association or sports-related body may be filed with the CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body.*

141. Article 58 (1) of the FIFA Statutes reads as follows:

> *Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of notification of the decision in question.*

142. The jurisdiction of the CAS is not contested by the Parties. Moreover, all Parties confirmed the CAS jurisdiction by the execution of the Order of Procedure. It follows, therefore, that CAS has jurisdiction in this appeal.

VII. ADMISSIBILITY

143. Article R49 of the Code provides as follows:

> *In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.*

144. The Decision was rendered on 11 February 2019; however, the grounds of the Decision were not notified to the Parties until 24 May 2019. The Appellant's Statement of Appeal was filed on 12 June 2019, *i.e.* within the expiry of 21-day deadline to file with the CAS. The Statement of Appeal, therefore, complies with the requirements set by Article R48 of the Code.

145. The admissibility of the appeal, however, is disputed by FIFA not because it was outside the time limit for an appeal but rather because the Appellant failed to nominate an arbitrator from the CAS list within the deadline provided by the CAS Court Office as required by Article R48 of the Code or a replacement arbitrator within the deadline provided by Article R36 or as laid down by the CAS Court office on 18 June 2019

146. In this respect, the Parties' arguments may be summarized as follows:

The Respondent:

- FIFA does not agree with the conclusion in the correspondence dated 5 July 2019 by which the CAS Secretary General accepted the Appellant's nomination of a new arbitrator in the present proceedings.

- FIFA argues that it was never asserted that the Parties had not received the CAS Court correspondence of 18 June 2019 by email.

- FIFA received this email on 18 June 2019 at 13.20 pm, claiming that the correspondence was also addressed to the Appellant's representative, Mr. Torchetti. No reason exists why FIFA, but not Mr. Torchetti, would have received this email.

- Indeed, Mr. Torchetti never asserted not having received the CAS Court letter via email on the 18 June 2019.

- The Appellant was aware of his failure to comply with the CAS Court Office request as he sent two letters to the CAS Court Office on 1 July 2019, *i.e.* the first letter concerning the nomination of a new arbitrator, Prof. Schimke, and the second letter containing a request from the Appellant for an extension of time to nominate a new arbitrator. This was clearly triggered by the CAS Court Office letter.

- FIFA underlines the existence of the "Practitioner's Guide to the Court of Arbitration for Sport", which indicates that CAS supports the "objective-receipt theory" and, considers any communication as validly received if the said communication has been delivered to the addressee.

- The Appellant admitted having knowledge of the communication of the CAS Court Office letter of 18 June 2019 the moment he sent the two letters on 1 July 2019 implying the correct receipt of the email sent on 18 June 2019. In the "CAS Commentary", it is stated that "*according to CAS Court jurisprudence, a formal irregularity of the notification of the decision is without effect to its validity when the athlete has anyway admitted having knowledge thereof, by filing an appeal against it*".

- Article R31 (2) of the Code is not applicable because the correspondence of 18 June 2019 is not an award, order or decision and it was anyway received by the Parties on that same day.

The Appellant:

- The CAS accepted the timeliness of the nomination of the Appellant's arbitrator on the basis that the deadline was 1 July 2019. Indeed, the CAS correspondence of 18 June 2019 setting the time limit for the Appellant to nominate a new arbitrator was not delivered in accordance with Article R31 of the Code as it was not "*in a form permitting proof of receipt*".

- On 5 July 2019, the CAS Secretary General indicated that "*it cannot exclude the possibility that the letter was received on 19 June 2019 which would mean that the 10-day time limit for the nomination of the new arbitrator by the Appellant would have elapsed on 1 July 2019*"; and "*such nomination is not late and can be validated*". Thus, on 5 July 2019, the CAS itself found that the letter could have been received on 19 June 2019 by the Appellant and in such case the deadline was 1 July 2019 since the original deadline fell on a non-business day.

- This decision was rendered by the CAS, is of administrative nature and is therefore not subject to the *de novo* power of the Panel because it is not the decision of a subsidiary federation. The Appellant submits that this analysis is consistent with Article 182 of the Switzerland's Federal Code on Private International Law.

- In its Answer, FIFA claims that the Appellant knew the letter of 18 June 2019 was delivered and received. In this context, and pursuant to Article 8 of the Swiss Civil Code, the burden of proof with respect to this issue is on FIFA. There is no evidence indicating that the Appellant received the letter on 18 June 2019 as that provision requires.

- FIFA's interpretation of the Code is overly restrictive. In fact, FIFA is looking for an outcome that would violate the principle of "excessive formalism". Albeit, the principle of "excessive formalism" is not violated in certain cases where it upholds deadlines imposed by the CAS Code. There is an exception where "excessive formalism takes place when strictly applying the rules is justified by no interest worthy of protection."

- In this respect, the Appellant further underlines that he nominated an arbitrator when he filed his Statement of Appeal. There is no justifiable interest in refusing the nomination of the arbitrator on 1 July 2019. On the other hand, accepting this nomination did not delay the procedure in any way as the Panel was only constituted subsequently. Furthermore, the nomination of the arbitrator was not challenged by FIFA in accordance with Article R34 of the Code.

147. As set out above, the Appellant nominated Mr. Hendel in his Statement of Appeal. On 18 June 2019, however, the CAS Court Office informed the Parties that Mr. Hendel was no longer a member of the CAS list of arbitrators and as a result, the Appellant was invited to nominate a new arbitrator from the CAS list within ten days receipt of such letter by email.

148. On 1 July 2019, two principal letters crossed paths in this procedure. The first is a letter from the CAS Court Office requesting an explanation from the Appellant as to the timeliness of his new nomination. The second is a letter from the Appellant nominating Prof. Schimke as arbitrator (which followed an earlier letter that day asking for additional time to make such nomination).

149. The Appellant asserts (in very simple terms) that its letter nominating Prof. Schimke was timely because the CAS Secretary General confirmed as such. FIFA, however, strongly disputes the Appellant's assertion in this respect, arguing *inter alia* that receipt of the 18 June 2019 letter should be confirmed as received on the same day as no evidence to the contrary was provided by the Appellant.

150. At the hearing, FIFA was specifically requested to address this admissibility issue, and was specifically questioned about the application of Articles R48 and R36 of the Code. FIFA responded to both the request and the question, relying as to the latter on both Articles.

151. Article R48 of the Code provides, so far as material, that:

> *The Appellant shall submit to CAS a statement of appeal containing:*
> *(...)*
> - *the nomination of the arbitrator chosen by the Appellant from the CAS list, unless the Appellant requests the appointment of a sole arbitrator;*
>
> *(...)*

152. In the Panel's view, this Article is inapplicable as it may well be that the name of Mr. Hendel was still visible on the CAS website at the time when the Appellant consulted the CAS list of arbitrators when preparing his appeal, but whose CAS membership was not renewed.

153. Article R36 of the Code provides the following:

> *In the event of* ***resignation, death, removal or successful challenge of an arbitrator****, such arbitrator shall be replaced in accordance with the provisions applicable to her/his appointment. If, within the time limit fixed by the CAS Court Office, the Claimant/Appellant does not appoint an arbitrator to replace the arbitrator it had initially appointed, the arbitration shall not be initiated, or in the event it has been already initiated, shall be terminated. Unless otherwise agreed by the parties or otherwise decided by the Panel, the proceedings shall continue without repetition of any aspect thereof prior to the replacement.* (emphasis added)

154. This Article is also inapplicable since the condition precedent for its engagement is not satisfied. Mr. Hendel has neither resigned, died, been removed or successfully challenged. There is a distinction between removal of an arbitrator from the dispute for which he was appointed and his removal from the CAS list (see The Code of the Court

of Arbitration for Sport: Commentary, Cases and Materials. D. Mavromati and M. Reeb p. 183). In the Panel's view, removal in the context of Article R36 of the Code refers to the former, not the latter situation, *i.e.* removal of the kind contemplated by Article R35 of the Code where "*the arbitrator refuses to or is prevented from carrying out her/his duties or if she/he fails to fulfil her/his duties pursuant to this Code within a reasonable time*" .To construe it as applying to the former situation would make it asymmetrical with the other three preconditions for replacement. The Panel naturally recognizes the wisdom of the CAS Court Office in stipulating analogically a deadline for his replacement which would otherwise be open-ended. Nonetheless, it is not prepared to apply the draconian sanction of termination to a situation not envisaged by the rules themselves.

155. Accordingly, even if the evidence now available (*i.e.* the original email message in *msg* format including the letter of 18 June 2019 which was sent to the parties by the CAS Court Office on 18 June 2019 at 12:25 pm) vindicates the assertion of the Respondent (upon whom the burden of proof lies) that the Appellant's nomination of Prof. Schimke on 1 July 2019 was marginally outside the deadline for such nomination (of which the Panel is not persuaded), it would not matter.

156. The Panel respectfully adopts the reasoning of the Secretary General in his letter of 5 July 2019 as indubitably correct, given the then state of the evidence before it. It was an administrative decision which disposed of this unusual admissibility issue and as such, was not, in the Panel's view, susceptible under the Code to an appeal to the Panel. While the Panel acknowledges the importance of fixed time limits, the Respondent's arguments were in its view overly technical and formalistic. FIFA did not and could not contend that any unfairness resulted from the acceptance of Prof. Schimke as arbitrator. The Panel is gratified that its decision on this threshold issue, supported as it is by considerations of justice, is also on its analysis sound in law.

157. It, therefore, follows that this Appeal is admissible.

VIII. Applicable Law

158. Article R58 of the Code provides as follows:

> *The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.*

159. Article 57 (2) of the FIFA Statutes provides the following:

> *The provisions of the CAS Code of Sports related Arbitration shall apply to the proceedings. CAS shall apply the various regulations of FIFA and additionally Swiss law.*

160. In light of those provisions, the Panel must decide the present dispute in accordance with, primarily, the FIFA Regulations (in particular, the FCE) and, additionally, Swiss law.

161. The Panel, however, notes the Appellant's assertion according to which FIFA applied the incorrect regulations to his case.

162. Therefore, the Panel needs to address the intertemporal issue as to which version of the FCE applies to this proceeding.

163. With respect to the "Applicability of time", the Panel notes that Article 3 of the 2018 FCE stipulates the following: "*This Code applies to conduct whenever it occurred, including before the enactment of this Code. An individual may be sanctioned for a breach of this Code only if the relevant conduct contravened the Code applicable at the time it occurred. The sanction may not exceed the maximum sanction available under the then-applicable Code.*"

164. To resolve the issue as to the applicable law, the Panel must closely scrutinize the wording of Article 21 of the 2012 FCE and Article 28 of the 2018 FCE as well as Articles 6, 20 of the 2012 FCE and Article 20 of the 2018 FCE, as set out below:

Article 21 of the 2012 FCE:

> *1. Persons bound by this Code must not offer, promise, give or accept any personal or undue pecuniary or other advantage in order to obtain or retain business or any other improper advantage to or from anyone within or outside FIFA. Such acts are prohibited, regardless of whether carried out directly or indirectly through, or in conjunction with, intermediaries or related parties as defined in this Code. In particular, persons bound by this Code must not offer, promise, give or accept any undue pecuniary or other advantage for the execution or omission of an act that is related to their official activities and is contrary to their duties or falls within their discretion. Any such offer must be reported to the Ethics Committee and any failure to do so shall be sanctionable in accordance with this Code.*
>
> *2. Persons bound by this Code are prohibited from misappropriating FIFA assets, regardless of whether carried out directly or indirectly through, or in conjunction with, intermediaries or related parties, as defined in this Code.*
>
> *3. Persons bound by this Code must refrain from any activity or behaviour that might give rise to the appearance or suspicion of improper conduct as described in the foregoing sections, or any attempt thereof.*

Article 28 of the 2018 FCE:

> *1.Persons bound by this Code shall not misappropriate funds of FIFA, the confederations, associations, leagues or clubs, whether directly or indirectly through, or in conjunction with, third parties.*
>
> *2. Persons bound by this Code shall refrain from any activity or behaviour that might give rise to the appearance or suspicion of a breach of this article.*

3. Violation of this article shall be sanctioned with an appropriate fine of at least CHF 100,000 as well as a ban on taking part in any football-related activity for a minimum of five years. The amount of misappropriated funds shall be included in the calculation of the fine. The sanction shall be increased accordingly where the person holds a high position in football, as well as in relation to the relevance and amount of the advantage received.

Article 20 of the 2012 FCE:

1. Persons bound by this Code may only offer or accept gifts or other benefits to and from persons within or outside FIFA, or in conjunction with intermediaries or related parties as defined in this Code, which

a) have symbolic or trivial value;
b) exclude any influence for the execution or omission of an act that is related to their official activities or falls within their discretion;
c) are not contrary to their duties;
d) do not create any undue pecuniary or other advantage and
e) do not create a conflict of interest. Any gifts or other benefits not meeting all of these criteria are prohibited.

2. If in doubt, gifts shall not be offered or accepted. In all cases, persons bound by this Code shall not offer to or accept from anyone within or outside FIFA cash in any amount or form.

3. Persons bound by this Code may not be reimbursed by FIFA for the costs associated with family members or associates accompanying them to official events, unless expressly permitted to do so by the appropriate organisation. Any such permission will be documented.

4. Persons bound by this Code must refrain from any activity or behaviour that might give rise to the appearance or suspicion of improper conduct as described in the foregoing sections, or any attempt thereof.

Article 20 of the 2018 FCE:

1. Persons bound by this Code may only offer or accept gifts or other benefits to and from persons within or outside FIFA, or in conjunction with intermediaries or related parties as defined in this Code, where such gifts or benefits

(a) have symbolic or trivial value;
(b) are not offered or accepted as a way of influencing persons bound by this Code to execute or omit
an act that is related to their official activities or falls within their discretion;
(c) are not offered or accepted in contravention of the duties of persons bound by this Code;
(d) do not create any undue pecuniary or other advantage; and

(e) do not create a conflict of interest. Any gifts or other benefits not meeting all of these criteria are prohibited.

2. If in doubt, gifts or other benefits shall not be accepted, given, offered, promised, received, requested or solicited. In all cases, persons bound by this Code shall not accept, give, offer, promise, receive, request or solicit from anyone within or outside FIFA, or in conjunction with intermediaries or related parties as defined in this Code, cash in any amount or form. If declining the gift or benefit would offend the giver on the grounds of cultural norms, persons bound by this Code may accept the gift or benefit on behalf of their respective organisation and shall report it and hand it over, where applicable, immediately thereafter to the competent body.

3. Violation of this article shall be sanctioned with an appropriate fine of at least CHF 10,000 as well as a ban on taking part in any football-related activity for a maximum of two years. Any amount unduly received shall be included in the calculation of the fine. In addition to the fine, the gift or benefit unduly received should be returned, if applicable. In serious cases and/or in the case of repetition, a ban on taking part in any football-related activity may be pronounced for a maximum of five years.

Article 6 of the 2012 FCE (sanctions):

1. Breaches of this Code or any other FIFA rules and regulations by persons bound by this Code are punishable by one or more of the following sanctions:

a) warning;
b) reprimand;
c) fine;
d) return of awards;
e) match suspension;
f) ban from dressing rooms and/or substitutes' bench;
g) ban on entering a stadium;
h) ban on taking part in any football-related activity;
i) social work.

2. The specifications in relation to each sanction in the FIFA Disciplinary Code shall also apply.

3. The Ethics Committee may recommend to the responsible FIFA body that the notification of a case be made to the appropriate law enforcement authorities

165. Further, the Panel refers to CAS 2017/A/5003, wherein it was stated that:

139. According to well-established CAS jurisprudence, intertemporal issues in the context of disciplinary matters are governed by the general principle tempus regit actum or principle of non-retroactivity, which holds that (i) any determination of what constitutes a sanctionable rule violation and what sanctions can be imposed in consequence must be determined in accordance with the law in effect at the time

> *of the allegedly sanctionable conduct, (ii) new rules and regulations do not apply retrospectively to facts occurring before their entry into force (CAS 2008/A/1545, para. 10; CAS 2000/A/274, para. 208; CAS 2004/A/635, para. 44; CAS 2005/C/841, para. 51), (iii) any procedural rule – on the contrary – applies immediately upon its entry into force and governs any subsequent procedural act, even in proceedings related to facts occurred beforehand, and (iv) any new substantive rule in force at the time of the proceedings does not apply to conduct occurred prior to the entry into force of that rule unless the principle of lex mitior makes it necessary.*
>
> *140. Article 3 FCE (2012 edition) departs from the traditional lex mitior principle by reversing it so that the new substantive rule applies automatically unless the old rule is more favourable to the accused. The CAS has previously held that even if the starting point of Article 3 FCE (2012 edition) is different, the approach is equivalent to the traditional principle of lex mitior (CAS 2016/A/4474, at para. 147).*

166. Therefore, applying *mutatis mutandis* the approach set out in CAS 2017/A/5003, the Panel must determine "*what constitutes a sanctionable rule violation and what sanctions can be imposed (...) in accordance with the law in effect at the time of the allegedly sanctionable conduct*". In the case at hand, the Appellant's allegedly sanctionable conduct arose before the entry into force of the 2018 FCE, namely in 2014 and 2015 with the consequence that the applicable FCE should presumptively be the 2012 FCE.

167. Against this background, the Panel highlights that the FIFA Ethics Committee in its Decision ruled that the Appellant breached Articles 28 and 20 of the 2018 FCE. More particularly, the FIFA Ethics Committee made the following comments about the applicability of the FCE:

> *4. The relevant events took place between 2014 and 2015, at a time before the FCE came into force. With regard to the applicability of the FCE in time, art. 3 of the FCE (see also art. 3 of the 2012 FCE) stipulates that the FCE shall apply to conduct whenever it occurred. Accordingly, the material rules of the FCE shall apply, provided that the relevant conduct was sanctionable at the time (with a maximum sanction that was equal or more) and unless the 2012 FCE would be more beneficial to the party (lex mitior).*
>
> *5. In this context, following the relevant case law and jurisprudence, the adjudicatory chamber notes that the spirit and intent of the 2012 edition of the FCE is duly reflected in the below articles of the FCE, which contain equivalent provisions:*
>
> - *Art. 28 of the FCE has a similar provision in the 2012 FCE (art. 21 par. 2);*
> - *Art. 25 of the FCE has a similar provision in the 2012 FCE (art. 13 par. 4);*
> - *Art. 20 of the FCE has a similar provision in the 2012 FCE (art. 20);*
> - *Art. 19 of the FCE has a similar provision in the 2012 FCE (art. 19).*

> *6. In consideration of all the above, the adjudicatory chamber concludes that the 2012 FCE edition covers the same offence and that the maximum sanctions in the FCE are equal or less. Furthermore, from a material point of view, the adjudicatory chamber notes that none of the provisions of the 2012 FCE would be more beneficial to the accused (principle of "lex mitior"), since their application would lead to the same result.*
>
> *7. Consequently, the FCE is applicable to the case according to art. 3 of the FCE (ratione temporis) and the equivalent provision in the 2012 FCE.*

168. In accordance with Article 3 of the 2018 FCE, "*an individual may be sanctioned for a breach of this Code only if the relevant conduct contravened the Code applicable at the time it occurred*". It follows that the potential breach needs to be established in relation to the code applicable at the time of the conduct, as well as at the time of the current code (*i.e.* the 2018 FCE). In this respect, the Panel notes that the punishable conducts of "misappropriation" and of "offering and accepting gifts and other benefits" in the 2012 FCE are both maintained in the 2018 FCE. In short, as in CAS 2017/A/5003, it made no difference which version of the FCE was applied to the Appellant's case in terms of the offence discussed.

169. Pursuant to Article 3 of the 2018 FCE, "*the sanction may not exceed the maximum sanction available under the then-applicable Code*":

> -With respect to the punishable conduct of "offering and accepting gifts and other benefits", the Panel observes that no maximum limit was foreseen for the available sanctions under the 2012 FCE at the time of the relevant events (Article 6 of the 2012 FCE). The Panel, however, remarks that there is a maximum limit foreseen for the available sanctions under the 2018 FCE (*i.e.* Article 20 (3)*: "a ban on taking part in any football-related activity for a maximum of two years (...) serious cases and/or in the case of repetition, a ban on taking part in any football-related activity may be pronounced for a maximum of five years.*")
>
> -With respect to the punishable conduct of "misappropriation", the Panel remarks that no maximum limit was foreseen for the available sanctions under both the 2012 FCE (Article 6) and the 2018 FCE (Article 28 (2)).

170. The Panel observes that there are variations in the relevant provisions of the 2012 FCE and 2018 FCE. However, the Panel considers that these variations do not detract from the fact that the substance of the relevant provisions in both the 2012 FCE and 2018 FCE remained the same between each edition. In terms of sanctions too - or where different -, the difference endured to the benefit of the Appellant.

171. To summarise in view of the foregoing, the Panel is of the opinion that even if the 2012 FCE should have been applied to the present case, the result would have been the same since there is no difference in the scope of application between the relevant articles of the 2012 FCE and those of the 2018 FCE. So, in terms of both the substantive offence and the sanction, the application of the 2018 FCE rather than the 2012 FCE makes no difference in the outcome of this case.

172. The Panel concurs with the carefully reasoned approach taken by the Panel in CAS 2017/A/5003 and "*does not purport to adjudicate beyond the matter submitted*".

IX. MERITS

A. *De Novo* Hearing

173. The Appellant stresses that the FIFA Ethics Committee rendered its Decision without a hearing and while FIFA's inability to refer to the correct Code of ethics deprived him of his right to be heard.

174. Under Article R57 of the Code, the Panel considers both fact and law *de novo* on appeal. Accordingly, any procedural defects which (may or may not have) occurred in the internal proceedings of a federation are cured by the present arbitration proceedings before the CAS (*see* CAS 96/156 and CAS 2001/A/345).

175. Since the Panel is conducting a *de novo* hearing pursuant to Article R57 of the Code, it will decide the appeal on the evidence before it, whether or not the same evidence was available to the FIFA Ethics Committee, subject only to its rejection of any fresh evidence under the discretion vested in it under paragraph 3 of the same Article.

176. For this reason, the Appellant's argument concerning any perceived violation of his right to be heard before the FIFA Ethics Committee is dismissed as moot. The Panel is not to be taken as endorsing the suggestion that the FIFA Ethics Committee was guilty of any such violation. If anything, it appears to it that the Appellant was cavalier in his attitude towards the FIFA Ethics Committee's directions.

B. Has the Appellant committed a disciplinary rule violation?

i. Burden and standard of proof

177. There was no burden of proof specifically allocated prior to the 2012 FCE. As explained in CAS 2016/A/4501, "*in cases related to alleged ethical violations prior to the entry into force of the 2012 edition of the FCE, for example in CAS 2011/A/2625, CAS panels have nevertheless held that FIFA carries the burden of proof by analogy to article 99(1) of the FIFA Disciplinary Code*". Since 2012, however, the FCE has added a provision, which reads as follows: "*The burden of proof regarding breaches of provisions of the Code rests on the Ethics Committee.*"

178. Hence, the Respondent has the burden of proof to establish that the Appellant is guilty of infringements of Articles 20 and 28 of the 2018 FCE. The burden, as set out in the FCE, is of comfortable satisfaction, after evaluation of all the evidence, bearing in mind the seriousness of the alleged offence. This standard has been confirmed in other cases by the CAS (CAS 2017/A/5086; CAS 2016/A/4501).

179. At the outset, the Panel notes that the Appellant's main arguments in his pleadings and his statement (which had the apparent benefit of legal input) focused on the procedural aspects of the case with respect to the applicable FCE and the burden of proof, rather than contesting the FIFA Ethics Committee's particular adverse findings of the facts.

180. Indeed, the Appellant defended himself at the hearing by baldly and repeatedly asserting that all the allegations against him brought by reference to any of the Articles of the 2018 FCE were "*wrong*" and "*unfair*". In order to give him every opportunity to rebut the charges himself, the Panel asked the Appellant to provide it with particulars as to why he believed the case against him was "*wrong*". The highwater mark of his response was "*because it's not true*". The same kind of generic responses were given by the witness proposed by the Appellant, Mr. Tito, when examined at the hearing. Given the patent inadequacy of these responses coupled with the fact that the Appellant's exhibits themselves did not engage with the case against him, the Panel focused its attention on whether FIFA had satisfied the burden and standard of proof on the various Articles relied on properly construed together with the material that it drew to the Panel's attention.

ii. Article 20 of the 2018 FCE

181. In consideration of the foregoing, the Panel must determine if the Appellant offered "substantial benefits" in the terms set out in Article 20 of the 2018 FCE.

182. Article 20 of the 2018 FCE prohibits persons bound by the FCE to offer or accept undue gifts or other benefits to and from persons within or outside FIFA.

183. Article 20 of the 2018 FCE reads as follows:

> *1. Persons bound by this Code may only offer or accept gifts or other benefits to and from persons within or outside FIFA, or in conjunction with intermediaries or related parties as defined in this Code, where such gifts or benefits*
>
> > *(a) have symbolic or trivial value;*
> > *(b) are not offered or accepted as a way of influencing persons bound by this Code to execute or omit an act that is related to their official activities or falls within their discretion;*
> > *(c) are not offered or accepted in contravention of the duties of persons bound by this Code;*
> > *(d) do not create any undue pecuniary or other advantage; and*
> > *(e) do not create a conflict of interest.*
>
> *Any gifts or other benefits not meeting all of these criteria are prohibited.*
>
> *2. If in doubt, gifts or other benefits shall not be accepted, given, offered, promised, received, requested or solicited. In all cases, persons bound by this Code shall not accept, give, offer, promise, receive, request or solicit from anyone within or outside FIFA, or in conjunction with intermediaries or related parties as defined in this Code, cash in any amount or form. If declining the gift or benefit would offend the giver on the grounds of cultural norms, persons bound by this Code may accept the gift or benefit on behalf of their respective organisation and shall report it and hand it over, where applicable, immediately thereafter to the competent body.*
>
> *3. Violation of this article shall be sanctioned with an appropriate fine of at least CHF 10,000 as well as a ban on taking part in any football-related activity for a*

maximum of two years. Any amount unduly received shall be included in the calculation of the fine. In addition to the fine, the gift or benefit unduly received should be returned, if applicable. In serious cases and/or in the case of repetition, a ban on taking part in any football-related activity may be pronounced for a maximum of five years.

184. Article 20 (1) of the 2018 FCE sets down the parameters of the offence, *i.e.* the person acting must be bound by the FCE and the counterpart must be a person within or outside FIFA, an intermediary or a related party as defined in the FCE.

185. Here, the Appellant was – at the time of the relevant events – an official bound by the FCE while the counterparts were other officials and persons outside FIFA. Therefore, this threshold requirement of Article 20 of the 2018 FCE is met.

186. Further, pursuant to Article 20 of the 2018 FCE, a "*gift or other benefit*" must be at stake, involving a pecuniary or any other advantage. As explained in CAS 2011/A/2426, "*the advantage can take any form and need not actually materialize as it is sufficient that someone "offers" or "promises" it (...) it can be money or any other benefit, even not economically quantifiable (for instance, a career advancement)*".

187. The Panel reviewed the documents submitted by the Respondent according to which the Appellant allegedly received various payments from the SSFA.

188. The Panel notes that not every kind of gift or other benefit falls under the scope of Article 20 (1) of the 2018 FCE. In fact, an infringement of Article 20 of the 2018 FCE will only take place when the relevant benefit does not meet the criteria set out in Article 20 (1) (a) to (e) of the 2018 FCE. According to Article 20 (1)(a), a gift or benefit cannot be accepted if it has more than a mere symbolic or trivial value. Moreover, the beneficiary can only accept the gift or benefit if the other conditions of Article 20 1()(b) to (e) are satisfied.

189. In general, Article 20 (1) (d) of the 2018 FCE forbids any gift or other benefit that creates an undue pecuniary or other advantage. As explained in CAS 2016/A/4501, an advantage is undue when the recipient obtains it without being entitled to receive it and it is given without a proper ground for example, a legal title or a right arising under contract.

190. On the evidence, several transactions were identified relating to various forms of financial assistance offered to SSFA officials, staff or others and which showed that the Appellant approved some payments from the FAP funds, namely:

- On 4 June 2014, the Appellant approved a payment of SSP 1,500 as "support to Juma Jenaro", based on a written request for "Financial assistance" from Juma Jenaro dated 19 May 2014, which mentioned that the amount relates to "some Family issues";

- On 16 June 2014, an amount of SSP 5,000 as "support for Sister's funeral who died and to be transported to Aweil from Juba" was paid on 16 June 2014 to Mr. Geng, "as per instructions from the President";

- On 14 July 2014, the Appellant approved the payment of SSP 18,000 as "incentive for organising South Sudan Premier League 2013" to the 11 members of the respective SSFA "Organizing Committee".

- On 16 July 2014, an amount of SSP 2,000 as "support to Joseph Deng" was paid "as per directive of the President", based on a written request for "Financial assistance" from Mr. Deng dated 18 June 2014 and approved by the Appellant on 24 June 2014. Such request mentioned that the amount related to the financing of Mr. Deng's MBA programme at the University of Nicosia;

- On 10 November 2014, an amount of SSP 1,000 as "incentive – for medical" was to paid to Mr. Gabriel Geng, chairman of the board finance committee of the SSFA, based on an Office Memo from the Appellant which read as follows: "Please pay Mr Gabriel Geng 1,000 SSP for his treatment";

- On 18 November 2014, the Appellant ordered the payment of USD 8,000 to a Mr. Taufiq Salim, for the purpose "Received 12 ft container of material from Italy", without any third party invoice provided.

- On 18 August 2015, with the Appellant's approval, the SSFA paid USD 1,500 in favor of Mr. Tito for "financial help for my air tickets back to United States of America".

191. In total, and based on the Respondent's calculation, the Appellant approved payments to SSFA officials, staff and other individuals of approximately USD 14,000 between 2014 and 2015. Indeed, the Panel observes that some payments were not related to football, notably the ones made for family issues to "*support to Juma Jenaro*", for education fees "*to support to Joseph Deng*" in his MBA program at the University of Nicosia, for medical costs to Mr. Gabriel Geng for his treatment and for private flights to financially help Mr. Tito.

192. In the Panel's opinion, it is unlikely that the SSFA would have funded the expenses approved by the Appellant. For example, the Panel cannot perceive any connection between the SSFA's payment in "*support for Sister's funeral who died and to be transported to Aweil from Juba*" and the SSFA itself. In the Panel's view, the Appellant failed to explain how and why such payment could be justified.

193. The Panel also observes that these payments did not have symbolic or trivial value and did not exclude the possibility for influence or for the execution or omission of acts related to the Appellant's official activities or falling within his discretion as President of the SSFA.

194. In addition, the Panel notes that the Appellant approved payments which were not supported by any authorization, ratification of any competent SSFA body or by any justificatory document. The Panel notes moreover that the Appellant did not report such payments and benefits to any competent body at the SSFA or FIFA.

195. In view of the above, and in the absence of any countervailing explanation or evidence from the Appellant, the Panel finds that the Respondent has established to its comfortable satisfaction that the Appellant approved payments which did not have a proper basis. The

Panel, therefore, categorises these as undue payments within the meaning of Article 20 of the 2018 FCE.

iii. Article 28 of the 2018 FCE

196. Article 28 of the 2018 FCE prohibits persons bound by the FCE from misappropriating FIFA funds whether directly or indirectly through, or in conjunction with, third parties.

197. Article 28 of the 2018 FCE reads as follows:

> *1. Persons bound by this Code shall not misappropriate funds of FIFA, the confederations, associations, leagues or clubs, whether directly or indirectly through, or in conjunction with, third parties.*
>
> *2. Persons bound by this Code shall refrain from any activity or behaviour that might give rise to the appearance or suspicion of a breach of this article.*
>
> *3. Violation of this article shall be sanctioned with an appropriate fine of at least CHF 100,000 as well as a ban on taking part in any football-related activity for a minimum of five years. The amount of misappropriated funds shall be included in the calculation of the fine. The sanction shall be increased accordingly where the person holds a high position in football, as well as in relation to the relevance and amount of the advantage received.*

198. The Respondent submits that the FAP fund budget approved by FIFA was not respected by the SSFA and that the distribution of the FAP funds was made in violation of the respective regulations, which stipulated that "*a member association or confederation that has received FAP funds shall use them in compliance with the detailed budget per category which is listed in FAP form [...] and has been approved by the FIFA general secretariat*".

199. The Respondent asserts several violations in this respect, as illustrated by various actions of the Appellant. Each will be separately addressed below.

(a) Misallocations

200. The SSFA received FAP funds in the amount of USD 500,000 for developing "Youth football" (which had a projected budget of USD 55,000); "Women's football" (which had a projected budget of USD 75,000); and "Medical" (which had a projected budget of USD 10,000). Therefore, the total budget approved and allocated by FIFA in these categories for the benefit of the SSFA was USD 140,000. The Panel, however, notes that only a very small percentage - corresponding to less than USD 2,000 - was actually spent by the SSFA in these categories. Instead, the SSFA significantly exceeded its planned budget in different categories entitled "Others" (more than three times), "Infrastructure" (more than double) and "Event Management" (more than 50%).

201. In addition, it appears that various bank transfers were executed by the SSFA against the FAP funds without supporting documentation or justification. On 11 July 2014, the Appellant himself signed a letter by virtue of which he unjustifiably requested the

bank,which held the SSFA dedicated FAP bank account (Qatar National Bank), to transfer USD 125,000 to another bank account of the federation (Bank of South Sudan). Furthermore on 3 October 2014 two transfers of USD 150,000 and USD 100,000 were ordered to an unknown bank account.

202. The Panel acknowledges the Appellant's argument that there was no evidence that the bank accounts in question were linked to him and, indeed, it observes that the only specific references to bank accounts are those in relation to two transfers (USD 150,000 and USD 100,000) executed on 3 October 2014 from the SSFA account to an unknown account. The Panel, however, considers that the Appellant failed to provide documents or explanations to justify these transfers. For those funds to have been misappropriated by the Appellant, the Panel agrees with the Respondent that the accounts do not necessarily have to be owned by or linked to him. Moreover, it is undisputed that the Appellant was one of three signatories to the FAP account and that he was authorized to make transactions by the SSFA from its FAP funds.

203. On these facts, the Panel considers that the funds' misallocations are self-evident.

(b) The Abyei Exchange

204. The SSFA made several withdrawals in USD amounts from its FAP account in 2015 through the Abyei Exchange, a company partially owned by the Appellant. The Panel considers that the Appellant attempted to give his own company - the Abyei Exchange - a financial advantage in exchanging the FAP funds received in USD into SSP at a low exchange rate. This, of course, is evidenced by the gain of approximately USD 129,194 between 19 January 2015 and 4 June 2015 received by the Appellant, and the correlative loss to the SSFA.

(c) Payments to I-Tech

205. The SSFA made numerous payments from the FAP funds to entities and persons with a connection to the Appellant. The Panel notes that the Appellant approved a transfer of USD 200,000 on 19 March 2015, a transfer of USD 35,000 on 4 May 2015 and a transfer of USD 20,000 on 18 May 2015 in favor of I-Tech Investment Co. Ltd, a company owned by the Appellant.

206. The Appellant explained that these payments/withdrawals were made to facilitate the exchange of USD to SSP during the time of war. The Panel, however, does not find this explanation credible or justified. Moreover, based on the evidence submitted by the Respondent, it appears that such transactions were not recorded on the respective FAP statement of accounts and that the former General Secretary and the Chairperson of the Board Finance Committee of the SSFA were unaware of such transfers.

207. In addition, between March and May 2015, the Appellant approved the payment of over USD 63,000 to I-Tech, in relation to the purchase of various electronic and furniture items. The Panel observes that the Appellant failed to explain why those materials were purchased by the SSFA from his own company without the approval of the SSFA Executive Committee.

208. Furthermore, the Panel notes that on 11 and 15 November 2015 the SSFA paid USD 75,000 to United, a company which is - in the Panel's view and in accordance with the evidence brought to the proceedings - connected with I-Tech.

209. Finally, the Panel remarks that the Appellant personally approved the use of FAP funds in the amount of SSP 62,000 in favour of his brother for purposes not related to football.

210. The Panel thus concludes that the Appellant conducted several businesses with his own company/ies in the terms explained above without the approval of the SSFA competent bodies and approved the use of FAP funds in favour of a close relative (his brother).

(d) Loans

211. The Panel also considered the amounts of USD 10,000 and USD 2,000 described as "Loan to SSFA President" received by the Appellant from the SSFA. In this respect, the Panel notes that the former General Secretary and the Chairperson of the Board Finance Committee confirmed during the investigations those transactions were made without the approval of the SSFA Executive Committee. The Panel also finds that the Appellant did not rebut these statements and failed to provide explanations relating to the conditions of such alleged loans, such as the interest rate and the reimbursement date.

212. The Appellant defends these (and other payments) on the ground that he did not have exclusive signing authority. He further explained in his statement that Mr. Okot de Toby was acting as the Secretary General, Mr. Tito was the Treasurer and Mr. Geng was the Chairman of the Finance Committee at the SSFA board. He stated that "*all amounts were decided by the board of directors members, the president can't withdraw any amount alone it has to be decided by the board first.*" He declared that the FIFA budget of 2014 was used properly and audited while all reports were sent to FIFA. He also stated that he hired auditors who were appointed to express their opinion on the SSFA financial statements. He claims that the CAF sent USD 300,000 in November 2013 for the renovation of the Juba Stadium and to conduct a C license course for all coaches. According to the Appellant, the Final Report wrongly indicated that this amount was part of FIFA's funds.

213. The Panel, however, finds that the Appellant failed to establish that the approval was received from the SSFA Executive Committee for any of these undertakings, which were on the contrary carried out solely on his own volition.

(e) The GOAL Project

214. As it concerns the GOAL Project, the Panel notes that the construction began on 20 May 2015 and was completed on 30 September 2015. The Contractor was China Jiangsu and the architect was Alal. The total cost of the project was USD 990,000 (USD 900,000 to China Jiangsu and USD 90,000 to Alal).

215. The Respondent asserts that the GOAL Project was devised to direct payments from the SSFA to a private company which the Appellant owned in partnership with his brother, namely, Alal. The Appellant, in response, denies these allegations and claims to have sold his shares of the company prior to the alleged transfers. Be that as it may, the evidence on

file establishes to the Panel's satisfaction that the Appellant's involvement was still ever-present.

216. In support of his allegations, the Appellant provided an affidavit as well as a resolution dated 7 March 2015 allegedly establishing that he sold 50% of his shares to "Samuel and Sons Ltd.". The Panel, however, observes that the affidavit does not contain a date. Moreover, a work report on the status of the GOAL Project dated 1 October 2015, which was enclosed to the KPMG Report, illustrates that the Appellant was signing on behalf of Alal.

217. Moreover, the Panel draws attention to the significant fact that the company Alal was directly selected by the Appellant as the architect for the GOAL Project, which was approved by FIFA in 2012.

218. For those reasons, the Panel is convinced that the Appellant was still involved with Alal at the time of the GOAL Project construction.

(f) Land Purchase

219. In accordance with the explanations given by the Appellant in Document 6 of the Appeal Brief, an amount of USD 100,000 coming from the FIFA funds would have been used to purchase the land for the current SSFA Headquarters. In this respect, the Appellant claims that it was approved after a meeting of board members and that he hired a lawyer to handle the transaction. In support of his allegations, the Appellant submitted an invoice for legal and government fees for plot No: 5813 Block A1 Nya West. The Panel, however, points out that the invoice for legal and government fees for plot No: 5813 Block A1 Nya West is a document consisting of 1 page dated 15 April 2015 that did not contain any information specific to a USD 100,000 transaction cost for a land. The invoice simply contained an indication "GOAL PROJECT" written by hand. It also notes that the respective property was purchased for SSP 650,000, with an additional SSP 50,000 paid as legal fees of the transaction.

220. Based on the uncontroverted evidence, when translating the amount in question from SSP using the exchange rate at the relevant period, the sum equates to SSP 634,000, which is significantly lower than the stated purchase cost of the relevant property (SSP 700,000). This undermines, in the absence of other evidence, the Appellant's claim.

(g) Conclusion

221. The Appellant was President of the SFFA and a FIFA committee member. He was responsible for complying with the highest standards of protection of the FAP funds. Instead, he misused FIFA funds for private gain and a purpose that was not authorized by FIFA. This is a sanctionable infringement.

222. Therefore, in the absence of any corroborative evidence, his arguments must be rejected. Under these circumstances, the Panel holds that the Appellant committed a violation of Article 28 of the 2018 FCE.

C. Sanctions

223. Having determined that the Appellant violated Articles 20 and 28 of the 2018 FCE, the Panel must now decide whether the sanctions imposed on him are appropriate. Under Articles 6 and 7 of the 2018 FCE, various sanctions can be imposed on an official - the most serious being a ban on taking part in football-related activity. Pursuant to Article 9 (1) of the 2018 FCE, when determining a sanction, the adjudicator must consider "*all relevant factors in the case, including the offender's assistance and cooperation, the motive, the circumstances and the degree of the offender's guilt*".

224. According to the CAS jurisprudence, whenever an association uses its discretion to impose a sanction, the panel shall consider that association's expertise and proximity but, if having done so, the panel considers nonetheless that the sanction is disproportionate, it must, given its *de novo* powers of review, be free to say so and apply the appropriate sanction (see CAS 2015/A/4338).

225. In the present case, the FIFA Ethics Committee sanctioned the Appellant with a fine of CHF 500,000 and a ban from taking part in any football-related activity (administrative, sport or any other) at the national and international level for a period of ten years.

226. In assessing the adequacy of the sanction, the Panel stresses that it considered all the arguments and evidence duly submitted by the Appellant and by FIFA.

227. On one hand, FIFA contends that misappropriation is one of the most serious offences under the FCE and the FIFA Ethics Committee can impose bans from taking part in any football-related activity from five years up to a lifetime ban taking due account of the principle of proportionality and all circumstances of the case. FIFA takes and urges a strong stance against any potential unethical act, especially of misappropriation, which is damaging to the good governance, integrity and viability of football.

228. On the other hand, the Appellant requests the Panel to reduce the sanction appropriately. He argues that his sanction is a violation of the principle of proportionality particularly in comparison to the sanctions imposed on other persons who have been found to have violated the various codes of ethics.

229. For instance, the Appellant relies upon the cases of Mr. Amos Adamu (CAS 2011/A/2426) and of Mr. Amadou Diakite (TAS 2011/A/2433) where the officials were sanctioned with three and two-year bans respectively. In this respect, the Panel recalls the content of these decisions, which are summarised as follows:

- ***CAS 2011/A/2426:*** Mr. Amos Adamu, former President of the West African Football Union, Chairman of the CAF Ethics Committee and Director General of Sports in Nigeria, was secretly filmed and recorded, while meeting with undercover *Sunday Times* journalists posing as lobbyists contending to support the United States football federation's bid for the 2018 and 2022 FIFA World Cups. He was found to have accepted a bribe of USD 800,000, allegedly towards the funding of artificial pitches in Nigeria, in exchange for agreeing to fix his vote for the future host of the FIFA World Cup. He was found guilty of

infringing Article 3 (General Rules), Article 9 (1) (Loyalty and confidentiality) and Article 11 (1) (Bribery) of the 2009 FCE. The CAS panel upheld a ban for a period of three years with a fine of CHF 10,000. The Panel ruled that it was "*not a disproportionate sanction and might even be deemed a relatively mild sanction given the seriousness of the offence*".

- ***TAS 2011/A/2433:*** Mr. Amadou Diakite, a former FIFA Executive Committee member was secretly filmed and recorded, while meeting with an undercover *Sunday Times* journalist posing as a lobbyist purporting to support the United States football federation's bid for the 2018 and 2022 FIFA World Cups. He was found guilty of failing to refuse an improper offer made by apparent lobbyists in contravention of Articles 3 (General Rules), 9 (Loyalty and confidentiality) and 11 (Bribery) of the 2009 FCE. He was banned for two years with a fine of CHF 7,500.

230. The Panel remarks that Mr. Amos Adamu and Mr. Amadou Diakite were sanctioned for soliciting bribes; their cases not being about misappropriation of funds. Since the Appellant was not charged with that type of offence, there are obvious limitations on the application of CAS 2011/A/2426 and TAS 2011/A/2433 to this present case. In particular, the Panel underlines that this case is more expansive as the Appellant, his companies and his family members all benefitted from the misappropriation of sums totaling approximately USD 900,000.

231. Nevertheless and even if CAS 2011/A/2426 and CAS 2011/A/2433 could somehow be construed to support the Appellant's contention, the Panel notes that in both of these cases the CAS considered the sanction "*might even be deemed a relatively mild sanction given the seriousness of the offence*".

232. Moreover, the Appellant referred to the cases of Mr. Michel Platini (TAS 2016/A/4474), Mr. Joseph S. Blatter (CAS 2016/A/4501) and of Mr. Jérôme Valcke (CAS 2017/A/5003). In this respect, the Panel recalls the content of these decisions, which are summarised as follows:

- ***CAS 2016/A/4474:*** Mr. Michel Platini, former FIFA Vice-President, was found to have received an undue gift of CHF 2 million and for violating Article 20 of the 2012 FCE. He was banned for four years as well as a fine of CHF 60,000.

- ***CAS 2016/A/4501:*** Mr. Joseph S. Blatter, former FIFA President, was found to have authorized and directed an undue gift and therefore committing a violation to Article 20 of the 2012 FCE. He was banned for six-year ban on for as well as a CHF 50,000 fine.

- ***CAS 2017/A/5003:*** Mr. Jérôme Valcke was found to have violated Article 19 FCE in relation to his involvement in the resale of FIFA World Cup tickets, Article 10 FCE (2009 edition) and Article 20 FCE (2012 edition) in relation to the offer of an undue benefit to the Caribbean Football Union as well as Article 18 and Article 41 for his failure to cooperate in the investigation. He was also found guilty to have violated Article 13 FCE in relation to his travel expenses as

well as Article 19 and Article 16 of the FCE in relation to his involvement in the FIFA- EON Reality Inc transaction. He was banned for a period of ten years as well as a fine of CHF 100,000.

233. On a more global level, the Panel observes that the aforesaid cases involved more than one charge, and, in this context, it keeps in mind that a case involving more than one charge should be assessed by reference to the most serious offence. It follows that the Panel must examine the seriousness and nature of the offences identified in 2016/A/4474, CAS 2016/A/4501 and CAS 2017/A/5003 in comparison to the most serious offense committed by the Appellant to assess the relevance of these cases to his case.

234. At the outset, the Panel remarks that the aforesaid cases do not specifically concern the violations that are expressly at stake in the present matter, *i.e.* Articles 20 and 28 of the 2018 of the FCE (Article 20 or 21 of the 2012 FCE). That apart, the Panel is aware that Mr. Platini and Mr. Blatter were initially accused of violating Article 21 of the 2012 FCE but is reminded that the evidence available against them was not enough to establish such infringement. This is not the position in the Appellant's case.

235. In this sense, the Panel observes that the most serious offences identified in the aforesaid cases were conflicts of interest and breaches of Article 20 of the 2012 FCE (offering and accepting gifts and other benefits).

236. Thereafter the Panel must turn its attention to assessing the seriousness of the offences committed by the Appellant, *i.e.* Article 20 of the 2018 FCE and Article 28 of the 2018 FCE.

237. In doing so, the Panel compared the sanctions available under the FCE for each punishable conduct. As for the punishable conduct of "offering and accepting gifts and other benefits", the Panel observes that there is a maximum limit foreseen for the available sanctions under the 2018 FCE (*i.e.* Article 20 (3): "*a ban on taking part in any football-related activity for a maximum of two years (...) serious cases and/or in the case of repetition, a ban on taking part in any football-related activity may be pronounced for a maximum of five years.*"). With respect to the punishable conduct of "misappropriation", the Panel remarks that no maximum limit is foreseen for the available sanctions under the 2018 FCE (Article 28 (2)) and therefore, life-time bans, being the most severe sanctions, are admissible. Consequently, the Panel is of the opinion that misappropriation of the funds is the most serious offence in the Appellant's case as it can result in more serious sanctions. According to the Panel, misappropriation of the funds can also be regarded as being more serious than the offences identified in CAS 2016/A/4474, CAS 2016/A/4501 and CAS 2017/A/5003.

238. Nevertheless, the Panel adds that it cannot properly use the duration of the bans imposed on Mr. Platini and Mr. Blatter as a reference point for the present matter since they were not found guilty of violating Article 21 of the 2012 FCE (equivalent to Article 28 of the 2018 FCE). Had Mr. Platini and Mr. Blatter been found guilty of violating Article 21 of the 2012 FCE, the Panel believes longer suspensions, as in the Appellant's case, would have possibly been considered.

239. In this context, the Panel rejects the Appellant's argument that a ten-year sanction for the Appellant is disproportionate in comparison to the 4- and 6-year ban imposed on Mr. Platini and Mr. Blatter.

240. Further, this Panel highlights the comments of the panel in CAS 2017/A/5003 which read as follows: "*In fact, the Panel finds that the Article 19 FCE infringement committed in relation to his involvement in the resale of FIFA World Cup tickets – i.e., his pactum sceleris with Mr. Alon aimed at receiving a kickback – is on its own severe enough to warrant a ten year ban from football. In particular, as already noted (see supra at para. 178), the Panel is of the view that FIFA could have even pursued, with solid factual and legal grounds, an Article 20 or 21 FCE violation for that grave misconduct that Mr. Valcke FIFA could have even pursued, with solid factual and legal grounds, an Article 20 or 21 FCE violation for that grave misconduct.*" The Panel emphasizes that this case points to a more severe sanction for a violation of Article 21.

241. The Panel nonetheless observes that - while Mr. Valcke was banned for a period of ten years for a less severe offense than the one committed by the Appellant - it was not clear for the panel in CAS 2017/A/5003 "*why the Appellant's conduct here under scrutiny was not examined by FIFA disciplinary bodies under the angle, first and foremost, of Article 20 FCE (2012 edition) on "Offering and accepting gifts and other benefits" (see the text of this provision supra at para. 140) or, possibly, even under the angle of Article 21 FCE (2012 edition), proscribing "Bribery and corruption". Whatever the reason for this omission, the Panel may in any event consider this aspect in evaluating the proportionality of the overall sanction imposed on the Appellant.*" Hence, the Panel notes that appears that "this omission" could have been considered in assessing proportionality of the ten-year ban on Mr. Valcke.

242. As a result, the Panel disagrees with the Appellant's assertion that the violations in those cases are much more severe than those alleged against him and that the sanctions imposed on him are disproportionate.

243. To the contrary, the Panel finds that the seriousness of the offence is a factor considered in determining the length of a suspension. Cases involving misappropriation of funds for approximately USD 900,000 should result in a longer suspension and by contrast, suspension for less serious offences should naturally be shorter. This reasoning is reflected in the spirit of the FCE.

244. In addition, the type and duration of the sentence imposed on the accused can be affected by a number of aggravating and mitigating factors in accordance with the fundamental principle of proportionality. The Panel underlines that the impact of any factor mainly depends on the circumstances of each case.

245. Hence, the Panel had to take into account the Appellant's individual circumstances, such as his age, his dedication to the sport, the effect of the deprivation of his livelihood on himself and his family, his understanding of the consequences of his actions, his abilities as a football official and the limited possibility of alternative employment, as well as the amount of the fine imposed.

246. The Panel accepts that the principle of proportionality dictates that the most extreme sanction must not be imposed before other less onerous sanctions have been exhausted (CAS 2011/A/2670). It notes that the Decision, applying a ten-year ban, was based on a variety of factors, notably the seriousness of the Appellant's breach, FIFA's "*zero tolerance policy against all kinds of corruption*", the need for sanctions to serve as an effective deterrent to other individuals, the need to maintain the integrity of the sport, and the threat that corruption poses to sport and sports organisations. The Panel endorses the relevance of these factors and accepts the way in which FIFA applied them to the present case.

247. Weighing all these factors, the Panel is of the opinion that the Appellant, a high-ranking official at national and international level, should have been aware of the relevant Ethics regulations of FIFA and should have acted accordingly. This is not a case where the Appellant was coerced or bribed into committing offences. Nor was he trapped into committing them.

248. As the President of the SSFA and cognizant (which he does not deny) of the ethical obligations to which he was subject, the Appellant should have been a role model. Instead, he may have irresponsibly involved others who were subordinate to him in his misconduct, which, if true, is simply inexcusable. Instead, the Appellant:

- failed to use FAP funds in compliance with the budget and executing bank transfers without supporting documents;
- used his own company to exchange FAP funds with a detrimental exchange rate;
- executed payments from FAP funds to himself and persons or entities related to him;
- used another of his own companies without the approval of the competent bodies for the GOAL project and construction of the SSFA headquarters; and
- executed unbudgeted and inadequate payment from FAP funds for non-football related payment to SSFA officials/staff and other individuals.

249. For the Panel, the principle of proportionality is clear. The sanction must be proportionate, and the object must be to make the punishment fit the crime. This stems from the well-established CAS jurisprudence (see CAS 2007/A/1217, CAS 2012/A/2762 and CAS 2013/A/3139) according to which a sanction must be in line with the seriousness of the infringement and must not be excessive or unfair. Whether the sanction is proportionate depends upon all the circumstances of the individual case. Since no one case is the same as the other, a read across from one sanction to another is not possible. One panel might think that a previous panel was too lenient. Focusing on the facts of the case in front of it avoids the possible perpetuation of error. The jurisprudence in this area has not sought to set a tariff equivalent to that set in CAS 2013/A/3327 in the anti doping area concerned with degree of fault.

250. With respect to the mitigating circumstances, the Panel notes that the Appellant claims to have cooperated with FIFA, attended the audits, provided information and that FIFA is not accusing him of refusing to cooperate. The Panel disagrees with these contentions as the Appellant neither cooperated with FIFA or the FIFA Ethics Committee nor with the CAS. Further, these arguments are undermined by the cavalier attitude of the Appellant during

the previous and the present proceeding, notably, as to the latter, that he never received his visas in time due to his own fault and that his assistance at the hearing was nugatory.

251. Moreover, the Panel considers that the Appellant denied any wrongdoing and did not accordingly express any remorse or contrition. The Panel finds too that there is no indication that the Appellant was pressured or coerced into this behaviour, as the evidence shows that he entered it willingly.

252. In addition, the Appellant claims that a ten-year ban in this case will end his career in football and is tantamount to a lifetime ban. The Panel does not concur with the Appellant. It is common mathematical sense that ten years is less than a life ban. Further, the rules themselves carefully differentiate between various lengths of ban. The Panel is of the opinion that ten years is less than a life ban and that it is proportionate to the seriousness of the Appellant's offence. If the Appellant cannot return to football after ten years, this is because of the nature of his offence not the length of his ban.

253. In light of all the above, the Panel finds that the sanction imposed on the Appellant by means of the Decision is not disproportionate, rather it is reasonable and fair.

254. Consequently, the Panel upholds the ban on the Appellant from taking part in any football-related activities (administrative, sports and other) at national and international level for ten years.

255. With respect to fine of CHF 500,000, the Panel notes that Article 28 of the 2018 FCE mentions that "*the amount of misappropriated funds shall be included in the calculation of the fine*". In this respect, the Panel underlines that the Appellant, his companies and his family members benefitted from the misappropriation of sums totaling approximately USD 900,000.

256. Yet, the Appellant contends that the *Matuzalem* argument must be taken into account when considering whether to reduce the fine. He asserts that a fine of CHF 500,000 deprives him of the right to work and it conflicts with public order.

257. On the face of it, the Panel finds that the reference to *Matuzalem* does not seem comparable to the matter at stake as this case was about the payment of a compensation and an undetermined suspension on any football-related activity lasting until the relevant payment would have been settled.

258. Besides, the Panel notes that the Appellant failed to substantiate why his case was allegedly analogous to *Matuzalem* and how a fine of CHF 500,000 was allegedly depriving him of the right to work.

259. In any event, it is not immediately apparent for the Panel why the fine should have this effect on the Appellant's ability to earn a living outside football in his various enterprises. Indeed, the Panel takes into account the evidence in file which illustrates that the Appellant has a wide range of experience in different sectors outside of football and that he has shares (or used to have shares) notably in the following companies:

- The company Abyei Exchange Bureau Company Limited is a foreign exchange broker.
- The company I-Tech Electronic Commerce and Investment Co. Ltd. is a company mainly dedicated to retail tech and e-commerce tech.
- Alal Engineering Company Limited is a company that *inter alia* undertakes structural, architectural or engineering works for building constructions as well as preparing designs, drawings and specifications for such purposes.

260. In view of the foregoing, the Panel deems that the sanction imposed on the Appellant cannot be compared to the *Matuzalem* case and does not violate the fundamental right to work.

261. Therefore, the Panel finds that the fine of CHF 500,000 would not make the Appellant subject to a prohibition of working, especially considering that his current and past professional experiences involve working in sectors unconnected to football such as retail tech, e-commerce tech, structural, architectural or engineering foreign exchange.

262. Consequently, the Panel concludes that a fine of CHF 500,000 is neither excessive nor manifestly excessive. It is a proportionate sanction in the case of the Appellant. This fine serves both to reclaim the benefit which was obtained by the Appellant through his behaviour and as a deterrent to other individuals against this form of misconduct.

D. Final Observations

263. In short, both on the issues of the violations and of the sanction, the Panel broadly aligns itself with the analysis and conclusions of the FIFA Ethics Committee. This is, in its view, not an untypical case of a senior official in a national sports governing body treating the sport as his personal fiefdom and elevating his own interests, usually financial, above those of the sport he is meant to serve.

X. Costs

264. Article R65.1 of the Code provides as follows:

> *This Article 65 applies to appeals against decisions which are exclusively of a disciplinary nature and which are rendered by an international federation or sports body. In case of objection by any party concerning the application of the present provision, the CAS Court Office may request that the arbitration costs be paid in advance pursuant to Article R64.2 pending a decision by the Panel on the issue.*

265. Article R65.2 of the Code provides as follows:

> *Subject to Articles R65.2, para. 2 and R65.4, the proceedings shall be free. The fees and costs of the arbitrators, calculated in accordance with the CAS fee scale, together with the costs of CAS are borne by CAS.*

Upon submission of the statement of appeal, the Appellant shall pay a non-refundable Court Office fee of Swiss francs 1,000.-- without which CAS shall not proceed and the appeal shall be deemed withdrawn.

266. Article R65.3 of the Code provides:

Each party shall pay for the costs of its own witnesses, experts and interpreters. In the arbitral award and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and the outcome of the proceedings, as well as the conduct and financial resources of the parties.

267. In accordance with Articles R65.1 and R65.2, given the nature of this appeal, the award is pronounced without costs, except for the Court Office fee of CHF 1,000 paid by the Appellant, which is retained by the CAS.

268. Pursuant to Article R65.3 of the CAS Code, in consideration of the outcome of the present proceedings, the conduct and financial resources of the Parties, the Panel finds it reasonable that the Appellant shall bear its own legal fees and expenses. Furthermore, the Appellant shall pay to FIFA, which was represented by in house counsel, the amount of CHF 2,000 (two thousand Swiss Francs) as a contribution towards its expenses for travel and accommodation, bearing in mind in particular the Appellant's responsibility for the aborted hearing scheduled for 18 November 2019 and the fact that - other than on the admissibility issue - his appeal has failed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr. Chabour Goc Alei against the Fédération Internationale de Football Association (FIFA) on 12 June 2019, with respect to the decision rendered by the Adjudicatory Chamber of the FIFA Ethics Committee on 11 February 2019 is dismissed.

2. The decision rendered by the Adjudicatory Chamber of the FIFA Ethics Committee on 11 February 2019 is confirmed.

3. The award is pronounced without costs, except for the Court Office fee of CHF 1,000 (one thousand Swiss Francs) paid by Mr. Chabour Goc Alei, which is retained by the CAS.

4. Mr. Chabour Goc Alei shall pay CHF 2,000 (two thousand Swiss francs) to FIFA as a contribution to its expenses for travel and accommodation. Save for that, each party shall bear its own legal fees and other costs incurred in connection with this arbitration.

5. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 16 July 2020

THE COURT OF ARBITRATION FOR SPORT

Michael J. Beloff QC
President of the Panel

Martin Schimke
Arbitrator

Jordi López Batet
Arbitrator

Marianne Saroli
Ad hoc Clerk