Decision

of the

Adjudicatory Chamber

of the

FIFA Ethics Committee

Mr Vassilios Skouris [GRE], Chairperson
Ms Margarita Echeverría [CRC], Member
Mr Flavio Zveiter [BRA], Member

taken on 11 April 2019

in the case of:

Mr Mooketsi Kgotlele [BOT]

Adj. ref. no. 4/2019
(E18-00028)

I. Inferred from the file

1. Mr Mooketsi Kgotlele (hereinafter: *Mr Kgotlele*), a Botswana national, has been an official of the Botswana Football Association (BFA); particularly, from August 2007 to December 2009, during the relevant timeframe, Mr Kgotlele has been the general secretary of the BFA.

2. The FIFA Integrity Department submitted a preliminary investigation report and its enclosures to the investigatory chamber of the FIFA Ethics Committee. According to this FIFA Integrity Report (which was based on email correspondence exchanged by Mr Kgotlele with Mr Perumal- Singaporean citizen and convicted match-fixer - between May and August 2009, the time of the relevant conduct), Mr Kgotlele had potentially engaged in corrupt behaviour in order to gain undue financial advantages.

3. More specifically, Mr Kgotlele would have accepted a financial incentive promised by Mr Wilson Raj Perumal to organize international matches and enter into alleged corrupt business dealings with Mr Perumal and his company […] (hereinafter: [Company 1]).

4. In view of the FIFA Integrity Report, formal investigation proceedings against Mr Kgotlele were opened on 6 September 2018, and led by Ms Maria Claudia Rojas, the chairperson of the investigatory chamber (see art. 63 of the 2018 FIFA Code of Ethics, ¨2018 FCE¨).

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

6. Investigation proceedings were concluded on 11 March 2019. The final report and investigation files (hereinafter: *the Final report*) were subsequently referred to the adjudicatory chamber.

7. On 12 March 2019, Mr Vassilios Skouris, chairperson of the adjudicatory chamber (hereinafter: *the Chairperson*), opened adjudicatory proceedings against Mr Kgotlele in accordance with art. 68 par. 3 of the 2018 FCE. The Chairperson informed Mr Kgotlele of the composition of the Panel deciding the case (against which he did not object). Furthermore, the Chairperson set a deadline for Mr Kgotlele to provide his position on the Final report and to request a hearing.

8. On 14 March 2019, Mr Kgotlele *inter alia* requested an extension of the deadline to submit his position. On the same day, the Chairperson decided to accommodate such extension and, accordingly, set a new deadline for Mr Kgotlele to provide his position.

9. On 25 and 26 March 2019, Mr Kgotlele requested a new extension of the deadline to provide his position. On 26 March 2019, Mr Kgotlele was provided with a final extension of the relevant deadline (until 8 April 2019).

10. On 6 April 2019, Mr Kgotlele requested a new (and third) extension for providing his position, which was dismissed by the Chairperson (cf. letter of 8 April 2019).

11. On 8 April 2019, within the final deadline, Mr Kgotlele provided his position.

12. On the same day, Mr Kgotlele was informed that the decision would be taken by the Panel (cf. par. 7 above) based on the existing documents and submissions (in accordance with art. 69 par. 2 of the 2018 FCE).

II. and considered

A. Applicability of the FCE *ratione materiae* (art. 1 of the 2018 FCE)

1. According to the Final report of the investigatory chamber, there are several indications of potential improper conduct by Mr Kgotlele. In particular, the Final report revealed potential violations of art. 3 and art. 12 of the 2006 FCE (and the analogous provisions in the 2018 FCE).

2. Consequently, the FCE is applicable to the case according to art. 1 of the 2018 FCE (*ratione materiae*).

B. Applicability of the FCE *ratione personae* (art. 2 of the 2018 FCE)

3. By virtue of his positions within the BFA mentioned previously (cf. par. I.1 above), Mr Kgotlele was an official as defined in the FIFA Statutes.

4. Consequently, the FCE is applicable to the case according to art. 2 par. 1 of the 2018 FCE (and the equivalent provision in the previous FCE).

C. Applicability of the FCE *ratione temporis* (art. 3 of the 2018 FCE)

5. The Final report concluded that Mr Kgotlele has taken bribes related to the manipulation of football matches. Misconduct that involves bribery has been duly established in FIFA's ethics framework since its beginning, and respective provisions can be found in the 2004 (art. 7), 2006 (art. 12), 2009 (art. 11), 2012 (art. 21) and 2018 (art. 27) editions of the FCE.

6. Moreover, the 2018 FCE has introduced a specific provision regarding the manipulation of football matches or competitions (art. 29), which absorbs bribes taken in that context. Such specific provision on match manipulation was however not available in previous editions of the FCE, particularly the 2006 edition ("2006 FCE"), which applied at the time of the relevant conduct (May to August 2009). Rather, bribes taken in the context of match fixing would be assessed based on the general provisions on bribery, which covers various types of corrupt behaviour.

7. Art. 3 of the 2018 FCE stipulates that the Code may only be applied "if the relevant conduct contravened the Code applicable at the time it occurred". Based on a preliminary material evaluation, Mr Kgotlele could have contravened the general provision on bribery as well as the new match manipulation provision contained in the 2018 FCE (*lex specialis*). However, the adjudicatory chamber considers that the

application of the (new) match manipulation provision would not be consistent with the principle *nulla poene sine lege*.

8. It is further noted that the application of the new match-fixing provision does not seem to be more beneficial for Mr Kgotlele. Rather, under the 2018 FCE, both offenses (match fixing and bribery) are considered as equally serious, which is, *inter alia*, demonstrated by their lengthy prescription periods and their severe scope of the sanctions (art. 12 par. 2, art. 27 par. 3 and 29 par. 4 of the 2018 FCE).

9. In view of the above, the adjudicatory chamber decides to judge the conduct presently relevant based on the material provisions of the FCE edition that was force at the time of the questionable conduct (*ratione temporis*). Consequently, the provision on bribery contained in the 2006 edition of the FCE would apply.

10. In the light of art. 3 of the 2018 FCE, the legal assessment shall be made based on the 2006 FCE (art. 12).

D. Jurisdiction of the FIFA Ethics Committee

11. 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 2006, 2009 and the 2012 FCE.

12. Art. 30 of the 2018 FCE concerns the competence of the FIFA Ethics Committee and is divided into two paragraphs. The first one stipulates the cases/instances in which the committee has exclusive competence to investigate and judge the conduct of the persons bound by the FCE, while the second paragraph describes the conditions under which the committee is entitled to investigate/judge the conduct that is not directly related to FIFA matters (subsidiary competence).

13. Art. 30 par. 1 of the 2018 FCE establishes that the FIFA Ethics Committee would have exclusive competence over conduct that (i) has been committed by an individual who was elected, appointed or assigned by FIFA to exercise a function; (ii) directly concerns their FIFA-related duties or responsibilities; or (iii) is related to the use of FIFA funds. Therefore, *in casu* none of these conditions are fulfilled by Mr Kgotlele's conduct, the Ethics Committee would not assume (exclusive) competence over the respective matter.

14. However, according to of art. 30 par. 2 of the 2018 FCE, the FIFA Ethics Committee would have subsidiary competence over the relevant conduct (of Mr Kgotlele, *in casu*) that ¨has not been investigated and judged, and/or cannot be expected to be investigated and judged, by the relevant judicial bodies of the association or confederation concerned. In particular, should no proper proceedings be taken at national and/or confederation level within three months as from when the matter became known to the Ethics Committee¨ (emphasis added). In the present case, these ¨subsidiary¨ conditions should be deemed to have been fulfilled and the committee would assume its subsidiary competence over the case.

15. In view of the above, the FIFA Ethics Committee is entitled to investigate and judge the present case on the basis of its subsidiary jurisdiction, given that neither the BFA nor CAF have been expressed their intention to investigate and/or judge Mr Kgotlele's violations. Moreover, this committee has not been informed of any investigation or proceedings having been initiated to date in relation to this specific matter (nor at least it has not been proven by the party). Furthermore, Mr Kgotlele does not dispute the jurisdiction of the FIFA Ethics Committee.

16. Consequently, the FIFA Ethics Committee is entitled to judge his conduct as per art. 30 par. 2 of the 2018 FCE.

E. Assessment of potential infringements of the 2006 FCE committed by Mr Kgotlele

1. Preliminary remark regarding possible violations of arts. 3, 8 and 16 of the 2006 FCE

17. The adjudicatory chamber notes that the Final report mentions on pages 11 to 14 the potential breaches of arts. 3, 8 and 16 of the 2006 FCE that could have been committed in relation to the relevant conduct of Mr Kgotlele. In this respect, the Panel considers that such infringements, committed in 2009, are time-barred pursuant to art. 12 par. 1 of the 2018 FCE (according to which the limitation period for prosecution in relation to this type of offences amounts to five years). Consequently, any further legal assessment in this respect would be redundant and the adjudicatory chamber will concentrate on a potential breach of art. 12 of the 2006 FCE.

2. Possible violation of art. 12 of the 2006 FCE

a) <u>The relevant facts</u>

18. It is undisputed that Mr Perumal is a convicted match fixer and that he aimed to fix matches which involved the participation of the Botswana national football team(s) for financial gains (through betting purposes).

19. It is equally uncontested that Mr Kgotlele exchanged extensive email correspondence with Mr Perumal, between May and August 2009, in relation to the organisation of international matches with the participation of the Botswana national football team(s). It is further noted that the email address used by the accused is an official account of the federation (¨kgotlele@bfa.co.bw¨) - including the respective BFA information (i.e. address, phone, fax and BFA's official website). Furthermore, Mr Kgotlele signed the relevant communications as ¨Chief Officer Botswana Football Association¨. To a large extent, the relevant facts are based on the aforementioned email exchanges, enclosed to the Final report.

A. *The friendly match between Singapore and Botswana in June 2009* [Cf. Final report pp. 5 to 8]

20. On 28 May 2009, Mr Perumal requested the assistance of Mr Kgotlele in finding/securing ¨a team that can work to my instructions for a U17 youth tournament in Bahrain¨ and further required ¨the co-operation of the entire team including coach and players¨ for a different friendly match to be played between the U-23 national teams of Botswana and Singapore. In relation to the latter, Mr Kgotlele accepted the economic incentive for his ¨services¨, i.e. a payment of USD 10,000, which was separate from the payments of USD 10,000 to the federation and USD 5,000 to the coach of the team (¨This [N.B. Mr Kogotlele's payment] will not be accounted in the total sum that i will be paying your players and staff.¨). Furthermore, Mr Perumal elaborated his intentions to manipulate the match as follows: ¨Most important is that we will pay the team what we promise only if we give you instructions during or before the game¨ (cf. email of 28 May 2009).

21. On the same day, Mr Kgotlele acknowledged Mr Perumal´s inquiry and confirmed his cooperation (¨Thanks for the proposal and let me assure you that we will cooperate. We are interested, but the 10,000 USD should be paid to the CEO as he is the link person. (...) But I am excited about this offer¨).

22. On 29 May 2009, following Mr Perumal's instructions, Mr Kgotlele forwarded to the former a letter addressed to the attention of the then general secretary of the Football Association of Singapore (FAS), requesting to play a U-23 friendly match against Botswana in June 2009. In addition, Mr Kgotlele noted that the BFA would cover the transportation and accommodation costs of its delegation for the match to be played in Singapore - on 17 June 2009.

23. On 8 June 2009, in relation to the friendly match in Singapore, Mr Perumal requested (a) ¨coach and players who are co-operative¨ and gave specific instructions to Mr Kgotlele on how to manipulate the: ¨INSTRUCTIONS: (…) If i provide you instructions it will be to play a very slow game with lots of passing in the first half. Avoid scoring in the first half. Keep the score as low as possible in the first half. In the 2nd half we unleash all our 22 year boys and beat the Singapore team by a good 5-0. All goals must be scored systematically between a time span of 8 mins per goal. End result for should read 5-0 or 6-0 to Botswana. Please bring a coach and players who are co-operative. Treat this as a holiday and exposure for the team. Thank you.¨.

24. In the same email, Mr Perumal offered a bribe of USD 25,000 in favour of Mr Kgotlele and USD 25,000 to be shared between the BFA players (¨TERMS N CONDITIONS 1. We pay airfare and accomodation. 2. If we pass down instructions to your team then your team will receive 50,000 US dollars to be divided into 25,000 to players and the balance of 25,000 will be handed to you. It will then left to you to divide this with your officials and u.¨).

25. One day later, on 9 June 2009, Mr Kgotlele answered positively to Mr Perumal's proposal (¨This should be possible on our side, please come back to us with more details regarding dates of departure (…).Thanks once again for this offer¨).

B. The friendly match between Syria and Botswana in June 2009 [Cf. Final report p. 8]

26. On 9 June 2009, Mr Perumal inquired whether the Botswana senior national team would be available for an international friendly match against Syria, and he again gave clear instructions to Mr Kgotlele on how to manipulate the game (¨Is it possible for the team to take instructions. I want the team to loose [sic] by a single goal¨).

27. On the same day, Mr Kgotlele answered that it would be ¨difficult¨ to gather the team due to the player's obligations in the national league. However, he suggested, as an alternative, that the match takes place during the FIFA official calendar dates (¨WITH THE Senior NATIONAL Team it is going to be difficult because they want finish the League by the 7TH August 2009,unless we pick a FIFA date¨).

C. The friendly match between China and Botswana in September 2009 [Cf. Final report pp. 9 - 10]

28. On 6 August 2009, Mr Perumal informed Mr Kgotlele that he would ¨sponsor¨ the Botswana delegation´s trip to China only if he obtained the ¨fullest cooperation¨ of the coach and the players in order to manipulate the match against China. Mr Perumal further described his match manipulation intentions, stating that he wanted to approach the national coach, as follows: ¨As a CEO i will not expect you to do the talking to the players. I will speak to the coach get his consent and let us do the work. I will pay u 10,000 US if we give instructions to your coach. Everything will be done with your knowledge.¨. Mr Perumal offered a bribe of USD 10,000 to Mr Kgotlele, as well as a payment of USD 8,000 to the coach and USD 5,000 to each player involved in the match.

29. On the same day, the accused accepted this new request and recommended that Mr Perumal should not mention the respective payments and bribes to the coach and the team players. Mr Kgotlele also asked for a higher amount (of the bribe), stating that he would be responsible for the ¨dirty work¨ (¨You can give the Coach 4000 USD on the side and just thank the players by giving them 1000 each. The rest must be directly given to the CEO who does the dirty work.¨).

30. Thereupon, Mr Perumal made a new bribe proposal to Mr Kgotlele for a total amount of USD 30,000 (¨10,000 for u, 5,000 for Coach, 1000 for each player. Then i will give you additional 20,000 that is suppose to go to players. The agent will get 10,000. this is only if i give out instructions. i do not want a misunderstanding.¨).

31. A few hours later, Mr Kgotlele accepted this proposal and asked Mr Perumal to send the offer to the executive committee of the BFA – but to exclude the financial terms of their ¨agreement¨ (¨Ok, now please give us an offer, just by email without the money part so that I can now show it to my Executive as proof.¨).

32. On 7 August 2009, Mr Perumal informed Mr Kgotlele that one of his collaborators would contact him and the coach of the team in order to explain the match

manipulation scheme (¨(…) will send one of my collegue [sic] to explain everything in detail to you and on your part you have to make arrangements for my collegue [sic] to meet the coach. we will give the coach the responsibilty [sic] of handpicking players who can co-operate with him.¨). On the same day, Mr Kgotlele agreed with Mr Perumal's proposal (and scheme).

b) Summary of the findings of the investigatory chamber

33. The investigatory chamber concluded that, in the period May - August 2009, Mr Kgotlele - using and taking advantage of his position as general secretary of the BFA - secured the Botswana national teams to play international friendly matches organised by Mr Perumal and his company [Company 1] in order to manipulate them. In this respect, the investigatory chamber noted that Mr Kgotlele accepted payments from Mr Perumal in exchange for the influencing and/or manipulating the results of those international friendly matches.

c) Mr Kgotlele's position

34. Mr Kgotlele claimed to have never received any benefit from Mr Perumal and that the BFA executive committee approved the participation of the Botswana national team(s) in the above-mentioned matches.

35. In addition, Mr Kgotlele asserted that he had been in conflict with the new BFA executive committee since 2008 and that he had not been ¨smarter enough to realise the strategy to avoid the trap¨. He stated that ¨when the delegation arrived in China things started breaking loose and there were talks with the coach and players. Whatever was agreed with Mr Perumal was explained before the start of the trip that it won't be possible. When the Team got back I was immediately suspended¨. He added that, subsequently, he ¨was fired as the Secretary of the Association¨ in October 2009.

36. Finally, Mr Kgotlele asked the adjudicatory chamber to take into account his (alleged) personal circumstances (his sacking by the BFA and difficulties in finding another job, dire financial situation, divorce and medical conditions) and the mitigating factors of the case.

37. With regard to any other motions or arguments brought forward by Mr Kgotlele, reference shall be made to them in the following legal analysis.

d) Legal assessment

38. As a football official bound by the FCE, Mr Kgotlele was forbidden from accepting bribes from any third party. In this respect, art. 12 of the 2006 FCE establishes three cumulative requirements: (a) a gift or advantage must be offered, promised or sent to an official; (b) the official must be incited to breach some duty or to behave dishonestly for the benefit of a third party; (c) the official has breached the obligation to refuse (cf. *mutatis mutandi* CAS award 2011/A/2426, page 52).

39. Based on the various email exchanges between Mr Kgotlele and Mr Perumal, it is clear that Mr Kgotlele engaged in a match fixing scheme in order to receive bribes from Mr Perumal. The wording used by both was very clear (e.g. ¨We require the co-operation of the entire team including coach and players¨; ¨End result for should read 5-0 or 6-0 to Botswana. Please bring a coach and players who are co-operative.¨; ¨I want the team to loose by a single goal.¨), as well as consistent, leaving no doubt that Mr Kgotlele must have acted deliberate and intentional. In this respect, it is sufficient to refer to the email exchanges in which Mr Perumal and Mr Kgotlele discussed the involvement of the coach (e.g. ¨you have to make arrangements for my collegue to meet the coach. we will give the coach the responsibilty of handpicking players who can co-operate with him.¨, email of 7 August 2009) or the participation of players (¨Please bring a coach and players who are co-operative¨, email of 8 June 2009), to determine that the accusable conduct contradicts Mr Kgotlele's most essential official duties.

40. In this sense, Mr Kgotlele interactions with Mr Perumal appeared to be driven by his aim to gain an advantage, i.e. a financial betterment. For the match between Botswana and Singapore to be played on 17 June 2009, Mr Kgotlele was offered *and* accepted (at least) USD 25,000 in order to influence the result of the match (¨End result for should read 5-0 or 6-0 to Botswana. Please bring a coach and players who are co-operative.¨). Furthermore, in an email of 6 August 2009, Mr Perumal promised to Mr Kgotlele a bribe of USD 10,000 for his cooperation in the match-fixing scheme (¨10,000 for u [Mr Kgotlele], 5,000 for Coach, 1000 for each player. Then i will give you additional 20,000 that is suppose to go to players. The agent will get 10,000. (…).¨). Moreover, for the match Botswana v China in September 2009, Mr Perumal promised and offered Mr Kgotlele a total bribe of USD 30,000 for the manipulation of the match and to ¨make arrangements for my [N.B. Mr Perumal's] collegue to meet the coach. we will give the coach the responsibility [sic] of handpicking players who can co-operate with him.¨ (cf. email of 7 August 2009). The abovementioned email exchanges attest, to the comfortable satisfaction of the adjudicatory chamber, that these amounts were repeatedly offered and promised by Mr Perumal, as well as negotiated, solicited and accepted by Mr Kgotlele.

41. It is further noted that the ratio of equivalence between the (undue) advantage given and a specific action by the official obtaining the advantage is clearly established. In this context, the adjudicatory chamber would like to recall that in cases of bribery, it is often difficult to establish a correlation between a payment and a particular act of an official. Objective indicators are important in this context, such as, 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. At present, based on the email exchanges, it is evident that the (undue) advantages were offered to Mr Kgotlele in order to obtain the latter's participation in the manipulation of international matches. Being an experienced official, Mr Kgotlele played a key role in the several match manipulations planned and carried out by Mr Perumal. He did so directly by approaching and involving players and other officials. Mr Kgotlele must have known that by being offered and accepting the bribes, he was being incited by Mr Perumal to breach his core duties as a general secretary and to behave dishonestly. Equally, it is evident that the bribes were specifically given for

Mr Kgotlele's execution or omission of an act (e.g. ¨End result for should read 5-0 or 6-0 to Botswana¨, email of 8 June 2009; and/or ¨I want the team to loose [sic] by a single goal.¨, email of 9 June 2009). Accordingly, the adjudicatory chamber notes that incentive and misconduct were directly linked to each other.

42. According to art. 12 of the 2006 FCE, the undue advantage must be ¨for the benefit of a third party¨. The manipulation of matches is an (illegitimate) business with the sole aim of making profits by fixing the result of a match. The fact that the result of the manipulated matches would directly affect gain and loss of Mr Perumal is evidenced by the events described above. *Inter alia*, the adjudicatory chamber recalls that Mr Perumal asked the accused for ¨a coach and players who are co-operative¨ in order to ¨avoid scoring in the first half. Keep the score as low as possible in the first half¨ and ¨end result for should read 5-0 or 6-0 to Botswana¨ - and/or ¨I want the team to loose [sic] by a single goal¨ - the adjudicatory chamber is comfortable to conclude that Mr Perumal gave such clear instructions in order to make a profit through betting purposes by influencing the result (or certain elements) of the international friendly matches organized by Mr Perumal.

43. In view of the above, the adjudicatory chamber concludes that the first two conditions of art. 12 of the 2006 FCE are met. The same applies to the third condition (obligation to refuse the bribe), since Mr Kgotlele evidently agreed to receive the bribe. On the contrary, on several occasions, Mr Kgotlele tried to negotiate a more substantial bribe (¨You can give the Coach 4000 USD on the side and just thank the players by giving them 1000 each. The rest must be directly given to the CEO who does the dirty work.¨, email of 6 August 2009).

e) Conclusion

44. Taking into account the evidence at hand, the adjudicatory chamber is comfortable to conclude that Mr Kgotlele conspired with Mr Perumal to manipulate the results of international matches.

45. Moreover, the adjudicatory chamber is comfortably satisfied that Mr Kgotlele conspired with Mr Perumal to approach and recruit players for them to play as per Mr Perumal's instructions to manipulate the results of international matches.

46. In the light of the foregoing, the adjudicatory chamber considers that, by being offered and promised as well as by accepting payments from Mr Perumal, Mr Kgotlele has breached art. 12 of the 2006 FCE.

F. Sanction and determination of sanctions

47. First, the adjudicatory chamber would like to highlight that match fixing constitutes one of the most serious breaches of sport principles and, in particular, those of loyalty, integrity, sportsmanship and fair play, and thus poses one of the biggest threats to football.

48. As a (former) general secretary of the BFA, Mr Kgotlele held a crucial position in association football at national level. As such, he had a special responsibility to serve as a role model. Yet, Mr Kgotlele has been found guilty of accepting bribes, repeatedly over a period of almost four months. In addition, not acts of mere negligence are at stake here but deliberate actions (see art. 6 par. 2 of the 2018 FCE). Further, most of the relevant acts are not merely attempts but have been completed by Mr Kgotlele. In view of all these circumstances, Mr Kgotlele's degree of guilt must be regarded as very serious.

49. With regard to the circumstances of the case, the adjudicatory chamber emphasises that several of its aspects render the case at hand to be of gravity: Mr Kgotlele was a senior and influential football official at the Botswana's federation; he personally enriched himself through the acceptance of bribe payments from an international match fixer; the bribe payments related to different competitions (including junior matches); Mr Kgotlele's conduct was highly detrimental to his association, the confederation that his association is affiliated with, and association football at large. On top of that, he committed the offence of bribery and corruption on several occasions and over a short period of time.

50. It is further noted that Mr Kgotlele was not only a mere participant in the match manipulation schemes and related bribes, but also selected, and therefore involved in the respective conspiracy, various players of the Botswana U23 team (young players, at the start of their international careers), assuring Mr Perumal of their faithful cooperation. Moreover, the Panel took note of the very explicit and unambiguous content of the emails describing the conspiracy and the methods to be used to ensure the manipulation of the matches. These circumstances are to be considered as aggravating factors.

51. The adjudicatory chamber further notes the absence of remorse or confession, as well as the non-cooperation during the present proceedings. In this connection, the adjudicatory chamber notes that Mr Kgotlele has not demonstrated, at any point during these proceedings, awareness of wrongdoing. Furthermore, Mr Kgotlele failed to report the manipulation (or attempt of manipulation) of the matches organized by Mr Perumal to any authority or body, including FIFA. These factors have an aggravating nature.

52. The adjudicatory chamber took into consideration the various alleged personal circumstances brought forward by Mr Kgotlele in his position (his sacking by the BFA and difficulties in finding another job, media persecution, dire financial situation, divorce and medical conditions). However, after carefully reviewing such allegations, for which no evidence has been corroborated by the accused, the Panel did not consider that, even if proven (*quod non*), they should have a (relevant) mitigating effect.

53. With regard to the type of sanction to be imposed on Mr Kgotlele, the adjudicatory chamber deems – in view of the serious nature of his misconduct (cf. par. 20 et seqq. above) and the zero tolerance policy to match manipulation – only a ban from

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 Mr Kgotlele. In the light of this, the adjudicatory chamber has chosen to sanction Mr Kgotlele by banning him from taking part in any football-related activity (art. 7 par. 1(j) of the FCE).

54. 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 only a life ban is adequate for the seriousness of the infringements of the FCE committed by Mr Kgotlele. Furthermore, considering that the breaches took place in the context of international matches (while Mr Kgotlele was the general secretary of the BFA), the adjudicatory considers that only a worldwide scope would be appropriate.

55. Mr Kgotlele negotiated, solicited and accepted significant bribes from Mr Perumal for an amount of at least USD 40,000 (cf. par. 20 et seqq. above). However, in order to ensure a sanctioning and a preventive effect, the fine must be substantially higher than such undue benefit, as it would otherwise only amount to a reclaiming of the respective benefit. The adjudicatory chamber thus considers a fine of CHF 50,000 to be proportionate.

56. The adjudicatory chamber notes that the sanction imposed lies within the respective minimum and maximum limits defined in the 2006 FCE (art. 12).

57. In conclusion, Mr Kgotlele is hereby banned for life 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 2018 FCE).

58. In addition, Mr Kgotlele shall pay a fine of CHF 50,000.

G. Procedural costs and procedural compensation

59. The procedural costs are made up of the costs and expenses of the investigation and adjudicatory proceedings (art. 54 of the 2018 FCE). As a principle, procedural costs shall be borne by the party that has been sanctioned (cf. art. 56 par. 1 of the 2018 FCE).

60. In the light of the above, the adjudicatory chamber rules that Mr Kgotlele shall bear the procedural costs, and that in the present case, the costs and expenses of the investigation and the adjudicatory proceedings add up to […].

61. According to art. 57 of the 2018 FCE, no procedural compensation shall be awarded in proceedings conducted by the Ethics Committee. Consequently, Mr Kgotlele shall bear his own legal and other costs (if any).

III. has therefore decided

1. Mr Kgotlele is found guilty of infringement of art. 12 (Bribery) of the FIFA Code of Ethics 2006 edition.

2. Mr Kgotlele is hereby banned for life from taking part in any kind of football-related activity at national and international level (administrative, sports or any other) as of notification of the present decision, in accordance with Article 7 let. j) of the 2018 FIFA Code of Ethics in conjunction with art. 22 of the FIFA Disciplinary Code.

3. Mr Kgotlele shall pay a fine in the amount of CHF 50,000 within 30 days of notification of the present decision. Payment can be made either in Swiss francs (CHF) to account no. […] or in US dollars (USD) to account no. […], with reference to case no. Adj. ref. no. 4/2019 (E18-00028) in accordance with art. 7 let. (e) of the 2018 FIFA Code of Ethics.

4. Mr Kgotlele 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 Kgotlele shall bear his own legal and other costs incurred in connection with the present proceedings.

6. This decision is sent to Mr Kgotlele. A copy of the decision is sent to the BFA, the CAF and Ms Maria Claudia Rojas, the chairperson of the investigatory chamber.

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
Chairperson of the Adjudicatory Chamber
FIFA Ethics Committee