Decision

of the

adjudicatory chamber

of the

FIFA Ethics Committee

Mr Vassilios Skouris [GRE], Chairman
Mr Mohammad Al Kamali [UAE], Member
Mrs Ayotunde Phillips [NGA], Member

taken on 23 January 2019

in the case of:

Mr Rafael Salguero [GUA]

Adj. ref. no. 20/2018
(Ethics 150957 GUA ZH)

I. Inferred from the file

1. Mr Rafael Salguero (hereinafter: "Mr Salguero" or "the official"), Guatemalan national, was a high ranking football official, in particular a member of the following FIFA Committees: FIFA Executive Committee (2007-2015); FIFA Finance Committee (2011-2012); FIFA Legal Committee (2007-2015); FIFA Football Committee (2007-2012); FIFA Appeal Committee (1999 – 2007); FIFA Organising Committee for the FIFA U-17 World Cup (2012-2015); FIFA Organising Committee for the FIFA U-20 World Cup (2011-2012); and FIFA Organising Committee for the FIFA World Cup TM (2012-2015). From 2007 to 2015, Mr Salguero was also a member of the Confederation of North, Central American and Caribbean Association Football (CONCACAF) Executive Committee. Furthermore, in the period between 1978 and 2005, he occupied, at various times, the senior positions of General Secretary, Treasurer and President of Federación Nacional de Fútbol de Guatemala (FEDEFUT).

2. On 3 December 2015, the United States Department of Justice issued an official Press Release ("the Press Release"), enclosing a superseding indictment ("the Superseding Indictment") against several individuals. According to the Press Release, Mr. Salguero appeared as a defendant amongst said individuals.

3. The official press release further indicated that Mr Salguero had been charged for acts of racketeering conspiracy, wire fraud, wire fraud conspiracy, money laundering and money laundering conspiracy. The infringements referred in the Indictment occurred in or about and between 2009 and 2015. This timeframe coincides with the time in which Mr. Salguero was an official of FIFA and CONCACAF.

4. Based on the above, the then Chairman of the investigatory chamber of the FIFA Ethics Committee (hereinafter: "the investigatory chamber"), determined that there was a *prima facie* case that Mr Salguero had committed violations of the FIFA Code of Ethics (hereinafter: "FCE"). The then Chairman of the investigatory chamber decided to lead the investigation proceedings as the chief of the investigation (cf. art. 65 of the FCE, 2012 edition – "2012 FCE"). As such, on 4 December 2015, Mr Salguero was notified that formal investigation proceedings, pursuant to arts. 63 par. 1 and 64 par. 1 of the 2012 FCE, had been opened against him under referenced 150957 […], relating to possible violations of arts. 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 25 of the 2012 FCE.

5. On 4 December 2018, the investigatory chamber came to know that Mr Salguero had pleaded guilty on 27 October 2016 to racketeering conspiracy, wire fraud conspiracy and money laundering conspiracy in connection with his receipt of bribes in exchange for the awarding of contracts for the media and marketing rights to FIFA World Cup™ qualifier matches and CONCACAF football tournaments and for voting to one of the countries bidding for the FIFA World Cup 2018™. Finally, Mr Salguero had also pleaded guilty for illegally reselling tickets to matches for the following editions of the FIFA World Cup™: 2006, 2010 and 2014. These infringements occurred in the period between 2006 and 2014.

6. With regard to the procedural history before the investigatory chamber, reference is made to the relevant section in the final report.

7. On 17 December 2018, the investigatory chamber informed Mr Salguero that it had concluded its investigation proceedings and, therefore, it had submitted its final report (hereinafter: the final report) to the attention of the Chairperson of the adjudicatory chamber of the FIFA Ethics Committee (hereinafter: the adjudicatory chamber) in accordance with art. 65 of the 2018 edition of the FCE ("2018 FCE").

8. On 18 December 2018, Mr Vassilios Skouris, chairperson of the adjudicatory chamber (the Chairperson), opened adjudicatory proceedings against Mr Salguero in accordance with art. 68 par. 3 of the 2018 FCE. Mr Salguero was also provided with a copy of the Final report and its enclosures, and informed of the deadlines within which he would have to provide his position on the final report and to request a hearing.

9. On 21 December 2018, Mr Salguero was informed about the composition of the adjudicatory chamber's panel.

10. On 22 December 2018, Mr Salguero requested a hearing. On the same day, Mr Salguero was informed that, after taking all relevant factors into account, the Chairperson of the adjudicatory chamber had decided to accept his request for a hearing, which would take place on 23 January 2018.

11. On 7 January 2019, Mr Salguero, via his legal representative (for whom a due power of attorney was provided), informed that he intended to "defend against the final report orally" at the hearing, and that he had no physical evidence or substantiated motions for the admission of evidence upon which he intended to rely.

12. On 8 January 2019, Mr Salguero was provided with the procedural outline of the hearing.

13. On 17 January 2019, Mr Salguero informed that, while he would be represented by his legal counsel - Mr Louis M. Freeman - at the hearing, he would also participate in person in such hearing, together with his son, Mr Luis Salguero (also an attorney and assisting him in the matter).

14. On 21 January 2019, Mr Salguero was informed that his presence in person (as well as that of his son and attorney) at the hearing was confirmed/allowed. Accordingly, on 23 January 2019, a hearing took place, attended by Mr Salguero, together with his legal representatives, and the chairperson of the investigatory chamber. On the occasion of the hearing, Mr Salguero's legal representatives presented oral submissions and handed over three documents which had not been provided previously and which will be referenced below.

II. and considered

A. Applicability of the FCE *ratione materiae* (art. 1 of the FCE)

1. The adjudicatory chamber notes that, according to the final report of the investigatory chamber on the present matter, there are several indications of potential improper conduct in terms of the FCE by the official. In particular, during the investigations, possible violations of the relevant provisions of the 2018 FCE related to general rules (art. 13), loyalty (art. 15), conflicts of interest (art. 19) and bribery (art. 27), as well as their analogous provisions in the 2012, 2009, 2006 and 2004 editions of the FCE, have been identified. The factual circumstances raise, without any doubt, questions of potential misconduct in terms of the FCE.

2. Consequently, the FCE is applicable to the case according to art. 1 FCE (*ratione materiae*).

B. Applicability of the FCE *ratione personae* (art. 2 of the FCE)

3. According to art. 2 FCE, the Code shall apply, *inter alia*, to "officials". The definitions section of the current FCE does not contain a definition of the term "official" but refers to the definitions section in the FIFA Statutes.

4. By virtue of his various positions within FIFA and CONCACAF mentioned previously (cf. par. I.1 above), Mr. Salguero was an official within the meaning of the definition given in no. 13 of the definitions section in the FIFA Statutes during the period presently relevant (2006 – 2014).

5. As a consequence, at the time the relevant actions and events occurred, and in view of Mr. Salguero's position in football at the time, the FCE applies to the official according to art. 2 of the FCE (*ratione personae*).

C. Applicability of the FCE *ratione temporis* (art. 3 of the FCE)

6. The relevant events took place between 2006 and 2014, at a time before the 2018 FCE came into force. With regard to the applicability of the FCE in time, art. 3 of the 2018 FCE stipulates that the 2018 FCE shall apply to conduct whenever it occurred. Accordingly, the material rules of the 2018 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 previous editions of the FCE would be more beneficial to the party (*lex mitior*).

7. In this context, following the relevant case law and jurisprudence, the adjudicatory chamber notes that the spirit and intent of the 2012, 2009, 2006 and 2004 editions of the FCE (which were applicable in the relevant period 2006 – 2014) is duly reflected in the below articles of the 2018 FCE, which contain equivalent provisions:

- Art. 27 of the 2018 FCE has corresponding provisions in the 2012 FCE (art. 21), 2009 FCE (art. 11), 2006 FCE (art. 12) and 2004 FCE (art. 7);
- Art. 19 of the 2018 FCE has corresponding provisions in the 2012 FCE (art. 19), 2009 FCE (art. 5), 2006 FCE (art. 8) and 2004 FCE (art. 9);
- Art. 15 of the 2018 FCE has corresponding provisions in the 2012 FCE (art. 15), 2009 FCE (art. 9 par. 1), 2006 FCE (art. 10 par. 1) and 2004 FCE (art. 5);
- Art. 13 of the 2018 FCE has corresponding provisions in the 2012 FCE (art. 13), 2009 FCE (art. 3), 2006 FCE (art. 3) and 2004 FCE (art. 1 par. 1 and art. 4 par. 1).

8. In consideration of all the above, the adjudicatory chamber concludes that the different FCE editions cover the same offence and that the maximum sanctions in the 2018 FCE are equal or less. Furthermore, from a material point of view, the adjudicatory chamber considers that none of the provisions would be more beneficial to the accused (principle of "*lex mitior*"), since their application would lead to the same result.

9. Consequently, the 2018 FCE is applicable to the case according to art. 3 of the 2018 FCE (*ratione temporis*).

D. Jurisdiction of the FIFA Ethics Committee

10. The scope of jurisdiction of the FIFA Ethics Committee is defined in art. 30 of the 2018 FCE, which is more restrictive compared to the equivalent provisions in the previous editions of the FCE.

11. Art. 30 of the 2018 FCE defines a primary (par. 1) and secondary (par. 2) competence of the FIFA Ethics Committee. At present, the competence of the FIFA Ethics Committee can be deduced from par. 1, which stipulates that if the relevant conduct has been committed by an individual elected, appointed or assigned by FIFA to exercise a function, the Ethics Committee shall be entitled to investigate and judge the respective matter.

12. The adjudicatory chamber notes that the relevant conduct has been committed by a member of various FIFA committees, in particular the FIFA Council (cf. par. I.1 above). Consequently, the FIFA Ethics Committee is entitled to judge his conduct as per art. 30 par. 1 of the 2018 FCE.

E. Assessment of potential violations of the 2018 FCE committed by Mr Salguero

a) Possible violation of art. 27 FCE (Bribery)

1. The relevant facts

13. The official may have violated art. 27 of the FCE in connection with the following schemes:

A. *UNCAF Region 2018 and 2022 FIFA World Cup Qualifiers Schemes* [Cf. Final Report p. 5]

14. The UNCAF qualification matches act as qualifiers for the 2018 FIFA World Cup™ and the 2022 FIFA World Cup™. The member associations of this region entered into independent negotiations with prospective purchasers of their commercial rights to these World Cup qualifiers. The talks included two sports marketing companies called [Company 1] and [Company 2].

15. On 16 March 2010, the FEDEFUT entered into an agreement with [Company 2] for the commercial rights it owned for qualifier matches to be played in advance of the 2018 FIFA World Cup™.

16. In the course of the contact negotiations, [A], an executive acting on behalf of [Company 2], met with Mr Salguero (a former General Secretary, Treasurer and President of FEDEFUT), amongst others. [Company 2] ultimately agreed to pay a six-figure bribe, to be shared amongst the three individuals involved (including Mr Salguero), in exchange for obtaining FEDEFUT's media and marketing rights.

17. In exchange for the awarding of said contract, [Company 2] agreed to pay, and did pay, a bribe of USD 20,000 to Mr Salguero. On or about 31 March 2011, [A] caused USD 20,000 to be wired from [Company 2]'s account at [Bank 1] in Miami, Florida, to a correspondent account at [Bank 2] in New York, New York, for credit to a Guatemalan bank account designated by Mr Salguero in the name of a travel agency. Mr Salguero confirmed in his guilty plea that he "owed this travel agency money for personal travel and also, FIFA-related travel". As to the FIFA-related travel, FIFA would reimburse him, although the same has already been paid to said travel agency.

B. *CONCACAF Media and Marketing rights scheme* [Cf. Final Report p. 6]

18. In 2011, [B] and [C], owners of the sports marketing company called [Company 3], sought to exploit the change in leadership at CONCACAF and win business with CONCACAF, which had not historically sold media and marketing rights to [B] and [C]' company, [Company 3]. [A], who had extensive contacts with the CONCACAF member associations as a result of his work for [Company 2], assisted in this respect and developed a plan, according to which [B] and [C] invited Mr Salguero, among others officials, to meet with them.

19. In November 2011, [B] and [C] paid for Mr Salguero, to fly to Buenos Aires, and then, on a private jet, to [B] and [C] estate in Punta del Este, Uruguay. During meetings held there, Mr Salguero, among other officials, agreed to use their influence to try to cause CONCACAF to sell media marketing rights for CONCACAF tournaments, including the Gold Cup, to [Company 3].

20. In order to induce the Mr Salguero and the other officials to make this agreement, [B] and [C] agreed to pay bribes to them. In particular, Mr Salguero received from

[B] and [C] the amount of USD 100,000 to use his influence at CONCACAF to seek the award the media and marketing rights for certain football tournaments to [Company 3].

C. *Vote for the FIFA World Cup 2018 bid* [Cf. Final Report p. 6]

21. According to Mr Salguero's guilty plea, about six months before the FIFA Executive Committee vote on the awarding of the 2018 and 2022 FIFA World Cups, a non-identified person offered undisclosed payments for Mr Salguero to vote for one of the bids for the 2018 FIFA World Cup, payments which Mr Salguero eventually accepted. About three or four weeks after the vote, Mr Salguero contacted the person that offered the bribe in order to collect the funds, however no payment was ever made.

D. *Reselling tickets for 2006, 2010 and 2014 FIFA World Cup* [Cf. Final Report p. 6]

22. According to Mr Salguero's guilty plea, during the period when he was a member of the FIFA Executive Committee, he had the right to purchase tickets to matches at the 2006, 2010 and 2014 FIFA World Cups™. Despite knowing that he was not allowed to do so, Mr Salguero resold the/his tickets, mainly in the United States and made a personal profit of over USD 40,000.

2. Mr Salguero's position

23. At the hearing on 23 January 2019, Mr Salguero's legal representative expressly stated and repeated that Mr Salguero does not contest the content of the final report, containing the above facts, which he described as being "complete and accurate". In particular, Mr Salguero admitted that "he took those bribes".

24. In view of the above, the adjudicatory chamber fully endorses the factual findings contained in the final report, which can be summarized as follows:

- Mr Salguero was offered and accepted a bribe payment of USD 20,000 in exchange of using his influence with(in) the FEDEFUT in order for the latter to assign its media and marketing rights of the FIFA World Cup qualifiers to [Company 2];

- He was offered and accepted a bribe payment of USD 100,000 in exchange of using his influence within the CONCACAF in order for the latter to assign its media and marketing rights of several football tournaments to [Company 3];

- He was offered and accepted a bribe payment in exchange of voting for one of the bid(der)s for the 2018 FIFA World Cup™; and

- He made a profit of over USD 40,000 for illegally reselling tickets for the 2006, 2010 and 2014 FIFA World Cups™.

3. Legal assessment

A. Wording of the relevant provision

25. With regard to the structure of art. 27 of the FCE, the adjudicatory chamber notes that the actual offence of bribery is laid down in the opening sentence of art. 27 par. 1 of the FCE, both with regard to the offerer ("offer, promise, give") and the offeree ("accept, receive, request or solicit"). The second sentence specifies the persons who may be involved in the act of bribery. The third sentence is a further specification of the first sentence in view of art. 322ter and art. 322^{quater} of the Swiss Criminal Code to which there are several analogies.

B. Persons involved

26. The first two elements set out in art. 27 par. 1 FCE are that (i) the person acting must be bound by the FCE and (ii) the counterpart must be a person within or outside FIFA. As has already been shown (cf. par. II.4 above), Mr Salguero was at the relevant time an official bound by the FCE. As he received the kickbacks from different third parties (including [A] and [B] and [C]), the counterpart condition is also fulfilled *in casu*.

C. Personal or undue pecuniary or other advantage

27. Secondly, a "personal or undue pecuniary or other advantage" must be at stake.

a. Pecuniary or other advantage

28. With regard to the term "pecuniary or other advantage", the adjudicatory chamber brings up that this includes any kind of advancement of economic, legal or personal, material or non-material interest.

29. Without any doubt, the various bribes offered, accepted and/or received by Mr. Salguero gave him a pecuniary advantage within the meaning of art. 27 par. 1 of the FCE. The same applies to the profit made by Mr Salguero from the illegally reselling tickets for the 2006, 2010 and 2014 FIFA World Cups™ (amounting to USD 40,000).

b. Personal or undue advantage

30. Not every kind of pecuniary or other advantage, however, falls under the scope of art. 27 par. 1 of the FCE. Rather, the relevant advantage has to be "personal or undue" one.

31. The pecuniary advantages described previously (cf. par. II.29 above) were all offered to, or accepted/made by or paid to Mr Salguero personally, and therefore represent personal benefits.

32. Furthermore, the advantage must be "undue" in the light of the provisions of FIFA regulations.

33. Mr. Salguero, in his position as a high-ranking football official, was offered, accepted and/or obtained considerable monetary advantages without legal basis in exchange for using his influence (within FEDEFUT and CONCACAF) in relation to the awarding the media and marketing rights for various football tournaments to a sports marketing company, as well as for his vote for a specific bid(der) for the 2018 FIFA World Cup™. Moreover, the profit made by Mr Salguero from resell of the tickets for the 2006, 2010 and 2014 FIFA World Cups™ arose from violations of FIFA's ticketing regulations, which prohibit, *inter alia*, any resale on top of face value.

34. Following the above considerations, it can be concluded that the respective advantages offered, accepted or received to Mr. Salguero constitute an undue pecuniary advantage within the meaning of art. 27 par. 1 of the FCE.

D. Accepting, giving, offering, promising, receiving, requesting or soliciting an advantage

35. The undue pecuniary or other advantage within the meaning of art. 27 par. 1 of the FCE must, in order to constitute a violation of the same provision, be accepted, given, offered, promised, received, requested or solicited by the persons in question.

36. In this case, it is indubitable that Mr Salguero was offered and accepted bribes, which he admitted to (both in his guilty plea and before the FIFA Ethics Committee). Moreover, he made a personal profit of USD 40,000 from the illegal resale of tickets, benefits which he therefore accepted within the meaning of art. 27 par. 1 of the FCE.

E. Ratio of equivalence

37. The core element of art. 27 par. 1 of the FCE is the establishment of a "*quid pro quo*" (ratio of equivalence) between the undue advantage and a specific action by the official obtaining it.

aa. Act that is related to official activities

38. Acts of bribery require that they aim at an act which is related to the official activities of the offeree or recipient.

39. *In casu*, the acts of bribery were clearly related to the official activities of the recipient. Mr. Salguero, in his roles as, *inter alia*, member of the FIFA and CONCACAF Executive Committee and former senior official (President) of the FEDEFUT, was (personally) involved in the assigning of the commercial rights for FIFA and CONCACAF competitions (as well as commercial rights of the FEDEFUT) and was without any doubt one of the key decision makers. The same would apply for the voting, as a FIFA Executive Committee, on the awarding of the 2018 FIFA World Cup™. As for

the illegal reselling of the tickets for the 2006, 2010 and 2014 FIFA World Cups™, Mr Salguero's conduct would include ticket requests as well as the signing of ticketing contracts with FIFA as a FIFA standing committee member, which quite evidently shows that he acted in his official capacity.

bb. Act contrary to duties or falling within discretion

40. The targeted official act must, then, be either contrary to the duties of the official or, despite not being contrary to his duties, be based on illegitimate motives or flawed conduct on his part.

41. Accepting or receiving bribes is a conduct specifically prohibited by the FCE, and directly contravening the core principles of FIFA. Furthermore, (re)selling tickets for the FIFA World Cup™ without the authorisation of FIFA, and even more so for prices double their face value, is manifestly contrary to FIFA's ticketing regulations, in particular, clause 2.2.1 par. 2 of Exhibit B of the Ticket Allocation Agreement that states: "*The NPMA may provide its NPMA Tickets to its Guests [for their personal, non-commercial use, see clause 2.7.1] on a complimentary basis or may seek reimbursement for the provision of NPMA Tickets to its Guests. In case the NPMA seeks reimbursement from its Guests, the NPMA may solely request that its Guests provide reimbursement of the price printed on the face of the Ticket*." Accordingly, Mr Salguero's conduct was contrary to his duties.

cc. *Incitement of the execution or omission of the act*

42. The undue advantage pursuant to art. 27 par. 1 of the FCE must, then, specifically be given in exchange for the execution or omission of the act (*quid pro quo*). Since it is, in many cases, difficult or even impossible to establish a correlation between a payment and a particular act of an official, the Swiss Federal Court and legal doctrine refer to objective indicators in such contexts. Of particular relevance are, for instance, the amount of the payment, the timing of the payment and the act of the official, as well as the occurrence and frequency of contacts between the parties involved.

43. In this respect, the adjudicatory chamber further recalls that CAS has held that "*corruption is, by nature, concealed, as the parties involved will seek to use evasive means to ensure that they leave no trail of their wrongdoing*" (CAS 2014/A/3537, par. 82; CAS 2010/A/2172, par. 21). On the other hand, it must be pointed out that according to the pertinent definition of CAS, a violation must be established to the comfortable satisfaction of the adjudicatory chamber "*bearing in mind the seriousness of the allegation*". Without any doubt, the allegation of bribery is among the most serious ones under FIFA's rules and regulations and the FCE; as a consequence, even if the act of bribery does not have to be proven beyond reasonable doubt, it shall also not be considered as established with levity.

44. Mr Salguero accepted undue advantage in exchange for various acts as described previously (using his influence in relation to the assignment of FIFA/CONCACAF

competitions commercial rights, voting for a specific bid for the 2018 FIFA World Cup™, ordering tickets and then illegally reselling them for a profit). The adjudicatory chamber believes that Mr Salguero would not have engaged in all of these arrangements if he were not positive about receiving a financial benefit/profit. Accordingly, the adjudicatory chamber is comfortably satisfied that Mr Salguero received the benefit in question as a return – *quid pro quo* – and, hence, as an incitement for the execution of an official act within the meaning of art. 27 par. 1 of the FCE.

dd. Intention to obtain or retain business or any other improper advantage

45. Finally, art. 27 par. 1 of the FCE states that the undue advantage must be given "in order to obtain or retain business or any other improper advantage". This requirement is to be sub-divided into several different elements, the first one being the business and/or advantage sought.

46. With regard to the term "advantage", the adjudicatory chamber points out that it must be interpreted in a broad sense, i.e. any kind of betterment or advancement of economic, legal or personal, material or non-material nature (cf. par. II.28 above).

47. In the present case, the advantage lies in Mr Salguero accepting or receiving bribes from various third parties, as well as reselling tickets for the FIFA World Cup™ and generating a profit therefrom. This constitutes a personal betterment and thus an "advantage".

48. Furthermore, the advantage sought must be "improper". Since Mr Salguero was, as per the relevant FIFA regulations, not allowed to accept/receive bribes, or to resell the FIFA World Cup™ tickets for a price above their face value (therefore making a profit therefrom), it follows that the advantage sought was improper.

F. Conclusion

49. All in all, and in the light of the considerations and findings above, the adjudicatory chamber holds that Mr. Salguero by his conduct presently relevant, has violated art. 27 of the FCE (Bribery).

50. In the present context, bearing in mind the gravity of the violation of art. 27 of the FCE, the adjudicatory chamber finds there is no necessity to consider further the violations of arts. 19, 15 and 13 of the FCE set out in the final report (see in this sense CAS 2014/A/3537, *Vernon Manilal Fernando v. FIFA*, par. 105), which, in any case, appear to be consumed by Mr Salguero's breach of art. 27 of the FCE.

F. Sanctions and determination of sanctions

a) Sanction

51. According to art. 6 par. 1 of the FCE, the Ethics Committee may pronounce the sanctions described in the FCE, the FIFA Disciplinary Code (hereinafter: FDC) and the FIFA Statutes.

52. When imposing a sanction, the adjudicatory chamber shall take into account all relevant factors in the case, including the nature of the offence, the offender's assistance and cooperation, the motive, the circumstances, the degree of the offender's guilt, the extent to which the offender accepts responsibility and whether the person mitigated his guilt by returning the advantage received (art. 9 par. 1 FCE). It shall decide the scope and duration of any sanction (art. 9 par. 3 FCE).

53. In his oral submissions before the adjudicatory chamber during the hearing, Mr Salguero (and his legal representative) argued for a lesser sanction, highlighting circumstances that he considered as mitigating factors, such as his cooperation with US authorities "to help clean up the corruption" and his professional record in football.

54. In particular, Mr Salguero claimed to have cooperated with the investigation conducted the US authorities since his arrest in December 2015, by giving truthful, accurate and detailed information on corruption in football (bribes offered and taken) while living for three years under house arrest in a secure location provided by the US government, due to concerns for his safety, without the permission to visit his family in Guatemala during such period. According to Mr Salguero, this cooperation was allegedly taken into account in the sentence of "time served" imposed on him by the US courts, and allegedly resulted in Mr Salguero helping the US government recover considerable amounts in restitution, fines and forfeiture. Furthermore, a detailed presentation of Mr Salguero's professional background and 40-year career in football was made, highlighting his senior roles in FEDEFUT, UNCAF, CONCACAF and FIFA, as well as his work on FIFA appointment developing football in Costa Rica and Panama. In this context, Mr Salguero's legal representative also mentioned that due to a judgement passed by a United States court (a copy of which he provided on the occasion of the judgement, cf. par. I.14 above), he is no longer entitled to work in football. In view of this, Mr Salguero emphasized that any additional ban imposed by the FIFA Ethics Committee would be redundant. Finally, Mr Salguero stated to have made a payment of USD 168,000 to the US government/authorities in the scope of the relevant criminal proceedings, as forfeiture of the bribes received, and provided the adjudicatory chamber with an excerpt of a document attesting such payment ("Transcript of criminal cause for sentencing before the Honorable Pamela Chen, United States district judge" dated 6 December 2018).

55. Overall, Mr Salguero emphasized that during the last years, he has gone through a very complicated and deprived period of his life, which has not only led to deep

remorse about his previous conduct, but has also made him pay for it – not only in a financial sense.

56. First of all, when evaluating the degree of the official's guilt in the context of sanctioning the violation of art. 27 of the FCE, the seriousness of the violation and the endangerment of the legal interest have to be taken into account. The legal interest protected by this provision refers to the integrity (cf. art. 2 let. e of the FIFA Statutes) and the objectivity of FIFA and its bodies and officials, as well as to the trust of the individuals and institutions subject to FIFA's powers as an association. Endangering this legal interest, in turn, is likely to cause serious damage to the trust in FIFA. Accordingly, FIFA has a legitimate interest to take a tough stance against violations of this provision.

57. In this respect, it should be pointed out that Mr Salguero has held very prominent and senior positions in association football at national, regional and international level. In these functions, he has a responsibility to serve the football community as a role model. In addition, no 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. In view of these findings, Mr Salguero's degree of guilt must be regarded as serious.

58. With regard to the circumstances of the present case, the adjudicatory chamber emphasises that several of its aspects render the case particularly grave: Mr Salguero is a senior and influential football official; he personally enriched himself by accepting bribes on several occasions (and for considerable amounts), as well as by dealing with tickets for the FIFA World Cup™, FIFA's flagship competition. It must also be borne in mind that Mr Salguero violated art. 27 of the FCE, which is the most serious offence under the Code.

59. As far as the motive is concerned, the adjudicatory chamber notes that Mr Salguero actions were led by personal financial interests. He sought to – and eventually did – materially benefit from his actions. In particular, he took advantage (and traded) his influence and high-ranking functions in exchange for bribes, and he abused his privileged access to tickets for the FIFA World Cup™, as a FIFA standing committee member. Accordingly, Mr Salguero's motive (which was driven by personal gain) in the present case must be qualified as reprehensible and an aggravating factor in the case.

60. On the other hand, the adjudicatory chamber has taken note that Mr Salguero has expressly and unequivocally admitted the charges against him and infringements committed during his last oral statement at the hearing. In an attempt to demonstrate his good faith, the oral submissions before the adjudicatory chamber, Mr Salguero abstained from contesting the final report, describing its contents as "complete and accurate", and expressed deep and sincere remorse for his actions (which he described as "a serious mistake" and "an error in judgement that gave football a black eye"). Note is also taken of the fact that Mr Salguero travelled with his son and legal representative to Zurich, city where he was arrested in 2015, in order to

apologize for his mistakes and to stand by for any questions of the panel. These circumstances do not relate to the question of Mr Salguero's guilt, but support leniency.

61. Furthermore, the adjudicatory chamber takes note that, based on the document provided by Mr Salguero on the occasion of the hearing, it appears that he has paid an amount of USD 168,000 to the US authorities in relation to his criminal proceedings, as forfeiture of the respective bribes.

62. Finally, the adjudicatory chamber takes into account, in Mr Salguero's favour, that he has been rendering valuable services to football and to the development of the game in Guatemala and the Central American region, as well as to FIFA during an extensive career spanning almost four decades.

63. To sum up, the adjudicatory chamber is of the view that, while the guilt of Mr Salguero in the present case is extremely serious, there are certain aspects that could mitigate the degree of his guilt.

b) Determination of the sanction

64. With regard to the type of sanction to be imposed on Mr Salguero, the adjudicatory chamber deems – in view of the serious nature of his misconduct (cf. par. II.56 *et seqq.* above) – only a ban on taking part in any football-related activity is 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 Salguero by banning him from taking part in any football-related activity (art. 7 par. 1(j) of the FCE; art. 56 par. 2(f) of the FIFA Statutes; art. 11(f) and art. 22 of the FDC).

65. When determining the scope and duration of a ban, the adjudicatory chamber has to be guided by the principle of proportionality.

66. After having taken into account all relevant factors of the case (cf. par. II.52 *et seqq.* above), in particular his deep remorse and other mitigating circumstances, the adjudicatory chamber deems a ban on taking part in any football-related activity for seven (7) years to be proportionate. With regard to the scope (geographical area, art. 9 par. 4 of the FCE), only a worldwide effect is appropriate since Mr Salguero committed FCE violations that involved FIFA assets and where stakeholders from other countries (e.g. United States, South America) were involved. Limiting the ban to association or confederation level, in turn, would neither prevent him from future misconduct nor adequately reflect the chamber's disapproval of his conduct.

67. In conclusion and in light of the above considerations, Mr Salguero is hereby banned from taking part in any football-related activity (administrative, sports or any other) at national and international level for seven (7) years. In accordance with art. 42 par. 1 of the FCE, the ban shall come into force as soon as the decision is communicated.

68. In the present case, the adjudicatory chamber is of the opinion that the imposition of a ban on taking part in any football-related activity is not sufficient to sanction the misconduct of Mr Salguero adequately, in particular since a personal financial motive and gain were involved. Hence, the adjudicatory chamber considers that the ban imposed on Mr. Salguero should be completed with a fine.

69. In the calculation of the fine, the adjudicatory chamber took into consideration the undue pecuniary advantages received by Mr Salguero as bribes (USD 120,000) and his profit obtained in connection with the FIFA World Cup™ tickets (USD 40,000). In the adjudicatory chamber's view, these amounts alone do not adequately reflect the seriousness of the misconduct displayed by Mr Salguero, nor the adjudicatory chamber's disapproval of such conduct. Moreover, in order to have a sanctioning and a preventive effect, the fine should be higher than the benefit Mr Salguero obtained, as otherwise it would only amount to a reclaiming of the respective benefit. However, in the present case, the adjudicatory chamber would like to take into account the fact that Mr Salguero has apparently forfeited to the US authorities an amount corresponding to (or even surpassing) that of the undue financial benefits obtained - USD 168,000. While this forfeiture/reimbursement, made in the scope of completely distinct state criminal proceedings, does not represent even a partial discharge of Mr Salguero's responsibility or guilt in the present proceedings, it shall be taken in consideration as a mitigating circumstance in the calculation of the financial sanction to be imposed.

70. In the light of the above, the adjudicatory chamber considers a fine of CHF 100,000 to be proportionate.

c) Procedural costs and procedural compensation

71. The procedural costs are made up of the costs and expenses of the investigation and adjudicatory proceedings (art. 54 of the FCE).

72. Mr Salguero has been found guilty of violations of art. 27 of the FCE and has been sanctioned accordingly. The adjudicatory chamber deems that no exceptional circumstances apply to the present case that would justify deviating from the general principle regarding the bearing of the costs. Thus, the adjudicatory chamber rules that Mr Salguero shall bear the procedural costs (art. 56 par. 1 of the FCE).

73. In the present case, the costs and expenses of the investigation and the adjudicatory proceedings – including a hearing before the adjudicatory chamber – add up to […].

74. According to art. 57 of the FCE, no procedural compensation shall be awarded in proceedings conducted by the Ethics Committee. Consequently, Mr Salguero shall bear his own legal and other costs incurred in connection with these proceedings.

III. has therefore decided

1. Mr Rafael Salguero, is found guilty of infringement of art. 27 (Bribery) of the FIFA Code of Ethics.

2. Mr Rafael Salguero, is hereby banned from taking part in any kind of football-related activity at national and international level (administrative, sports or any other) for a period of 7 (seven) 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 Rafael Salguero, shall pay a fine in the amount of CHF 100'000 within 30 days of notification of the present decision. Payment can be made either in Swiss francs (CHF) to account no. 0230-325519.70J, UBS AG, Bahnhofstrasse 45, 8098 Zurich, SWIFT: UBSWCHZH80A, IBAN: CH85 0023 0230 3255 1970 J or in US dollars (USD) to account no. 0230-325519.71U, UBS AG, Bahnhofstrasse 45, 8098 Zurich, SWIFT: UBSWCHZH80A, IBAN: CH95 0023 0230 3255 1971 U, with reference to case no. "Adj. ref. no. 20/2018 (Ethics 150957)"in accordance with art. 7 let. e) of the FIFA Code of Ethics.

4. Mr Rafael Salguero shall pay costs of these proceedings in the amount of […] within 30 days of notification of the present decision, which shall be paid according to the modalities stipulated under point 3. above.

5. Mr Rafael Salguero, shall bear his own legal and other costs incurred in connection with the present proceedings.

6. This decision is sent to Mr Rafael Salguero. A copy of the decision is sent to the CONCACAF and to FEDEFUT. A copy of the decision is also sent to the Chairperson of the investigatory chamber of the FIFA Ethics Committee, Ms Maria Claudia Rojas.

LEGAL ACTION:

In accordance with art. 82 par. 1 of the FCE and art. 58 par. 1 of the FIFA Statutes, this decision can be appealed against to the Court of Arbitration of Sport ("CAS") in Lausanne, Switzerland (www.tas-cas.org). The statement of appeal must be sent directly to CAS within 21 days of notification of this decision. Within another ten (10) days following the expiry of the time limit for filing the statement of appeal, the appellant shall file with CAS a brief stating the facts and legal arguments giving rise to the appeal (see art. R51 of the Code of Sports-related Arbitration).

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION

Vassilios Skouris
Chairman of the adjudicatory chamber
of the FIFA Ethics Committee