CAS 2018/A/6038 Osiris Guzmán v. FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Ricardo de Buen Rodríguez, Attorney-at-law, México City, México

Arbitrators: Mr Pedro Tomás, Attorney-at-law, Sitges, Spain
Mr Gustavo Albano Abreu, Professor, Buenos Aires, Argentina

between

Mr. Osiris Guzmán, Santo Domingo, Dominican Republic
Represented by Mr Juan de Dios Crespo Pérez and Mr Enric Ripoll González, Attorneys-at-law, Valencia, Spain

- as Appellant -

and

Fédération Internationale de Football Association, Zurich, Switzerland
Represented by Mr Emilio García Silvero, Mr Jaime Cambreleng Contreras, Ms Audrey Cech, Mr Carlos Schneider, Mr Luis Villas-Boas Pires and Mr Víctor Rodrigo, Attorneys-at-law, Zurich, Switzerland

- as Respondent -

I. THE PARTIES

1. Mr Osiris Guzmán (the "Appellant" or "Mr Guzmán") is the former president of the Dominican Football Federation (the "FEDOFUTBOL").

2. The Fédération Internationale de Football Association (the "Respondent" or "FIFA") is the football governing body worldwide.

II. FACTS OF THE CASE

3. The following is a summary of the relevant facts based on the Parties' written submissions. Although the Panel has considered all the facts, legal arguments and evidence submitted by the Parties in the present case, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning. With regard to several documents originally written in Spanish that are inside the FIFA's file, which is part of this arbitration file, the Panel advises that it has also analyzed them.

4. In 1998, Mr Guzmán was elected President of the FEDOFUTBOL.

5. In connection with the so called CONCACAF development program (the "CONCACAF program"), the Appellant received a total amount of USD 87'000 through three installments: on 10 December 2013 he received USD 15'000; on 18 November 2014 he received USD 36'000; and on 5 December 2014, he received an amount of USD 36'000. The existence of the CONCACAF program and the final destination of the said amount are disputed and will be analyzed by the Panel later in this award.

6. For the 2014 FIFA World Cup held in Brazil, the Appellant ordered 385 tickets in total (76 on his own behalf and 309 using the ticket allocation of FEDOFUTBOL). The tickets purchase was formalized in a contract with FIFA Ticketing, which is a FIFA subsidiary. The mentioned agreement was signed by Mr Guzmán and by Mr Felix Ledesma, (who is a former FEDOFUTBOL Executive Committee member). The price of the tickets was USD 85'945.

7. From March to June 2014, a Company named KSE Sports ("KSE") made a total of 8 money transfers into Mr Guzmán's bank account, for a total of USD 164'538.

8. The Appellant received a total of USD 193'473 for the tickets mentioned in paragraph 6.

9. A Company called "Sport Manufacturing Inc" ("SMI"), in which the Appellant's son is the CEO, was incorporated on 1 January 2017. During the same month, some lawnmowers and 5,000 balls were bought to MSI to be used in the Dominican Republic. There is a dispute, among other things, on who was the buyer. This dispute will be analyzed by the Panel on the merits of this award.

10. For the 2018 FIFA World Cup held in Russia, Mr Guzmán ordered and purchased 220 tickets in total (28 on his own behalf and 192 using the ticket allocation of FEDOFUTBOL) for a total amount of USD 72'965. The tickets purchase was formalized also through a contract with FIFA Ticketing. The mentioned agreement was signed by Mr Guzmán and by Mr Rolando Miranda, (the FEDOFUTBOL General Secretary).

11. The Appellant received USD 70'680 and FEDOFUTBOL received an amount of USD 73'975 in relation to the 2018 World Cup tickets.

12. The Appellant owns an engineering services company named TIASA. The logo of this Company has appeared on the cover of the FEDOFUTBOL´s corporate magazine for several years, without any payment from TIASA to FEDOFUTBOL.

13. The FEDOFUTBOL has five Appellant´s relatives in its payroll. These relatives are Alfredo Guzmán (Appellant´s brother), Ana Rita Guzmán (Appellant´s sister), Ms Santa Guzmán, Mr Ylbin Delgado and Mr Irving Delgado.

III. PROCEDURE BEFORE FIFA

14. In a nutshell, the following is a description of what happened in front of FIFA that lead to the Appealed Decision. Although the Panel has reviewed in detail the complete file sent by FIFA, only the relevant parts for this arbitration are mentioned in this award.

15. On 31 July 2017, FIFA, through its Investigatory Chamber opened an investigation against Mr Guzmán.

16. On 1 June 2018, the Chairperson of the Investigatory Chamber requested the Chairman of the Adjudicatory Chamber of FIFA to impose provisional measures to the Appellant. Following that petition, the latter, via a resolution dated 4 June 2018, provisionally suspended Mr Guzmán from all football-related activities for a period of 90 days, which was extended later for 45 more days.

17. The investigation proceedings finished on 30 August 2018, after the submission of the final report to the Adjudicatory Chamber.

18. On 5 September 2018, the Chairman of the Adjudicatory Chamber opened adjudicatory proceedings and requested Mr Guzmán to provide his position regarding the final report. Mr Guzmán asked for a hearing. The Chairman decided to hold the hearing on 11 October 2018.

19. On 25 September 2018, Mr Guzmán sent his position to FIFA´s Adjudicatory Chamber.

20. On 11 October 2018, the hearing was held at FIFA´s headquarters in Zurich, Switzerland. The Appellant attended the hearing personally and was accompanied by his legal counsel and his daughter.

21. On 11 October 2018, the Adjudicatory Chamber of the FIFA Ethics Committee issued a decision (hereinafter referred to as the "Appealed Decision"). The operative part of the Appealed decision was notified to the Appellant on 12 October 2018 and the grounds on 9 November 2018. FIFA stated:

1. Mr Osiris Guzmán is found guilty of infringement of art. 27 (Bribery), art 20 (Offering and accepting gifts or other benefits) and art. 19 (Conflict of interest) of the FIFA Code of Ethics.

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

3. Mr Osiris Guzmán shall pay a fine in the amount of CHF 150,000 within 30 days of notification of the present decision. Payment can be made either in Swiss francs (CHF) to account no. 0230-325510.70J, 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, Bahnhoftstrass 45, 8098 Zurich, SWIFT: UBSWCHZH80A, IBAN: CH95 0023 0230 3255 1971 U, with reference to case no. E17-00012 in accordance with art. 7 let. e) of the FIFA Code of Ethics.

4. Mr Osiris Guzmán shall pay costs of these proceedings in the amount of CHF 10,000 within 30 days of notification of the present decision, which shall be paid according to the modalities stipulated under point 3. above.

5. Mr Osiris Guzmán shall bear his own legal and other costs incurred in connection with the present proceedings.

6. This decision is sent to Mr. Osiris Guzmán. A copy of the decision is sent to the CONCACAF and to the Federación Dominicana de Fútbol, as well as to the chairperson of the investigatory chamber."

IV. THE ARBITRAL PROCEEDINGS BEFORE THE CAS

22. On 29 November 2018, the Appellant filed a statement of appeal with the Court of Arbitration for Sport (hereinafter referred to as the "CAS") against the Respondent, pursuant to the Code of Sports-related Arbitration (hereinafter referred to as the "Code"), challenging the Appealed Decision.

23. On 31 December 2018, following agreed upon extensions of time, the Appellant filed his appeal brief, together with supporting documents. In the appeal brief the Appellant requested

the CAS:

"1. To accept this appeal against the Decision rendered by the FIFA AC.

2. To adopt an award annulling the Decision of the FAC, eliminating the sanctions against the Appellant on the basis that the Appellant has not violated the FCE,

3. In the alternative, if it is found that there is a violation, that the Appellant receive a warning and/or a reprimand

4. In the further alternative, that the Appellant receives a prohibition from participating in football-related activities for a maximum of 1 year based on the proportionality of the sanction.

5. In any event the Appellant requests the Panel issue an award where:

a. the Appellant is relieved from paying all amounts payable to FIFA, including but not limited to the amount of 10,000 CHF already requested by the FAC;

b. the Respondent FIFA covers the entire cost of the proceedings and arbitration; and

c. the Respondent FIFA pays the legal fees and costs of the previous hearing in the amount of 20,000 CHF."

24. On 22 January 2019, the CAS Court Office notified the parties the conformation of the Panel with Mr Ricardo de Buen Rodríguez as President and Pedro Tomás (nominated by the Appellant) and Gustavo Albano Abreu (nominated by the Respondent) as Arbitrators.

25. On 14 February 2019, the Respondent, following agreed upon extensions of time, filed its answer of the appeal, with the following request:

"To reject the Appellant's appeal in its entirety.

To confirm the decision rendered by FIFA Ethics Committee on 11 October 2018 hereby appealed against.

To order the Appellant to bear all costs incurred with the present procedure and to cover all expenses of the Respondent related to the present procedure."

26. On 21 February 2019, the CAS Court Office informed the parties that the Panel had decided to hold a hearing.

27. The Order of Procedure was signed on 5 March 2019 by the Respondent and on 7 March 2019 by the Appellant.

28. The hearing of the case was held on 16 April 2019, in Lausanne, Switzerland with the presence of the members of the Panel and Mr Antonio de Quesada, CAS Head of Arbitration. The Appellant attended the hearing in person and was accompanied by his legal counsels Mr

Juan de Dios Crespo Pérez, Mr Enric Ripoll González and Ms Amaury Guzmán, as well as Ms Marta Cano as translator. FIFA was represented by Ms Andrey Cech, Mr Carlos Schneider, Mr Luis Villas-Boas Pires and Mr Víctor Rodrigo. At the beginning of the hearing Mr Guzmán and FIFA stated that they did not have any objection regarding the conformation of the Panel. Both parties had the opportunity to express everything they considered important to, and the Panel heard all their arguments. At the end of the hearing the Appellant and the Respondent expressed that they were comfortable with the way the hearing had been held and stated that the right to be heard had been respected.

V. SUMMARY OF THE PARTIES POSITIONS

29. The following summary of the parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the parties. The Panel, however, has carefully considered, for the purposes of the legal analysis, which follows, all the submissions made by the parties, even if there is no specific reference to those submissions in the following summary.

A. THE APPELLANT'S POSITION

30. The Dominican Republic is an underdeveloped country that struggles to grow. Mr Guzmán has provided services for free to FEDOFUTBOL for more than 20 years.

31. The FIFA Code of Ethics (the "FCE") to be applied must be the 2012 version.

32. Regarding the 2014 World FIFA Cup tickets, the FEDOFUTBOL never had an account to collect the money for the tickets, so the Appellant had to pay them using his personal bank account. Afterwards the money was deposited in Mr Guzmán's account as a reimbursement.

33. The Appellant provided 9 documents, certified and signed by all those that received the funds transferred by KSE. The Appellant did not resold the tickets, he only requested them for people who asked him and FEDOFUTBOL to buy the tickets for them. All is a matter of evidence. Mr Guzmán presented documents proving who received the money and the amount received by each one.

34. In relation to the CONCACAF program, FIFA conclusions cannot be accepted. The reports sent by CONCACAF prove the real implementation of the project. Mr Webb, CONCACAF's President, approved the transfer of money to the Appellant's account. Furthermore, Mr Salcedo CONCACAF''s Director of Development, confirmed that the main interest of the Appellant was to develop Football in the Dominican Republic. In conclusion the amounts were received by Mr Guzmán directly from CONCACAF after they

were approved by the latter's President.

35. Regarding SMI, the purchase of the lawnmowers and 5000 balls was for the Dominican Republic, not for FEDOFUTBOL.

36. The determination of the two expert audit companies regarding the falsification of invoice 94.630, mistakes in the invoice 12125, the price of the balls and the balls remaining, is absolutely wrong. FEDOFUTBOL did not pay any amount in relation to invoice 94.630, so the value of the mentioned invoice did not affect FEDOFUTBOL in any sense.

37. Denis, the manufacturer, issued the invoice directly to SMI; the prices contained in the invoice were not meant to be the final prices but the price established by the manufacturer to SMI as a distributor.

38. For different reasons, far from taking advantage of its influence on the FEDOFUTBOL, SMI benefited the Federation a lot.

39. The difference between the invoice number 12,125 and the payment, is due to the request of FEDOFUTBOL of additional items and services.

40. The purchase of the balls was a Dominican Republic Government's decision not a FEDOFUTBOL decision, thus it is not a conflict of interest. The price for the balls established in invoice 790/17 is not the price of acquisition of the balls, is just the importation price to be declared at customs. That price has to be added with services provided by SMI such as marketing, logo and designs. That will lead us near to what was finally paid.

41. Going to the relation between TIASA and the FEDOFUTBOL magazine, the first, far from getting a profit out of the magazine was the one that paid for its expenses.

42. In relation to FEDOFUTBOL payroll, the Appellant recognizes that the employees are his relatives. Some of them have been paid with Dominican Government funds and other using FIFA's funds. All of them worked for free for a long time.

43. There is no breach of article 27 of the FCE FIFA, since it is clear where the money came from.

44. There is no breach of article 20 if the FCE, due to the fact that it is proven that Mr Guzmán did never kept the money coming from CONCACAF.

45. There is no breach of article 19 of the FCE, because as it was proved, FEDOFUTBOL benefited from the transactions with SMI.

46. No breach to article 19 of the FCE was committed because the Appellant did not resell any tickets.

47. FIFA has not met its burden of proof. The evidence provided are just assumptions and FIFA has not been able to contest any of the physical evidence provided by the Appellant.

48. The sanction is not proportional. Taking into account different previous cases and other circumstances the prohibition to participate in football related activities for a period of 10 years and the fine of CHF 150'000 are absolutely disproportionate. There are various mitigating circumstances.

B. THE RESPONDENT'S POSITION

49. It was right that the Adjudicatory Chamber of FIFA applied the 2018 version of the FCE. The debate regarding the applicable FCE has no practical consequences to the sanction imposed. The punishable conduct in the FCE 2012 (bribery) is maintained in the new Code FCE 2018. The FCE 2012 is not more favorable than de FCE 2018.

50. Regarding the standard of proof the case must be solved following the principle of comfortable satisfaction. CAS panels have confirmed that the "personal conviction" standard does not oblige hearing bodies to "establish the objective truth", thus it is not necessary in a case like this to present direct evidence. The Panel is free regarding the evaluation of the evidence.

51. The case is about the Appellant, performing the following conducts: receiving a profit of USD 78'593 from the sale of tickets of the 2014 FIFA World Cup; offering gifts in the total amount of USD 72'000 to several officials; accepting and receiving cash form Mr Webb; accepting gift from his son's company SMI; accepting a gift from his own company TIASA; and acting in a conflict of interest.

52. In relation to the 2014 FIFA World Cup tickets, it can be established that the funds transferred by KSE were not used to implement development projects in the Dominican Republic. The funds paid by KSE constituted a personal pecuniary advantage for the Appellant. Mr Guzmán fulfilled all the elements provided for bribery, according to article 27 par. 1 of the FCE 2018.

53. Regarding the CONCACAF program, a payment from CONCACAF was received by Mr Guzmán who kept USD 15,000 for himself and offered USD 72,000 to other officials. The Appellant has to be found guilty of offering and accepting gifts, according to article 20 par. 1 of the FCE 2018.

54. Talking about SMI, this Company obtained gains derived from selling lawnmowers and balls to FEDOFUTBOL. This means that at least USD 65'818 received by the Appellant via a related party did not have a proper basis. Being a prohibited benefit, the Appellant has breached article 20 par 1 of the FCE 2018.

55. In relation to TIASA, the fact that this company was freely advertised in the FEDOFUTBOL magazine implies that the Appellant accepted a benefit, thus Mr Guzmán is guilty of accepting gifts, according to article 20 par 1 of the FCE 2018.

56. Regarding the 2018 FIFA World Cup tickets, Mr Guzmán violated FIFA´s ticketing regulations by selling tickets without FIFA´s authorization. When arranging the 220 tickets and selling them to persons and companies chosen by him alone, the Appellant incurred in a conflict of interest, violating article 19 of the FCE 2018.

57. The fact that the Appellant hired relatives to work at FEDOFUTBOL and that he provided services through his company TIASA, means that he was acting in a conflict of interest, breaching article 19 of the FCE 2018.

58. The sanction applied to Mr Guzmán is neither disproportionate nor oppressive. CAS has to show reservation or restraint in evaluating whether a sanction is appropriate. Therefore, there is no basis to annul the Appealed Decision.

VI. LEGAL ANALYSIS

V.1 JURISDICTION

59. The CAS jurisdiction derives from Art. R47 of the Code and from Art. 57 par. 2 of the FIFA Statutes. It follows that CAS has jurisdiction to rule on this dispute. Both parties have confirmed CAS jurisdiction by signing the order of procedure.

60. According to Art. R57 of the Code, the Panel has full power to review the facts and the law of the case. Furthermore, the Panel may issue a new decision which replaces the decision challenged or may annul the decision and refer the case back to the previous instance.

V.2 ADMISSIBILITY

61. The Appealed Decision was issued and notification given to the Appellant on 9 November 2018 and the statement of appeal was filed on 29 November 2018, within the twenty-one day deadline specified in the FIFA Statutes and the Code. No further stages of appeal against the Appealed Decision were available at the FIFA level. The appeal therefore complies with the requirements of Art. R48 of the Code. Accordingly, the appeal is admissible.

V.3 APPLICABLE LAW

62. According to Art. R58 of the Code,

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

63. In this case, therefore, for the evaluation of the Appealed Decision, FIFA regulations have to be applied primarily, and Swiss law subsidiarily. Regarding the version of the FCE that its applicable to this case, the Panel considers that the 2018 version is applicable, and will give its reasons below.

V.4 THE MERITS OF THE DISPUTE

V.4.1 THE OBJECTS OF THE DISPUTE

64. According to the parties' written submissions the main objects of the dispute consist of the following:

- Which version of the FCE is applicable to this case?
- Burden and Standard of Proof.
- Did the Appellant commit Bribery?
- Did the Appellant offered and accepted gifts and other benefits?
- Did the Appellant incurred in conflict of interest?
- The sanction.
- Final conclusions.

V.4.1.1 Which version of the FCE is applicable to this case?

65. After analyzing the arguments of both parties, in relation with this issue, the Panel has found that the main discussion regarding which of both versions of the FCE (2012 or 2018) is applicable to our case, lies in whether the 2018 is less favorable or not than the 2012 version, in general and specially article 27 of the 2018 compared to article 21 of the 2012 version.

66. The Panel departs from the fact that there is no discussion between the Appellant and the Respondent regarding the general possibility of applying a new FCE (2018) in relation to

facts occurred when another FCE (2012) was in force. This is possible due to the content of article 3 of the FCE (2018) which states the following:

"This Code applies to conduct whenever it occurred, including before the enactment of this Code. An individual may be sanctioned for a breach of this Code only if the relevant conduct contravened the Code applicable at the time it occurred. The sanction may not exceed the maximum sanction available under the then-applicable Code."

67. The mentioned article allows the Panel, to apply the 2018 FCE to sanction conducts occurred before, as in our case, if:

a) The relevant conduct contravened the 2012 FCE.
b) The sanction does not exceed the maximum sanction available under the 2012 FCE.

68. In the case at hand, and focusing on the most serious punishable conduct at stake, that is bribery, which is the one the Appellant bases his discussion regarding the applicable FCE, the Panel has checked the articles of both versions that prohibit this conduct.

69. The wording of article 21 of the 2012 FCE, on the part that defines the prohibited behavior, is the following:

"1.Persons bound by this Code must not offer, promise, give or accept any personal or undue pecuniary or other advantage in order to obtain or retain business or any other improper advantage to or from anyone within or outside FIFA. Such acts are prohibited; regardless of whether carried out directly or indirectly through, or in conjunction with, intermediaries or related parties as defined in this Code. In particular, persons bound by this Code must not offer, promise, give or accept any undue pecuniary or other advantage for the execution or omission of an act that is related to their official activities and is contrary to their duties or falls within their discretion. Any such offer must be reported to the Ethics Committee and any failure to do so shall be sanctionable in accordance with this Code.

70. On the other hand, article 28 of the 2018 FCE, in the respective part, states that:

"1. Persons bound by this Code shall not accept, give, offer, promise, receive, request or solicit any personal or undue pecuniary or other advantage in order to obtain or retain business or any other improper advantage to or from anyone within or outside FIFA. Such acts are prohibited regardless of whether carried out directly or indirectly through, or in conjunction with, third parties. In particular, persons bound by this Code shall not accept, give, offer, promise, receive, request or solicit any personal or undue pecuniary or other advantage for the execution or omission of an act that is related to their official activities and is contrary to their duties or falls within their discretion.

71. Being true that the wording of both versions is a little beat different, this Panel finds that

they refer to the same kind of conduct, thus the first mentioned element that is that the relevant conduct, in this case bribery, was considered on the 2012 FCE is fulfilled.

72. Going through the second mentioned element, this is that the sanction contained on the 2018 FCE does not exceed the one contained on the 2012 FCE, article 6 of the latter, that establishes the possible sanction, contemplates as one of the possible sanctions the "ban on taking part in any football-related activity" which is the same that the one contained on article 7 and 27 of the 2018 FCE. This means that the maximum sanction available on the 2018 FCE version is the same that the one contained on the 2012 FCE version, so the first one does not exceed the second one.

73. In addition, and analyzing a possible violation to the principle of *lex mitior* argued by the Appellant, in specific referred to the establishment on the 2018 FCE of a minimum sanction applicable to bribery, that was not contained on the 2012 FCE, the respective part of the article 27 of 2018 FCE states that:

> *"Violation of this article shall be sanctioned with an appropriate fine of at least CHF100,000 as well as a ban on taking part in any football-related activity for a minimum of five years. Any amount unduly received shall be included in the calculation of the fine. The sanction shall be increased accordingly where the person holds a high position in football, as well as in relation to the relevance and amount of the advantage received."*

74. By reading this part of article 27 of the 2018 FCE alone, one may think that if we apply it, this may be a violation or the *lex mitior* principle, due to the fact that the new article contains a minimum sanction that was not contemplated before and this may lead to the application of a bigger sanction. However, performing an integral analysis of the 2018 FCE, and reviewing the content of article 9 par. 2 of it, the Panel can conclude that it will have, in certain circumstances, the possibility to go below the minimum established sanction. Thus, the conclusion in this regard, is that the application of the 2018 FCE does not violate the *lex mitior* principle.

75. As a first conclusion, the Panel considers that it is legally right to apply the 2018 FCE for the sanction, and even though the 2012 FCE was supposed to apply for any reason, the final sanction parameters are the same and do not affect the Appellant´s rights.

V.4.1.2 Burden and Standard of proof

76. According to article 49 of the 2018 FCE the burden to prove the Appellant´s violations is on FIFA´s side and the standard of proof in general must be "comfortable satisfaction", according to article 48 of the FCE.

77. Additionally there are reiterative CAS disciplinary and integrity cases in which it has been concluded that due to the difficulty to prove conducts performed by individuals that most of the times try to do their illegal conducts leaving no trail, those cases must be solved on the basis of a comfortable satisfaction of the respective Panel (CAS 2017/A/5003 and CAS 2017/A/5086 for example), without the necessity of direct evidence. The Panel agrees with these criteria.

78. Therefore, the Panel will solve this case analyzing if FIFA proves the breaches allegedly committed by the Appellant deciding if it is comfortably satisfied with the arguments and evidence presented by FIFA and also by checking if the Appellant proves those facts that he relies his defense on.

V.4.1.2 Did the Appellant commit Bribery?

79. Due to the fact that it is the most serious violation, the Panel will analyze the possible commission of bribery before the other conducts.

80. The definition of bribery is contained on the aforementioned article 27 of the FCE.

81. FIFA´s accusation of bribery is based, in a nutshell, in the following:

a) At the start of 2014, on the occasion of the 2014 FIFA World Cup Brazil, the Appellant, on behalf of FEDEOFUTBOL, ordered a total of 309 tickets for a total of USD 69'265,38.

b) At the same time, Mr Guzmán, as a member of a FIFA standing committee, bought 76 tickets for the same event, for a total price of USD 16'680,48.

c) KSE, a Canadian company dedicated to organize tourist packages to attend major sporting events, purchased a package of tickets for the 2014 FIFA World Cup Brazil, performing 8 deposits into the Appellants bank account for a total of USD 164'538,50

d) The Appellant paid USD 85'945 for the tickets of the 2014 FIFA World Cup Brazil, and received more that the double of that sum. This means that the Appellant received a profit of USD 78'593 from the sale of tickets for the 2014 FIFA World Cup Brazil.

e) The mentioned facts are considered an act of bribery in accordance with article 27 of the FCE: Mr Guzmán was bound by the FCE and he obtained a personal or undue pecuniary or other advantage from reselling the tickets.

82. The Appellant´s specific arguments in relation to the bribery accusation, in a nutshell, are the following:

a) Thanks to his contacts and capacity to socialize, the Appellant met Mr Vlasic, KSE´s owner.

b) FEDOFUTBOL never had an account where to receive the money paid for the tickets. For that reason, Mr Guzmán personally paid in advance for them and the money came to his account, because he was being reimbursed.

c) The KSE transfers have an easy explanation. Mr Vlasic requested the Appellant tickets for KSE. Mr Guzmán provided such tickets and KSE paid the tickets plus additional amounts with the purpose of contributing with FEDOFUTBOL. Mr Guzman used those funds to help different parts of the Country for the football´s development.

d) Mr Guzman provided 9 documents, certified and signed by those who received the funds transferred by KSE that were used to develop football in the Dominican Republic.

e) As FIFA states in the Appealed Decision: "*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*".

83. After contrasting both parties' arguments regarding bribery, the Panel found that the first part of the sequence of facts is recognized by both. It is a pacific fact that the tickets were bought by Mr Guzmán and that KSE paid an amount of USD 164'538,50 that was received in the Appellant´s bank account from KSE.

84. The dispute, is whether the money was used or not to develop football in the Dominican Republic. Due to the fact that this controversy comes from the Appellant´s affirmation that he gave the money for the development of football in his Country, the burden of proof for this affirmation is on Mr Guzmán´s side.

85. The Appellant´s defense relies on the existence of 9 documents that are included in the FIFA´s file, which he claims to prove who received the money and how much each person received.

86. The Panel has analyzed those 9 receipts presented by Mr Guzmán. The 9 receipts are in Spanish and refer to a project called "HUMANISMO Y SOLIDARIDAD. OSIRIS GUZMAN. PROYECTO SOCIAL DE LAS COMUNIDADES REFERENCIADAS". They are signed by different individuals, without expressing in what character they signed the receipt and received the money. They only refer to different provinces and they all express in Spanish that the respective money was going to be used to "organize, instruct and practice football in our children and youth female and male community during 2014-2015".

87. The total sum covered by the 9 receipts is USD 87,000.00 and they were dated on different dates (there is one without a date) comprised between March and June 2014.

88. Analyzing the mentioned documents together with all the related facts, the Panel concludes that it is not comfortable satisfied to believe that the use of the money transferred to the Appellant by KSE was in part used to develop football in the Dominican Republic. This conclusion is based on the following:

a) The receipts precise that an amount of money was supposedly received by an individual, but they do not prove that the money was paid by Mr Guzmán with the money sent by KSE.

b) There is not proved link between the money supposedly received by each of the 9 individuals and the Mr Guzmán´s account. Mr Guzmán presented bank statements of the account in which he received the money from KSE, and the statements do not reflect any transfer or withdrawal of money to perform each of the 9 payments, or an amount equal to the total of them during the period of time in which they were signed. This not only creates doubts in relation with the link, but also it creates doubts to believe whether this people received the money they signed for.

c) There is no evidence of the use of the mentioned amounts of money to develop the football in the Dominican Republic; not a description of the project, not a contract related to it, not a trail of its materialization. Thus, even if the receipts proved the delivery of money, *quod non*, they do not prove that they were used for the football development.

89. Therefore the Appellant has not comfortably satisfied the Panel with the explanation regarding the way the money was used. Additionally, there are other elements to take into account:

a) If the receipts were issued between March and June 2014, they were available to Mr Guzmán since that time; however he did not show them to FIFA at the beginning of the proceedings but at a later stage, without any logical explanation from the Appellant.

b) The Panel has not found any credible explanation on why a Canadian company dedicated to the organization of travel packages to attend major sporting events, wanted to help the development of football in the Dominican Republic.

c) If KSE is a company dedicated to the organization of tourist packages to attend major sporting events, it more likely that it purchased the tickets to comply with its business object.

d) The Appellant contradicts himself during the FIFA proceedings regarding his relation with Mr Vlasic, showing that he was trying to hide his relationship with the referred

person, when if he was someone that had helped the Dominican Republic´s football, he was a person not to forget about.

e) FEDOFUTBOL was never aware of the project to develop football in its Country.

f) The re-sale of the mentioned tickets is prohibited and the Appellant re-sold them, violating the Ticket Allocation Agreements signed with FIFA.

90. Taking all the above mentioned elements into account, the Panel concludes that it is proved that the Appellant re-sold the 2014 World Cup Brazil to KSE and that he received funds from this Company in his personal bank account that exceed by far the value of the tickets. It also concludes that it is not proven that part of the money was used to develop football in the Dominican Republic. Thus, the Panel is comfortable satisfied with the position expressed by FIFA in the sense that Mr Guzmán obtained a profit from the re-selling of tickets and that this constituted a personal pecuniary advantage to the Appellant, which is prohibited. Mr Guzmán obtained a personal benefit of USD 78'593.

91. The related conduct performed by Mr Guzmán, who is subject to the FCE, as the President of FEDOFUTBOL and as a member of as FIFA Standing Committee implies that he accepted and received a personal and undue pecuniary advantage, so he committed bribery, according to article 27 of the FCE.

V.4.1.3 Did the Appellant offered and accepted gifts and other benefits?

92. The article 20 of the FCE states that:

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

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

Any gifts or other benefits not meeting all of these criteria are prohibited.

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

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

93. FIFA's accusation of offering and accepting gifts or other benefits, is based, in a nutshell, in the following:

CONCACAF PROGRAM.

94. The President of CONCACAF, Mr Jeffrey Webb decided to assign funds to Mr Guzmán without executing a bidding process or consulting with the competent bodies of the Confederation. It was a verbal contract; the Director of Development of CONCACAF, Mr Salcedo, advised Mr Webb not to engage in this development program due to two factors: the funds were going to Mr Guzmán´s personal account and the project was implemented in a secretive manner. Additionally the program was awarded to a Company owned by the Appellant.

95. CONCACAF transferred a total amount of USD 87'000 into the personal bank account of Mr Guzmán. There were no legal basis for this payment and there are not follow-up reports or contracts related to the project.

96. Mr Guzmán created and submitted two false payment vouchers, allegedly signed by two persons: Mr Rodríguez and Mr Severino. The money received by Mr Guzmán was a personal gift from Mr Webb to Mr Guzmán. The Appellant kept USD 15,000.00 and offered USD 72,000.00 to other officials.

SMI

97. The CEO of SMI is Osiris Guzmán Díaz, the Appellant´s son. At the beginning of January 2017, a few days after the incorporation of SMI, FEDOFUTBOL, purchased two

lawnmowers for a total amount of USD 25'000 and other two on May 2017 for USD 22'150.

98. FEDOFUTBOL also bought 5,000 footballs from SMI for USD 53,499.00. According to audit reports, the prices of the aforementioned products were increased disproportionately, with an illegitimate gain going to SMI. There has been a misappropriation of funds and falsification of invoices.

TIASA

99. The Appellant owns TIASA. TIASA has appeared on the cover of the FEDOFUTBOL´s corporate magazine without paying for it.

100. The Appellant´s specific arguments in relation to the offering and accepting gifts accusation, in a nutshell, are the following:

CONCACAF PROGRAM.

101. The reports sent to CONCACAF are crystal clear demonstrating the implementation of the project. Mr Salcedo received several emails informing him about the progress of the CONCACAF program. The amounts were received by Mr Guzmán directly from CONCACAF after the project was approved by Mr Webb.

SMI

102. There were 2 orders, form the Dominican Republic, not from FEDOFUTBOL, to buy the lawnmowers and 5'000 balls.

103. In relation to invoice 94.630 FEDOFUTBOL did not pay for it, it was issued by Denis, which is the authorized distributor, to SMI. The prices contained were not the final prices but the prices SMI received as a distributor.

104. Regarding invoice 12125 and the payment made in relation to it, the difference is due to the request of additional products and services.

105. The footballs project was a project of the Dominican Government. SMI was hired not only to provide 10'000 balls but also to perform the marketing campaign and the balls design.

TIASA

106. TIASA supported economically FEDOFUTBOL for many years. Far from getting a profit out of the FEDOFUTBOL magazine, TIASA took charge of all expenses of the magazine.

107. The Panel has analyzed both parties' arguments, getting to the conclusion that even though the Appellant has performed some irregular conducts, it cannot be considered that he performed the conducts prohibited in article 20 of the FCE, for the following reasons:

CONCACAF PROGRAM.

108. Although the Appellant's behavior in relation to the CONCACAF program, as stated before, is clear irregular, with no contract and a few follow-ups of the development of the program as well as some contradictions of the officials that declared in front of FIFA, due to the nature of FIFA´s accusations the duty of the Panel in this point is to determine whether this conduct can be considered that Mr Guzmán offered and accepted gifts or other benefit, and if that is the case, if this gift or benefit is not one of the exceptions contained in par. 1 of article 20 of the FCE.

109. The Panel states that the conduct performed by the Appellant in relation to the CONCACAF project cannot be considered as that he received a gift or another benefit for himself or gave it to another person.

110. The Panel has carefully analyzed the documents related to the program that are in the file as well as the interviews performed to Mr Salcedo, Mr Severino and Mr Rodríguez.

111. The amount paid to Mr Guzmán was approved and paid by CONCACAF. It may be irregular that it was paid without any written contract between CONCACAF and the Appellant´s Company, but this does not mean that is illegal.

112. There are some reports presented to CONCACAF (from June to December 2014) that explain how the programs had been developed.

113. It is true that Mr Salcedo expressed that he did not recommend to give the money for the program, but he also declared that different projects had been developed by Mr Guzmán and that he was not sure if one of them was the program at stake

114. It is also true that there was a contradiction in relation to Mr Severino and Mr Rodríguez´s declaration, but this contradiction does not lead to consider that no money was used for the program.

115. There are some doubts regarding the final destination of the money paid by CONCACAF to the Appellant´s personal account, but the Panel is not comfortably satisfied that the money was used by Mr Guzmán for his own and to benefit other FEDOFUTBOL officials.

116. In conclusion, the Panel is not comfortable satisfied with FIFA´s arguments and evidence to consider that the Appellant received or gave gifts or other benefits derived from the CONCACAF project.

SMI

117. FIFA states that a gain of USD 65'818 was received by SMI, through a disproportionate increase of the price of the lawnmowers and the footballs bought by FEDOFUTBOL. The Respondent also argues that being SMI a related party, the benefit was for the Appellant.

118. The Panel has analyzed all the documents and reports contained on the file, as well as the arguments of the parties. The conclusion of the Panel is that it is true that there may be a high overprize of the lawnmowers and the balls from the distributor´s price and the final price. However an overprize from the manufacturing cost to the final cost is always a market possibility and depends on different factors, and in this case even considering this overprize as high, we cannot conclude that is something prohibited by the FCE.

119. Additionally it is not clear for the Panel, if a gain of USD 65,818 or another was actually received by SMI. Thus the Panel concludes that the SMI issue does not imply a conduct prohibited by article 20 of the FCE.

TIASA

120. For the Panel, the fact that TIASA has been freely advertised in the FEDOFUTBOL´s corporative magazine, being not a common thing and maybe against a strict compliance, it is not something that can be considered a gift or an undue benefit to be sanctioned.

121. For all the aforementioned reasons, the Panel concludes that the Appellant has not violated article 20 of the FCE 2018.

V.4.1.4 Did the Appellant incurred in conflict of interest?

122. The definition of conflict of interest is contained on article 19 of the FCE:

"1. Persons bound by this Code shall not perform their duties (in particular, preparing or participating in the taking of a decision) in situations in which an existing or potential conflict of interest might affect such performance. A conflict of interest arises if a person bound by this Code has, or appears to have, secondary interests that could influence his ability to perform his duties with integrity in an independent and purposeful manner. Secondary interests include, but are not limited to, gaining any

possible advantage for the persons bound by this Code themselves or related parties as defined in this Code.

2. Before being elected, appointed or employed, persons bound by this Code shall disclose any relations and interests that could lead to situations of conflicts of interest in the context of their prospective activities.

3. Persons bound by this Code shall not perform their duties (in particular preparing, or participating in, the taking of a decision) in situations in which there is a danger that a conflict of interest might affect such performance. Any such conflict shall be immediately disclosed and notified to the organization for which the person bound by this Code performs his duties.

4. Violation of this article shall be sanctioned with an appropriate fine of at least CHF 10,000 as well as a ban on taking part in any football-related activity for a maximum of two years. In serious cases and/or in the case of repetition, a ban on taking part in any football-related activity may be pronounced for a maximum of five years.

123. The Appellant has admitted that he committed conflict of interest, so that no future factual and legal analysis is necessary in this regard. During the hearing, at the final statements, the Appellant, through his lawyer stated that there was conflict of interest but with no fault from Mr. Guzmán, and that a 10 years suspension for that was too much.

124. Additionally, this Panel considers that the Appellant committed a violation of FIFA´s ticketing regulation when buying the 2018 World Cup tickets by selling those tickets without FIFA´s authorization, to persons and companies chosen by him alone, and these violations imply a conflict of interest. It also considers that having family working for a football federation as FEDOFUTBOL and having his own Company TIASA providing services to FEDOFUTBOL, is also a clear conflict of interest.

125. With the Appellant´s acknowledgement of the conflict of interest, the Appellant has to be sanctioned for violating article 19 of the FCE.

V.4.1.5 The sanction.

126. As a preliminary issue, the Panel points out that there is well-established CAS case-law with respect to the matter of the discretionary powers that the decision-making bodies of sports associations enjoy and the scope and extent of the CAS power to review their exercise. Such case law consistently allows for the wide exercise of such powers which is to be restrained by CAS only in extreme cases. For instance, the CAS Panel in cases 2009/A/1817 & CAS 2009/A/1844 has stated that: *"In this latter respect, this Panel agrees with the CAS jurisprudence under which the measure of the sanction imposed by a disciplinary body in*

the exercise of the discretion allowed by the relevant rules can be reviewed only when the sanction is evidently and grossly disproportionate to the offence (see e. g. the awards of: 24 March 2005, CAS 2004/A/690, § 86; 15 July 2007, CAS 2005/A/830, § 10.26; 26 June 2007, 2006/A/1175, § 90; and CAS 2005/C/976 & 986, § 143)".

127. In this case, the Panel has determined that only two offences were committed by the Appellant (instead of those three established on the Appealed Decision). For that reason, the Panel shall amend the sanction determined by the Appealed Decision.

128. The two offences committed by the Appellant are bribery and conflict of interest. The Panel considers that, due to the nature of the Appellant's misconduct the applicable sanction must be a ban of taking part in any football-related activity, which is included in the list stated in article 7 of the FCE, among other FIFA regulations. With respect to the length of the ban, the violation of article 19 can be punished with a maximum of 2 years and the violation of article 27 can be sanctioned with a minimum of 5 years. According to article 11 of the FCE, in a case of concurrence like this, the sanction other than economic, must be based on the most serious breach and increased by up to one third.

129. In accordance to article 9 of the FCE, the Panel considers as aggravating circumstances the fact that Mr Guzmán was a high ranking official and also that he had been banned by the Ethics Committee for 30 days in 2011.

130. Analyzing the mitigating factors, the Panel has taken into account that the Appellant has a 20-year trajectory, showing interest and actions to improve football in his Country.

131. In light of the above, the Panel concludes that a sanction imposed on the Appellant shall be reduced to 7 years. The Panel considers that such sanction is proportionate taking into account all the circumstances of the case.

132. Being possible, under article 7 of the FCE to apply two sanctions, and given that there was a financial benefit for Mr Guzmán derived from his prohibited behavior, the Panel considers that a fine must be applied to this case.

133. The Panel notes that the minimum fine for committing bribery is CHF 100'000. Therefore, despite that the benefit obtained by the Appellant was USD 78,593, the fine to be paid by the Appellant is CHF 100,000.

V.4.1.6 Final conclusions.

134. The Appellant is found guilty of bribery and conflict of interest. He is banned from taking

part in any kind of football-related activity at national and international level (administrative, sports or any other) for 7 years as of the notification of the Appealed Decision, and has to pay a fine of CHF 100'000. The Appellant will still have to pay the CHF 10'000 established by FIFA, as costs, in the Appealed Decision.

VI. COSTS

135. Article R65 provides as follows:

"This Article R65 applies to appeals against decisions which are exclusively of a disciplinary nature and which are rendered by an international federation or sports-body. In case of objection by any party concerning the application of the present provision, the CAS Court Office may request that the arbitration costs be paid in advance pursuant to Article R64.2 pending a decision by the Panel on the issue.

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

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

If an arbitration procedure is terminated before a Panel has been constituted, the Division President shall rule on costs in the termination order. She/he may only order the payment of legal costs upon request of a party and after all parties have been given the opportunity to file written submissions on costs.

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

136. Taking into account that the appeal that started this procedure was issued against a decision, which is exclusively of a disciplinary nature and was rendered by an international federation, pursuant to art. R65 of the Code, it is free of costs except for the initial Court Office fee of CHF 1.000. Furthermore, the Panel deems it fair and reasonable that the Parties should respectively bear their own legal costs and other expenses incurred in connection with these proceedings.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr Osiris Guzmán against the decision issued on 11 October 2018 by the Adjudicatory Chamber of the FIFA Ethics Committee is partially upheld.
2. Points 1, 2 and 3 of the operative part of the decision issued on 11 October 2018 by the Adjudicatory Chamber of the FIFA Ethics Committee are amended as follows:
   - Mr Osiris Guzmán is found guilty of infringiment of art. 27 (bribery) and art.19 (Conflict of Interest) of the FIFA Code of Ethics
   - Mr Osiris Guzmán is banned from taking part in any kind of football-related activity at national and international level (admisinitrative, sport or any other) for 7 years as of notification of the decision issued on 11 October 2018 by the Adjudicatory Chamber of the FIFA Ethics Committee.
   - Mr Osiris Guzmán shall pay a fine to FIFA in the amount of CHF 100'000.
3. The costs of the arbitration are borne by CAS, with exception of the Court Office fee of CHF 1.000 which was paid by Mr Osiris Guzmán and which is retained by the CAS.
4. Each party shall bear its own legal costs and other expenses incurred in connection with these appeals proceedings.
5. All other motions or prayers for relief are dismissed.

Done in Lausanne, on 23 September 2019.

THE COURT OF ARBITRATION FOR SPORT

Mr Ricardo de Buen Rodríguez
President