

Decision

of the

FIFA Appeal Committee

Mr Thomas BODSTROM [SWE], Chairman;
Mr Victor GARZA [MEX], Member;
Mr Salman AL ANSARI [QAT], Member;
Ms Larissa ZAKHAROVA [RUS], Member.

on 6 September 2019,

to discuss the case of:
Mohammad Salim Israfeel Kohistani [AFG]

(Decision 190074 APC)

regarding:

Appeal lodged by Mr Mohammad Salim Israfeel Kohistani
against the decision passed by the FIFA Disciplinary Committee on 4 April 2019
(Decision 190074 AFG ZH)

I. inferred from the file

1. As a preliminary remark, it is to be noted that the present matter relates to the player Mr Mohammed Salim Israfeel Kohistani (hereinafter: *the Appellant* or *Mr Kohistani*) who allegedly participated in the manipulation of several matches between 2008 and 2011, namely:
 - i. the Merdeka Tournament 2008 (played by the representative team of Afghanistan);
 - ii. the 2009 Lion Cup (played by the U-16 representative team of Afghanistan);
 - iii. a match played between the representative team of Malaysia and Afghanistan on 25 November 2009;
 - iv. a match played between the representative team of Bangladesh and Afghanistan in January 2010;
 - v. matches played by the women's representative team of Afghanistan in November 2008;
 - vi. some "unidentified" matches of the representative team of Afghanistan.
2. It is in this context that, on 14 March 2018, the FIFA Integrity Department provided the secretariat to the FIFA Disciplinary Committee with a preliminary investigation report concerning the possible involvement of the Appellant in match manipulation.
3. Subsequently, on 19 February 2019, disciplinary proceedings were opened against the Appellant for a possible violation of art. 69 of the FIFA Disciplinary Code (FDC).
4. On 4 April 2019, the FIFA Disciplinary Committee passed a decision (hereinafter, *the Appealed Decision*) against the Appellant. In particular, the Disciplinary Committee decided as follows:
 1. *Mr Mohammad Salim Israfeel Kohistani is found guilty of breaching art. 69 par. 1 of the FIFA Disciplinary Code for unlawfully influencing match results.*
 2. *In accordance with arts. 22 and 69 par. 1 of the FIFA Disciplinary Code, Mr Mohammad Salim Israfeel Kohistani is hereby banned from taking part in any kind of football-related activity at national and international level (administrative, sports or any other) for life as from notification of the present decision.*
 3. *In accordance with art. 105 par. 5 of the FIFA Disciplinary Code, no costs of proceedings are to be borne by Mr Mohammad Salim Israfeel Kohistani.*

5. The terms of the Appealed Decision were notified to the Appellant on 24 April 2019. Upon request of the latter, the grounds of the Appealed Decision were notified on 17 June 2019.

6. On 19 June 2019, the Appellant informed the secretariat to the FIFA Appeal Committee (hereinafter: *the Secretariat*) about its intention to appeal the aforementioned decision. In this context, the Appellant claimed that he has "*no regular income*" and requested the possibility to pay the appeal fee in instalments. In addition, the Appellant provided a letter in which he wanted to "*comment on the allegations of match fixing*". The content of this letter can be summarised as follows:
 - i. He was not the "*driving force behind the match fixing*", since it "*was a collective offense, led by our head coach Mr. Mohammad Yosuf Kargar*" (hereinafter: *Mr Kargar*);

 - ii. He first met Mr Perumal in India, together with his coach and one of his teammates, Mr Islam Amiri, who introduced "*him [Mr Perumal] to [the Appellant] as a football agent*". All contacts between Mr Perumal and Mr Kargar "*took place through [the Appellant] and [his] email addresses*" since Mr Kargar "*did not speak English well and could not handle internet well*";

 - iii. At that time, the Appellant "*was never able and in position to decide about the composition and the results of the national team*" and "*acted only as a middleman between (...) Mr. Kargar and the so-called football agent Mr. Perumal*". The Appellant was "*not aware at the time of the gravity of the guilt*", otherwise he "*would never have got involved with it*". The latter also considered that it is "*unfair that the actual match fixers go unpunished, while as an exporter of command and instruction [he] get[s] the heaviest punishment*";

 - iv. "*The fact that the players living in Afghanistan were not able [to] be inconsistent with the coach was also evident in Malaysia before the tournament "Merdeka" began. While all players living abroad protested and refused to play the tournament, all players living in Afghanistan participated and did not object. At the first team meeting, when Mr. Perumal talked about the games in front of the team, a player living in Germany (...) threw his chair against the wall in anger. He and three other players living abroad, (...), left the meeting. One of the officials (...) left the team in protest, did not take part in the meeting and even changed his hotel before the start of the tournament. As a player living in Afghanistan, [he] would never have been able to oppose the decision of [his] coach*";

- v. *"The fact that Mr. Perumal personally distribute[d] the money to the team while the coach and all the players living in Afghanistan were present shows a collective offense led by [the] coach Mr. Kargar".*
 - vi. Finally, the Appellant requested a hearing to be held *"to be given the opportunity to explain all the allegations of match fixing"*.
7. On 21 June 2019, the Secretariat acknowledged receipt of the aforementioned correspondence and requested the Appellant to provide additional documents and information corroborating the latter's absence of income.
 8. On 24 June 2019, the Appellant provided the requested documentation.
 9. On the same day, the Secretariat *inter alia* informed the Appellant that *"in view of the very specific circumstances of the present matter, the Chairman of the FIFA Appeal Committee decided to exceptionally hear the appeal without the appeal fee having to be paid"*.
 10. On 27 June 2019, the Appellant submitted its reasons for the appeal, which are summarised as follows¹:
 - i. The Appellant has *"been punished without having the opportunity to comment on the accusations"*;
 - ii. With respect to the emails addresses through which FIFA tried to reach him, the Appellant explained the following:
 - *"The email address "(...@yahoo-com" is not [his] account. This account was set up by Keramuddin Karim and Mohammad Yosuf Kargar. Only they had access to it"*;
 - *"The email address "(...@hotmail.com" was a joint account between three persons. [The Appellant] had also access to it. [He] contacted Mr. Perumal through this e-mail address only on the instructions of the President of the AFF and [his] Head Coach. [He] acted only as a translator. After some time passed, they changed the password so that [he] no longer had access to it"*;

¹ For the sake of clarity, this summary does not purport to include every single contention put forth by the Appellant. Nevertheless, the FIFA Appeal Committee has thoroughly considered in its discussion and deliberations any and all evidence and arguments submitted, even if no specific or detailed reference has been made to these arguments in the following outline of their positions and in their ensuing discussion on the merits.

- iii. *"As the left winger, [the Appellant] never had the opportunity to influence the results. Mr. Perumal gave his instructions by phone to [the] coach. He passed this instructions on to the respective players. Everything can be seen in the videos of the games";*
 - iv. *"Four players living abroad (...) all still accuse the former coach as the driving force behind the match fixing".*
11. On 6 September 2019, a hearing was held by Committee at the Home of FIFA in Zurich, Switzerland, in the presence, via conference call, of the Appellant. During said hearing, the Chairman of the Committee explained the procedure to be followed and reminded the Appellant of the composition of the Committee. The floor was subsequently given to the Appellant, who, in essence, reiterated the statements and arguments already communicated in writing to the Secretariat².

II. and considered

1. In view of the circumstances of the present matter, the Committee (hereinafter also referred to as *the Committee*) decided first to address some key procedural aspects (A), before entering into the substance of the case at stake (B).

A. PROCEDURAL ASPECTS

1. Competence of the FIFA Appeal Committee and admissibility of the Appeal

2. Primarily, the Committee recalled that the procedural aspects of the matter at stake are governed by the 2017 edition of the FDC (hereinafter: *the 2017 FDC*), in particular considering that the present appeal was lodged by the Appellant on 19 June 2019, *i.e.* while the 2017 FDC was applicable and before the entry into force of the 2019 edition of the FDC.
3. In this context, the Committee underlined that the sanction imposed by the Disciplinary Committee through the Appealed Decision is a life-ban. As such, the Committee pointed out that, in accordance with art. 79 in conjunction with art. 118 of the 2017 FDC, it is competent to hear the appeal presented by the Appellant against the decision rendered by the Disciplinary Committee on 4 April 2019.

² For the sake of good order, it is to be emphasised that the Committee considered the entirety of the declarations made during the hearing.

4. This having been established, the Committee acknowledged that:
 - i. the grounds of the decision were notified on 17 June 2019;
 - ii. the Appellant communicated its intention to appeal on 19 June 2019 and;
 - iii. The Appellant submitted his reasons for the Appeal on 27 June 2019.
5. In view of this, the Committee held that the time limits established under art. 120 pars. 1 and 2 of the 2017 FDC in order for an appeal to be admissible have been met in the case at hand.
6. Finally, with respect to the payment of the appeal fee (cf. art. 123 of the 2017 FDC), the Committee noted that, in view of the very specific circumstances of the present matter, the Chairman of the Committee decided to exceptionally hear the appeal without the appeal fee having to be paid.
7. Against such background, the Committee declared the Appeal admissible.

2. Applicable law

8. In continuation, the Committee deemed that it had to determine which edition of the FIFA Disciplinary Code (FDC) applies to the substance of the matter at stake.
9. In these circumstances, the Committee first noted from the Appealed Decision as well as from the report established by the FIFA Integrity Department that the matter at hand relates to the alleged participation of the Appellant "*in the conspiracy to manipulate the results of several international friendly matches involving the Afghanistan national teams (senior, women, U16) during the period of August 2008 - April 2011*".
10. In these circumstances, the Committee held that these facts occurred while the 2008 edition of the FDC (hereinafter: *the 2008 FDC*) was applicable, said edition being in force from 1 August 2008 until 1 August 2011 (cf. art. 153 par. 2 of the 2008 FDC in conjunction with art. 147 par. 2 of the 2011 edition of the FDC – hereinafter: *the 2011 FDC*).
11. In addition to the above, the Committee stressed that these facts fall under the scope of art. 76 of the 2008 FDC which reads as follows: "*Anyone who conspires to influence the result of a match in a manner contrary to sporting ethics shall be sanctioned with a match suspension or a ban on taking part in any football-related activity as well as a fine of at least CHF 15,000. In serious cases, a lifetime ban on taking part in any football-related activity shall be imposed*".

12. Notwithstanding the above, it needs to be emphasised that this article was incorporated in identical terms in the 2011 and 2017 editions of the FDC under art. 69.
13. With these elements in mind, the Committee recalled that both the 2011 and 2017 editions of the FDC were applicable to facts which occurred before they entered into force provided that:
 - i. The relevant edition of the FDC is equally favourable or more favourable for the perpetrator of the facts than the previous edition and;
 - ii. The judicial bodies of FIFA are deciding on these facts after the relevant edition of the FDC has come into force.
14. As far as the matter at stake is concerned, it appears to be clear that:
 - i. The relevant facts occurred prior to the entry into force of both the 2011 and 2017 editions of the FDC (the 2017 edition being applicable as of 1 August 2011);
 - ii. The 2008, 2011 and 2017 editions of the FDC are equally favourable in so far as "*Unlawfully influencing match result*" is always sanctioned with a match suspension or a ban on taking part in any football-related activity (which can be a lifetime ban in serious cases) as well as a fine of at least CHF 15,000;
 - iii. The FIFA Disciplinary Committee decided on these facts after the 2017 FDC had come into force.
15. For the reasons set out above, the Committee considered that the 2017 FDC should be applied to the facts at hand and therefore, the Appealed Decision was rightfully based on art. 69 of the 2017 FDC³.
16. This being established, the Committee subsequently went on to analyse the merits of the present case.

³ For ease of reference, the Committee will simply refer to such article as art. 69 of the FDC in the upcoming developments.

B. MERITS OF THE CASE

17. The present proceedings are related to a decision rendered by the FIFA Disciplinary Committee by means of which the Appellant has been banned from taking part in any kind of football-related activity at national and international level (administrative, sports or any other) for life. Said decision is now challenged by the Appellant who requests a *“fair decision on the part of FIFA”*.
18. In these circumstances, a number of issues have been raised by the Appellant. In essence, the latter considers that he has *“been punished without having the opportunity to comment on the accusations”*, while submitting that he was not the *“driving force behind the match fixing”*, as a result of which the Appealed Decision is considered to be unfair.
19. As a result of the foregoing, the Committee deemed that it had to address the following issues separately:
 - i. Was the Appellant’s right to be heard respected before the FIFA Disciplinary Committee?
 - ii. What is the scope of art. 69 of the FDC, and particularly of the notion of conspiring *“to influence the result of a match in a manner contrary to sporting ethics”*?
 - iii. Does the Appellant’s behaviour fall under the scope of art. 69 of the FDC?
 - iv. If the Appellant is to be found guilty of a breach of art. 69 of the FDC, are the sanctions imposed on the latter proportionate?

i. Was the Appellant’s right to be heard respected before the FIFA Disciplinary Committee?

20. First of all, the Committee noted that the Appellant argued that he has *“been punished without having the opportunity to comment on the accusations”* since the email addresses on which FIFA tried to reach him were either not his, or no longer under his control.
21. In the light of this, the Committee however emphasised that the letter sent by the Secretariat to the FIFA Disciplinary Committee on 19 February 2019 – initiating the disciplinary proceedings against the Appellant and inviting him to provide his position

(hereinafter: *the Opening letter*) – had not been addressed to any of the email addresses referred to by the Appellant.

22. As a matter of fact, the Opening letter was sent to the Danish Football Association – where the player was registered as a football player at the time – which was requested “*to immediately forward this letter to [the Appellant] and to provide [FIFA] immediately with the contact details (email, address etc.) of the latter for ease of communication*”.
23. In this regard, the Committee acknowledged that, on 19 February 2019, the Danish Football Union provided the player’s contact details (postal and email addresses), and confirmed that the aforementioned letter had been forwarded to the player’s personal email address.
24. More fundamentally, the Committee wished to emphasise that it is precisely from this email address (*i.e.* the one provided by the Danish Football Union) that the Appellant requested the grounds of the Appealed Decision and communicated with the Secretariat during the present proceedings before the Committee.
25. As a result of the above, the Committee was convinced that the Appellant’s right to be heard had been duly respected, since the latter was offered a concrete opportunity to state his case. In particular, the Committee took into consideration (i) the fact that the Opening letter sent by the Secretariat has been duly forwarded by the Danish Football Association to the Appellant’s valid email address and (ii) that said letter clearly invited the latter to provide “*a statement and any evidence that may be considered relevant to the present case*”.
26. As such, the Committee held that the Appellant can legitimately not claim that his right to be heard was neglected when he decided to not participate in the disciplinary proceedings until the Appealed Decision had been notified to him.
27. Notwithstanding the above, the Committee referred to art. 124 par. 1 of the 2017 FDC and recalled that it is competent to examine *de novo* the facts and the law of a case. In other words, it is not limited nor bound to the facts and legal arguments of the previous instance.
28. As a result, and with regard to the particular issue raised by the Appellant regarding his right to be heard having not been respected during the procedure before the FIFA Disciplinary Committee, the Committee held that any such possible procedural flaw is, in any case, cured in these *de novo* appeal proceedings.

29. This being established, the Committee subsequently turned its attention to art. 69 of the FDC for which the Appellant has been sanctioned in the Appealed Decision.

ii. What is the scope of art. 69 of the FDC, and particularly of the notion of conspiring “to influence the result of a match in a manner contrary to sporting ethics”?

30. Art. 69 of the FDC is contained in Section 10 of the FDC titled “*Unlawfully influencing match results*”. The first paragraph of said article reads as follows:

“[a]nyone who conspires to influence the result of a match in a manner contrary to sporting ethics shall be sanctioned with a match suspension or a ban on taking part in any football-related activity as well as a fine of at least CHF 15,000. In serious cases, a lifetime ban on taking part in any football-related activity shall be imposed”.

31. As such, the key element to determine a potential breach of said article is the notion of “*conspiring to influence the result of a match in a manner contrary to sporting ethics*”.

32. In this context, the Committee recalled that CAS already defined that “to conspire” to influence a match may be deemed to include all intentional actions, secretly planned, aimed at manipulating the result of a match, be that in combination with, or to the advantage, of others, or by the person who conspires acting alone, or to his individual benefit⁴.

33. With these elements in mind, the Committee went on to analyse the Appellant’s behaviour.

iii. Does the Appellant’s behaviour fall under the scope of art. 69 of the FDC?

34. Against such background, the Committee went on to analyse the facts of the present matter in light of the scope of art. 69 of the FDC.

35. In this respect, the Committee turned its attention to the evidence at its disposal, and more particularly, to several emails exchanged between the Appellant and Mr Perumal – widely known as a convicted Singaporean match-fixer – for the period between August 2008 and April 2011.

⁴ CAS 2017/A/5173 Joseph Odartey Lamptey v. FIFA.

36. In this sense, the Committee would like to emphasise the content of the following communications:

i. In relation to the Merdeka Tournament 2008 played by the representative team of Afghanistan:

- Email dated 15 August 2008 from Mr Perumal to the Appellant: *"Please remember that the team that arrives in malaysia hve to take the instructions from the sponsor. There are times the team has to loose, draw or win. We play to our sponsors wish and return home with good money. After this we will keep invite you for more regional tournaments";*
- Email dated 17 August 2008 from the Appellant to Mr Perumal: *"That is our pleasure that we have like you supporter";*
- Email dated 19 August 2008 from Mr Perumal to the Appellant: *"(...) Please ensure the team listens and co-operates with the sponsors. That is important. We will pay the team 50,000 US dollars per match. And we will donate 10,000 to the FA of Afganistan. Try and bring the same team except the foreign players. (...)"*;
- Email dated 22 August 2008 from the Appellant to Mr Perumal: *"Can I ask you a Question the 50,000 \$ is for players or also for officials";*
- Email dated 24 August 2008 from Mr Perumal to the Appellant: *"There will be a US 50,000 reward for each game. This reward is for the 25 people in the contingent. We will divide this money accordingly. we will have a meeting on how to distribute this money before we begin the tournament.";*
- Email dated 25 August 2008 from Mr Perumal to the Appellant: *"(...) you do not have to bring a strong team because like i told you this tournament is meant for exibition and not competitive. we look forward to your teams co-operation to loose and win some matches. the sponsors will decide on what we should do on the field and we play accordingly.(...)"*;
- Email dated 30 August 2008 from Mr Perumal to the Appellant: *"Is your team ready to take instructions from our sponsor. This tournament is meant for exhibition and therefore we want you to loose and win some games accordingly. And I need your teams fullest co-operation. Can you confirm your teams co-operation";*
- Email dated 30 August 2008 from the Appellant to Mr Perumal: *"I went to the AFF I Talked to President of AFF I told him About all instruction of your sponsors they accept the Rules But they don't*

want to lose all computation also we need to win & also if you need to loose ok no problem will do";

- Email dated 4 September 2008 from the Appellant to Mr Perumal: *"our ministry of sports & our team are agreeing with your sponsors to co-operate. Anything that your sponsors want we are agree with them so when you will start the booking of our team";*
- Email dated 21 September 2008 from Mr Perumal to the Appellant: *"It is my company that will pay 50,000 to your team after each match. This has nothing to do with the Malaysia FA. My company need the co-operation of your team. When we want you to win you play good game and when we want you to lose you have to listen. Don't worry your team will go back rich. Just listen to my instructions.";*
- Email dated 29 October 2008 from the Appellant to Mr Perumal: *"all the players are thanked from you and from your company they are very happy from you".*

37. In view of these emails, the Committee was convinced that the Appellant plotted together with Mr Perumal deriving a financial benefit (for him but also for other members of the team), and as such, took some actions aimed at influencing the matches played by the Appellant's team in the frame of the Merdeka tournament. In particular, the Appellant received instructions from Mr Perumal – and agreed to it – to directly influence the result of the match by winning or losing the matches as per the directives of a "sponsor".

38. As such, the Committee concurred with the Appealed Decision in so far as the Appellant conspired with Mr Perumal to manipulate the result of the matches played by the representative team of Afghanistan in the scope of the Merdeka Tournament 2008 Edition, and therefore breached art. 69 par. 1 of the FDC.

ii. In relation to the 2009 Lion Cup played by the U-16 representative team of Afghanistan:

- Email dated 4 September 2008 from Mr Perumal to the Appellant: *"Secondly prepare a under 16 team to play a exhibition tournament in singapore. Its the lion city cup. Its in march 2009. As usual please ensure the team and coach cooperate with the sponsor";*
- Email dated 30 October 2008 from Mr Perumal to the Appellant: *"(...) Please ensure the team cooperate and work with us like your team. (...)";*
- Email dated 3 November 2008 from the Appellant to Mr Perumal:

"i talked with the all players they are agree with you say my sallam to all friends and kind family";

- Email dated 3 November 2008 from the Appellant to Mr Perumal: *"I want you to write singapore football association and state your intrest to play in the Lion City cup under 16 tournament this year. State that your FA will incur their own airfare and you only require accomodation from the host country. (...) Keep me posted. And also write to arab countries like qatar, bahrain, uae, iran, asking for International friendly matches . i will pay your airfare";*
- Email dated 15 January 2009 from Mr Perumal to the Appellant: *"please make sure the coach and the team is aware that we want results like we ask for"*.

39. After a careful reading of these communications – particularly the last one – the Committee held that the Appellant undoubtedly secretly planned, upon instructions of Mr Perumal, some actions aiming at manipulating the result of the matches played in the scope of the aforementioned tournament.

40. By way of consequence, the Committee shared the Disciplinary Committee's view in so far as the Appellant plotted with Mr Perumal in order to involve the U-16 representative team of Afghanistan in a match manipulation scheme concerning the Lion City Cup 2009 Edition, and, as such, breached art. 69 of the FDC.

iii. In relation to the match between the representative team of Malaysia and Afghanistan of 25 November 2009:

- Email dated 12 October 2009 from Mr Perumal to the Appellant: *"want to invite Afganistan national men team to play friendly international in Malaysia on November 25 2009. You can invite German based players but dont tell them about our business. I want only defenders, goalkeeper and 2 midfielders to know our business. I want 2-0 first half and 2-0 second half for Malaysia to win. I can pay 50,000 to players n 10,000 for u and 10,000 for coach. Total 70,000. (...)"*;
- Email dated 20 October 2009 from the Appellant to Mr Perumal: *"i talked with our trainer he is agree with you you can get my phone numbers and other email address bellow"*.

41. In view of the above, the Committee held without any doubt that, once again, the Appellant received instructions from Mr Perumal, to which he agreed, to fix the results of a match played by the team of which he was part.

42. As a consequence, the Committee deemed that the Disciplinary Committee rightly concluded that the Appellant conspired with Mr Perumal in order to manipulate the result of an international friendly match to be played by the representative team of Afghanistan on 25 November 2009, therefore in breach of art. 69 of the FDC.

iv. In relation to the match between the representative team of Bangladesh and Afghanistan of January 2010:

- Email dated 5 December 2009 from Mr Perumal to the Appellant: *"Salim can the Afgan team in Bangladesh do business. I can pay 10,000 for u, coach 10,000 and team take 40,000"*;
- Email dated 6 December 2009 from the Appellant to Mr Perumal: *"i talked with my coach he didnt accept yet but we try our best to accept dont worry if he doesnt accept we are 7 person Goalkeeper 4 defender 2 midfielder right & left we are ready to do business with you but they need the money before the match t talk with them they didnt accept it i dont know what can i do my dear you tell me"*;
- Email dated 6 December 2009 from Mr Perumal to the Appellant: *"I arrange the money before the game. But if u dont give me 3-0 in 2nd half i send my men to take money back. 1st half try 0-0. If there is goal 1-0 or 2-0 then no problem. But 2nd half u must loose 3-0. This is our business. 1 player 10,000. u take 15,000"*;
- Email dated 6 December 2009 from the Appellant to Mr Perumal: *"could you make money of our coach he is ready with us or not also i need more money if you can"*.

43. In this respect, the Committee found the wording of these emails clear and unequivocal: Mr Perumal instructed the Appellant about the result of the match and the latter agreed to such instructions, therefore conspiring to manipulate these matches.

44. By way of consequence, the Committee concurred with the Appealed Decision in the sense that this conduct corresponds to a violation of art. 69 par. 1 of the FDC.

v. In relation to matches played by the women's representative team of Afghanistan in November 2008:

- Email dated 4 November 2008 from Mr Perumal to the Appellant: *"If i arrange women tournament can you bring Afgan women and can you make them listen"*;

- Email dated 8 November 2008 from the Appellant to Mr Perumal: *"talked with the National women team they are ready to listen and we cooperate with you my dear brother also i will come with my trainer of men team if you invite Afghan National Women team. Thanks"*;
- Email dated 29 November 2008 from the Appellant to Mr Perumal: *"i didnt get email from you as you emailed me about the women football team i talked with them they are agree with all your opration to cooprate with you and with the company but tell me when is the tournamint and where is it i mean which country thanks my brother"*.

45. Relying on these emails, the Committee considered that the Appellant also conspired with Mr Perumal in the context of these matches, involving the women's representative team of Afghanistan in a match manipulation scheme. Once again, the Committee agreed with the conclusion reached by the Disciplinary Committee in the Appealed Decision.

vi. In relation to unidentified matches of the representative team of Afghanistan:

- Email dated 2 September 2010 from Mr Perumal to the Appellant: *"I can arrange International friendly matches for Afghanistan in UAE, Qatar or Bahrain and you will play against Palistine or other weaker teams"*;
- Email dated 21 September 2010 from the Appellant to Mr Perumal: *"if you can arrange a tournament for our Afghanistan team we are ready to cooperate with you I'm with you all the time"*;
- Email dated 24 April 2011 from the Appellant to Mr Perumal: *"I talked with my coach n all players they are ready to do business with u if you invite us in Mardeka Cup as I heard that this year will start again (...) Note: if you trust me just tell send me anything you want if you don't trust me then u can talk with our coach n I show u my all players we are ready"*.

46. In these circumstances, it appears to be clear from the content and wording of said emails that the Appellant accepted once more to cooperate with Mr Perumal to influence the result of some matches. The Committee stressed that in relation to the last email, it is even the Appellant who contacted Mr Perumal, offering his and his team's "services".

47. The Committee therefore held that it can only agree with the Appealed Decision in so far that the Appellant conspired to manipulate some more matches.
48. In view of all of the above, the Committee was strongly convinced that, as rightly emphasised in the Appealed Decision, the Appellant had an active and proactive role in conspiring to influence the results of several matches. Needless to emphasise that this influence was contrary to sporting ethics as proven by the factual circumstances of the case - the emails on file clearly demonstrating a will to reach certain pre-defined results in the relevant matches in exchange of a sum of money -.
49. Notwithstanding the above, the Committee noted that the Appellant's argumentation mainly revolves around the fact that he was not the only one involved in this match manipulation scheme. In particular, the latter considered that he was not "*the driving force*" behind such scheme, as it was "*a collective offense led by [their] coach*", further emphasising that it is "*unfair that the actual match fixers go unpunished, while as an exporter of command and instruction [he] get[s] the heaviest punishment*".
50. In reply thereto, the Committee first wished to emphasise that the wording of art. 69 of the FDC is clear and leaves no room for interpretation. It is addressed at "*anyone who conspires to influence the result of a match*" regardless of whether the latter is solely "*an exporter of command*" or rather "*the driving force*".
51. Secondly, the Committee's attention was drawn to the fact that all these emails were always addressed to and/or sent by email addresses bearing the Appellant's name. In this regard, the Appellant alleged that the relevant email addresses were either not his, or no longer under his control. Nonetheless, the Appellant failed to demonstrate such allegations, upon which the Committee can therefore not rely. To the contrary, the Committee rather emphasised that some of the emails clearly appear to have been sent by the Appellant himself – as confirmed by the latter –. It is particularly true for the email sent by the Appellant on 6 December 2009 which reads as follows "*i talked with my coach he didnt accept yet but we try our best to accept dont worry if he doesnt accept we are 7 person Goalkeeper 4 defender 2 midfielder right & left we are ready to do business with you but they need the money before the match t talk with them they didnt accept it i dont know what can i do my dear you tell me*". The wording of this email even contradicts the Appellant's allegation that the match fixing scheme was led by his coach.
52. Thirdly, the Committee also stressed that the Appellant never contested the content of these emails, nor that he had conspired (or taken part in a conspiracy) to influence the result of matches, but limited himself to argue that he was not the only individual involved.

53. Finally, after a careful reading of all aforementioned emails, but also after analysing all documents conforming the case file, the Committee submitted that there is no case for finding that the Appellant had been forced or threatened to communicate with Mr Perumal between 2008 and 2011 in the context of the match fixing activities.
54. In conclusion, the Committee was convinced that by committing the above-described acts, the Appellant conspired to influence the result of several matches in a manner contrary to sporting ethics, and is fully responsible for said behaviour. As such, the Committee held that the Appellant breached art. 69 par. 1 of the FDC.
55. Notwithstanding all of the above, the Committee concurred with the Appellant in the sense that it may not be the only player involved in this particular scheme of match manipulation. As such, the Committee deemed that further investigations are required and strongly recommended FIFA to conduct them.

iv. Is the sanction imposed on the Appellant, namely a life-ban, proportionate?

56. The responsibility of the Appellant in relation to a breach of art. 69 of the FDC having been established, the Committee subsequently noted that the Appellant considered the sanctions imposed in the Appealed Decision to be "*unfair*".
57. Against such background, the Committee went on to analyse as to whether the sanctions imposed on the Appellant, namely a life-ban from taking part in any kind of football-related activity at national and international level, are proportionate to the offence committed.
58. In this respect, the Committee first underlined that the wording of art. 69 of the FDC is clear and leaves no room for interpretation in so far as the sanctions are concerned. Indeed, the person found responsible for the violation "*shall be sanctioned with a match suspension or a ban on taking part in any football-related activity as well as a fine of at least CHF 15,000*".
59. As such, there is no doubt that, for having committed a breach of art. 69 of the FDC, the Appellant had, in principle, to be sanctioned with a fine of at least CHF 15,000 on the one hand, and with a match suspension or a ban on taking part in any football-related activity on the other hand.
60. With regard to the fine, the Committee noted that the Disciplinary Committee decided to deviate from the general principle of art. 69 and to not impose any fine on the Appellant. Taking into consideration the financial situation of the Appellant (cf. para.

I.7 and II.5 *supra*), the Committee considered that such approach was justified and does not, in any way, undermine the principle of proportionality of the sanction.

61. This being said, the Committee had to analyse as to whether a life-ban on the Appellant is proportionate to the offense committed by the latter.
62. In these circumstances, it is worth emphasising that art. 69 par. 1 of the FDC foresees the possibility to impose “a lifetime ban on taking part in any football-related activity” in case of “serious offence”.
63. In this regard, the Committee wished to endorse the developments of the Appealed Decision in the sense that unlawfully influencing match results causes immense damage to football’s integrity and threatens its credibility and reputation. In the same line, the Committee recalled that FIFA adopted a zero-tolerance approach to match manipulation and is committed to protecting the integrity of football by all means necessary. Such approach has been reflected in the FIFA Statutes (cf. art. 2 lit. g)), but also in FIFA circular no. 1422.
64. In the light of this, the Committee was of the unanimous view that the case of the Appellant is a “serious case”, particularly considering:
 - i. The active role of the Appellant;
 - ii. The number of matches in which he was involved in a match fixing scheme and;
 - iii. The exposure of these matches, all played by the representative teams of a national association.
65. For the sake of good order, the Committee underlined that CAS already confirmed that a life ban from any football-related activities against someone having conspired to influence the result of a match is a proportionate sanction⁵.
66. Applying the above reasoning to the case at stake, the Committee unanimously considered that the sanction imposed on the Appellant is not disproportionate and is a deterrent sanction to avoid unacceptable conducts such as the one at hand. In particular, the Committee underlined that there were not mitigating circumstances which could justify a lower sanction.

⁵ CAS 2017/A/5173 Joseph Odartei Lamptey v. FIFA.

67. Consequently, the Appeal Committee deemed that the Disciplinary Committee took into consideration the facts and circumstances of the case and correctly applied the principle of proportionality when deciding on the sanctions to be imposed.

C. CONCLUSION

68. Bearing in mind all of the foregoing, the Committee concluded that the Appeal lodged by the Appellant had to be rejected and the decision taken by the FIFA Disciplinary Committee on 4 April 2019 confirmed in its entirety.

III. has therefore decided

1. Mr Kohistani is found guilty of having infringed Article 69 of the FIFA Disciplinary Code. In particular, the FIFA Appeal Committee considers that Mr Kohistani has not been forced or threatened to communicate with Mr Perumal between 2008 and 2011 in the context of the match fixing activities.
2. The appeal lodged by the Mr Kohistani is rejected and the decision of the FIFA Disciplinary Committee rendered on 4 April 2019 is confirmed in its entirety.
3. The FIFA Appeal Committee underlines that it appears that Mr Kohistani may not be the only player involved in the match fixing activities, and thus strongly recommends FIFA to initiate further disciplinary investigations.

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Thomas Bodstrom
Chairman of the FIFA Appeal Committee

LEGAL ACTION

According to art. 58 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision. Within another 10 days following the expiry of the time limit for filing the statement of appeal, the appellant shall file a brief stating the facts and legal arguments giving rise to the appeal with the CAS.

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

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