CAS 2019/A/6219 Sidio José Mugadza v. Fédération Internationale de Football Association

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Prof Luigi Fumagalli, Professor and Attorney-at-law in Milan, Italy
Arbitrators: Dr Anna Bordiugova, Attorney-at-law in Kyiv, Ukraine
Prof Thomas Clay, Professor in Paris, France

in the arbitration between

Sidio José Mugadza, Maputo, Mozambique
Represented by Mr Jan Kemp Nel and Mr Shane Wafer, Attorneys-at-law with Javelin Sports Consulting, Pretoria, South Africa

- Appellant -

and

Fédération Internationale de Football Association, Zurich, Switzerland
Represented by Mr Emilio García Silvero and Mr Jaime Cambreleng Contreras, FIFA Litigation Department

- Respondent -

I. PARTIES

1. Mr Sidio José Mugadza (the "Appellant") is a Mozambican national, born on 17 August 1971, who is currently, *inter alia*, the General Coordinator and a Club Licensing Instructor at the African Football Confederation ("CAF"), and has been the FIFA Forward Project Manager for the Mozambican Football Federation ("FMF") since 2016, the Head of FMF Player Status and Registration since 2012, and "*MA Administration instructor*" since 2010.

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

II. BACKGROUND FACTS

3. Below is a summary of the main relevant facts, as submitted by the Parties in their written pleadings and adduced at the hearing.[1] Additional facts may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

4. The dispute centres on events related to alleged actions taken by the Appellant in breach of the FIFA Code of Ethics ("FCE"), on a number of counts. Specifically, the actions encompass the Appellant's alleged involvement in match manipulation schemes orchestrated by an individual named Mr Wilson Raj Perumal, a match-fixer, through the participation of the Mozambique U20 national team (the "FMF U20 Team") in the Merdeka Cup 2008 and the preparation for the participation in the Manama Cup 2009.

A. FMF U20 Team's participation in the Merdeka Cup 2008

5. In the period between 1 October and 2 November 2008, the Appellant and Mr Perumal were in communication through a series of email exchanges with regard to the FMF U20 Team's participation in a tournament to take place in Malaysia called the "Merdeka Cup".

6. More specifically, in October 2008, the Appellant was contacted by Mr Perumal regarding the FMF U20 Team's participation in the Merdeka Cup 2008. An extensive communication via email correspondence between these two individuals concerning said tournament followed.

7. More specifically, on 2 October 2008:

[1] Several of the documents submitted by the Parties and referred to in this Award contain various misspellings: they are so many that the Panel, while quoting them, could not underscore them all with a "*sic*" or otherwise.

i. in reply to Mr Perumal's invitation, the Appellant responded as follows:

"*I have been with the board of directors of the Football Federation of Mozambique and after a few explanatios, the was an overwhelming acceptance to this Cup*";

ii. in a second email, the Appellant extended the following request:

"*Being close to South Africa, I am paving way to be in the technical committee for 2010 World Cup. It will be of paramount importance if I could share some experience with you, starting with a tournament like the Merdeka Cup and also have the opportunity to meet new partners and share cultural experiences. […] I will therefore kindly ask a separate invitation as your logistic assistant or any other purpose you might find relevant*";

iii. as a response to the Appellant's request, Mr Perumal answered:

"*Please ensure the selected team will co-operate and work closely with the promoters and sponsors during the tournament. We will certainly include you as the 26th member of the squad. Thank you*";

iv. the Appellant transmitted the official acceptance of the invitation to participate in the "*Friendly Exhibition Tournament*", the Merdeka Cup 2008.

8. Thereafter, on 3 October 2008, the Appellant was informed via email by Mr Perumal that the rules and regulations of the tournament "*will be sent to you shortly*".

9. The Merdeka Cup 2008 was played in the period between 1 and 25 October 2008, with the participation of the FMF U20 Team.

10. On 28 October 2008, Mr Perumal sent an email to the Appellant, which reads in the relevant part as follows:

"*I trusted you so much on this project and you fucked me up really bad sidio. […] Why did you cheat me on the last game. If the coach was not going to allow you to answer the phone why didn't you tell me earlier. I didn't bring you guys here to fucking win the tournament. […] Dont be surprise if i come to Mozambique to look for that bastard coach. Tell him i am going to write Mozampique FA that he took money for replacing the goalkeeper in the match against Vietnam. I will do my very best to put him in trouble".*

11. On 31 October 2008, the Appellant replied in the following terms:

"*Lets forget about the past and look forward to a brighter future. Life is good because it gives opportunities and teaches us to learn from our mistakes*".

12. On 2 November 2008, in reply to the Appellant's email, Mr Perumal responded as follows:

"*I know Sidio life has ups and downs but the manner i was taken for a ride has made me very very mad. U should be on my side and not the coaches. You should have told me he is not going to let you use the phone. Then we could have conspired with the players. How am i to trust you guys and my bosses will never agree to pay for mozambique anymore*".

13. On 3 November 2008, the Appellant replied to Mr Perumal by stating *inter alia*,

"*Sorry for the loss, and I am also sorry for myself*".

14. According to the declarations of the Appellant, the organizers of the Merdeka Cup 2008 had apparently agreed to pay the FMF an amount of USD 90,000 for the three matches to be played by the FMF U20 Team. The Mozambique delegation, however, was (only) paid USD 30,000.00 cash in a conference room, instead of the promised USD 90,000.00. The money received was shared among the players and the officials. The Appellant was paid USD 1,500.00 cash.

B. FMF U20 Team's participation in the Manama Cup 2009

15. Between 21 February 2009 and 24 June 2009, the Appellant and Mr Perumal got again in touch through a series of emails with respect to the possible participation by the FMF U20 Team in another competition, the Manama Cup 2009, to be facilitated by the Appellant.

16. On 21 February 2009, the Appellant was informed by Mr Perumal about the Manama Cup 2009, to be played between 16 and 26 March 2009. The relevant parts of the email message sent by Mr Perumal read as follows:

"*I ahve a under 20 tournament in Bahrain. Can you convince your FA to send team with the same set of players who played in Malasia. This time we dont tell anyone anything. Just deal with me you and players. […] You can make good money for yourself. WE do it nicely this time. You dont fuck me up. What do you say. […] Dont tell your FA it is the same company that brought you to Malaysia*".

17. On 23 February 2009, in reply to Mr Perumal's email of 21 February 2019, the Appellant responded by using the subject "*Good Idea*" to plan the participation at the Manama Cup 2009, in a message which reads as follows:

"*So you have to send an invitation letter with all the respective conditions. Let me convince these guys and see if I can bring people who will listen to my voice*".

18. In another email of the same day, the Appellant, then, indicated that:

"*I will not bring any of those two coaches who claimed to be professional. […] Lastly, for me to be very authorative on the whole trip, I will need you to put aside 10,000 USD for the Football Federation, just as participation fee, then we can do our game the way we want. Confirm with me and I will convince the board members. I need a break through and will not fuck you up*".

19. On 23 February 2009, Mr Perumal, in reply, wrote the following:

"*The boys trust me and i trust them. Just dont bother about the coaches. Just make it look like a normal invitation and bring the team. You have to be honest with me not like the last time*".

20. On 24 February 2009, several messages were exchanged between the Appellant and Mr Perumal:

i. the Appellant sent an email to Mr Perumal stating in the relevant part that:

"*We are now aware of the game, its play to instructions and if you cannot score, you have to concive. Just simple as that. The boys will be more than willing to be your stewards. N:B. Do not mension the participation fee in your first letter until I say so. We will mention it when there appears to be some complications. We will not fuck with anymore*".

ii. the Appellant sent to Mr Perumal an additional message, as follows:

"*Please make sure that you don't mention your previous company name nor your name. I am only the one aware of that at the moment*".

iii. in another email, the Appellant indicated that:

"*I will bring you almost all the boys who where in Malaysia. The boys already know their master … To night I am going to speak to the Vice President … He will not know the deal behind*".

iv. Mr Perumal answered as follows:

"*Alright Sidio, there wont be any mention of my previous company or any match fees. We will invite you and we will take care of accommodation and airfare. On the other hand you speak to the boys who came to malaysia that they are to work with me quietly and not to discuss this with anyone. You try and bring as many boys as possible from the Malaysia group*".

21. On 26 February 2009, the Appellant sent an email to Mr Perumal, informing him about the selection of the players:

"*My coach has started the selection of the squad, but we are just using the same players who participated in Malaysia so that we will be speaking the same language. The players were so desciplined that they did not spill the secrets of Kuala Lumpur. Do not be afraid, the players already know you and they will not listen to anyone else. […]*".

22. On 3 March 2009, Mr Perumal informed the Appellant that the Manama Cup 2009 had been postponed inviting the Appellant to:

"*speak to the players and prepare them as well*".

23. On 23 June 2009, the Appellant was informed by Mr Perumal that the FMF U20 Team had been replaced for the Manama Cup 2009 by the national team of Kenya.

III. PROCEEDINGS BEFORE FIFA

24. On 11 May 2018, the FIFA Integrity Department submitted a preliminary investigation report to the FIFA Ethics Committee based on the email correspondence between the Appellant and Mr Perumal between October 2008 and February 2011. The report contained the following conclusion and recommendation:

"*it is submitted that the preliminary investigation is found to establish a prima facie case against Mr Mugadza. Therefore, in accordance with art. 63 of the FCE, it is hereby recommended that investigation proceedings are opened against Mr Mugadza for potential breaches of arts. 13, 18, 19 and 21 of the FCE as well as the corresponding provisions of the FCE 2009 edition (respectively arts. 3, 5, 11 and 14)*".

25. On 11 July 2018, the Investigatory Chamber of the FIFA Ethics Committee (the "Investigatory Chamber") notified the Appellant of the opening of investigation proceedings against him as follows:

"*Based on a preliminary investigation initiated pursuant to art. 62 par. 3 of the FIFA Code of Ethics 2012 ("FCE"), the Chairperson of the Investigatory Chamber of the FIFA Ethics Committee ("the Chairperson"), Ms Maria Claudia Rojas, has determined that there is a prima facie case that you have committed FCE violations.*

Accordingly, pursuant to art. 63 par. 1 and art. 64 par. 1 of the FCE, the Chairperson has opened the investigation proceedings identified by the reference number listed above. Pursuant to art. 63 par. 2 of the FCE, this letter notifies you that you are a party to the investigation proceedings, which relate to possible violations of art.13, art. 18, art.19 and art. 21 of the FCE. The list of possible violations may be supplemented as additional information becomes available.

The Chairperson will lead the investigation proceedings as the chief of the investigation (see art. 65 of the FCE). You will be informed of further details and developments concerning these proceedings as required.

Furthermore, please note that parties are obligated to collaborate to establish the facts of the case (cf. art. 18 par. 2 of the FCE; art. 41 par. 2 of the FCE) and are required to act in good faith throughout the proceedings (cf. art. art. 41 par. 1 of the FCE). A failure to cooperate may lead to disciplinary measures (cf. art. 41 of the FCE, art. 66 par. 4 of the FCE).

Moreover, we note that this investigation is confidential. Accordingly, we request that you refrain from discussing our communications, requests of you, and any other details regarding this ongoing investigation, with anyone other than your legal representative. In this respect, (if applicable) we would like to ask you to provide us, with the name(s) and respective(s) Power of Representation of any attorney whom you have instructed to assist you with regard to this ongoing investigation."

26. On 13 July 2018, the Appellant acknowledged the receipt of the FIFA's correspondence of 11 July 2018.

27. On 20 August 2018, the FIFA Investigatory Chamber communicated to the Appellant the following:

"*We refer to the abovementioned investigation and acknowledge receipt of your correspondence of 13 July 2018, the content of which was duly noted. In this respect, we kindly ask you to provide us, by return, with the exact title of your current function within the Federação Moçambicana de Futebol.*

Furthermore, in order to establish the facts of the case, I ask that you provide us with your position regarding the charges mentioned in relation to you in the corresponding enclosed report by no later than 31 August 2018 to the Secretariat to the Investigatory Chamber, using the following email address: …

For the sake of good order, we would like to point out that persons bound by the FIFA Code of Ethics, 2018 edition (FCE) shall assist and cooperate truthfully, fully and in good faith with the Ethics Committee at all times (see art. 18 par. 1 of the FCE). Failure to do so may result in the imposition of disciplinary measures (see art. 39 par. 1 and art. 64 par. 4 of the FCE).

Moreover, please be advised that these investigation proceedings are confidential. Accordingly, please refrain from discussing this notice or any details whatsoever of these proceedings with anyone other than your attorney, should you choose to retain one. […]"

28. On 22 August 2018, the Appellant sent a letter to the FIFA Investigatory Chamber, which reads as follows:

"*I am in reception of your letter of the above reference dated 20 August 2018 through my e-mail address. As stated in my previous communication, I chose not the be represented by any legal adviser or attorney for two main reasons:*

1. *I have no intention to delay the proceedings of the case against me and I wish if I could get over this case at the earliest possible*
2. *I know what I did intentionally and unintentionally and my declarations are given on first account as it happened*

It is therefore my plea that the FIFA Ethics Committee register that between 2007 to 2009 those were my first years into football activities when I had very little knowledge on the football structures, ethics and regulations.

From late 2009 when I started getting involved in more seminars and workshops, I realized the good side of football and I got remorse of my past and pursued the right path which lead me to occupy prestigious positions in the Confederation Africaine de Football (CAF) serving as CAF General Coordinator and CAF Club License Instructor, roles that came after faithfulness and determination to the development of the game… Of all CAF General Coordinators I have been one of the regular General Coordinators due to my complete dedication into the game. I have since and still organized many CAF Matches.

I am in regret of my past unethical conduct and I regret having been part and having attempted to corrupt the system. Kindly consider that it has been more than 9 years after I took the right position in defending the integrity of the game and I am still full of ambitions to continue assisting FIFA, CAF and MA in developing the game.

Attached to this cover letter is my true and faithful submission to the case against me and I guarantee all that I have written is my whole truth from my personal account without any assistance.

I hope my response will assist in the current investigations and that the verdict will be delivered in the right time so that my current performance is not affected by anxiety".

29. As mentioned in its text, attached to the letter sent to the FIFA Investigatory Chamber, the Appellant provided a declaration concerning the case brought against him. Such declaration reads, where relevant, as follows:

"[…]*2. Evidence that Mr Mugadza potentially conspired in order to manipulate matches of the Mozambique U20 National Team played in the Merdeka Tournament 2008 Edition*

a) Contact with Mr. Wilson Raj Perumal

I confirm to have been in contact with Mr. Perumal from October of 2008 until February of 2011. The contact was very strong in the beginning and faded away at the end.

b) Participation of Mozambique Under 20 team in the Merdeka Tournament Edition 2008

The Mozambican Football Federation received an invitation to participate in the Merdeka Tournament 2008 through a scanned letter on its e-mail. I was by then the front desk manager for all correspondences. I used that position to gain trust from Mr. Perumal.

c) Conditions of participation in the Merdeka Cup 2008

Only one condition of the participation in the tournament motivated me; the fact that Mozambique MA was going to be paid USD30,000.00 (thirty thousand dollars) per match and that the amount was going to be shared among players and officials. The executive board calculated that just three group matches would profit Mozambique MA USD90,000.00 (ninety thousand dollars). This prompted the Executive Board to have the then Vice President for Administration and Finance, Mr. Luis Nhancolo and the Secretary General, Mr. Filipe Johane to be part of the delegation to make sure that the money is not paid to the players and officials. The invitation letter however stated that the tournament would be played under some specific rules of the promoters. I tried to get the rules of the tournament in advance but I was not provided with any rule prior to our departure.

d) My trip to Malaysia

After having been directly involved in all the correspondence of the tournament and knowing that there was going to be some payment in cash for participants, I felt it was worth for me to be part of the delegation. My position by then would not make me suitable to travel with national teams, so I had to ask Mr. Perumal to guarantee my air ticket and

accommodation and presenting those conditions to the Executive Board was going to guarantee approval for my trip with the delegation. I was then appointed the logistics assistant for Mozambique and I was on board.

e) The Tournament

Out of innocence both the Under 20 National team, officials and I had gone for a genuine football tournament and in turn get some extra cash for participation. After meeting Mr. Perumal before the first match, I requested for the rules of the competition and I was informed the rules would be verbally transmitted and I took the honest position of presenting Mr. Perumal to the Technical Team since I felt that was not my area. In my presence I can confirm there were no rules transmitted by Mr. Perumal but the general information was that the players should show all what they have to offer in the field of play and that after the first half more instructions would come through. No one on the Mozambican technical team had objections to the instructions as they were normal to any coach. Any national team would play at its best to win a match.

f) Failure to influence results of the match

I was not aware that one of the rules was to deliberately lose matches and because of that I did not influence or facilitate any match manipulation and as a result things did not go well for the match fixers:

1.1 players were met in a room by Mr. Perumal with a group of what I now believe were members of match fixing syndicate. Players were informed that those individuals had lost millions of dollars after Mozambique had failed to comply in losing matches. The meeting with the unknown individuals made me and the whole delegation feel unsafe and made it even difficult to comply with any further instructions. We were just hoping to return home safe

1.2 The promised USD 90,000.00 for three matches played was never paid in full. We made efforts to reach the Malaysian Football Federation by phone call but we were referred to the organizers of the tournament, Worldwide Events Sports International and that took us back to Mr. Perumal. After some persistence, USD 30,000.00 was paid to the Mozambique delegation and was shared among 18 players and 8 officials. Each player received USD 1,000.00 and each official received USD 1,500.00 including me. This payment was made in the presence of all in a conference room. The money received was treated by all as part of the commitment of the organizers of the tournament as stated in the invitation letter and that was my feeling also.

1.3 Many of the hotel rooms for our delegation were cancelled and our delegation had to share 4 rooms in the last long hours prior to departure from Malaysia.

[…]

3. Evidence that Mr. Mugadza potentially conspired in order to manipulate matches of the Manama Cup 2009 Edition

After the failed manipulation of results in the Merdeka Cup 2008, Mr. Perumal informed me on how match fixing works and he made me aware of how all was done (it easy to concede than to score). I was fully aware that Manama Cup Edition 2009 competition would involve manipulating results. I was also willing to facilitate fixing the results in exchange of cash. My intention in the Manama Cup 2009 Edition was to manipulate matches played by the Mozambique Under 20 national team. Mr. Perumal further informed me on other possible matches and tournaments however, none of the intended tournaments was organized.

4. Evidence that Mr Mugadza presumably conspired with Mr Perumal in order to engage in potential human trafficking activity regarding the intention to recruit and transfer underage Mozambique football players

I had no intention of being involved in illegal activity of human trafficking. By that time I was in the early stages of understanding the Regulations on the Status and Transfer of Players through seminars organized by FIFA TMS. I was now aware that international transfers would pass through some transparent processes especially the treatment of minors. The activity cited by Mr. Perumal was not welcome when I found out what it really meant and for that reason I never responded with information of any Mozambican families that were willing to have their kids adopted. Despite Mozambique having many families suiting Mr. Perumal's conditions, I never attempted to contact any as I was aware that such activities were and are deemed illegal.

In some of my correspondences to Mr. PerumaI in relation to the transfer of two under 20 boys, I even informed him that he had to respect the contract of the players as well as their education please see attached

[…]

From 2009 to present date

After having realized how bad match fixing was, I took a personal stand to change my way of conduct. I alerted the then General Secretary and the President on how those invitations to international friendly matches were not worth accepting. For that reason I never again participated in any suspicious matches in which Mozambican national team was involved, example of which are given attached Exhibit 2

[…]

Conclusion

I conclude that I was at some point during my career involved in misconduct and I testify that as I learned more on football, I left the bad practice behind and pursued a good path in football. I am currently involved in honest football practices and regret having been on the wrong side of the good course of footbal".

30. On 18 September 2018, the FIFA Investigatory Chamber communicated to the Appellant the following information:

"*We refer to the abovementioned investigation and acknowledge receipt of your correspondence of 23 August 2018 and enclosed documents, containing your position regarding the charges mentioned in relation to you in the Preliminary Investigation Report dated 11 May 2018, the content of which was duly noted. […]*

[F]rom the content of your position, it appears that other officials of the FMF were involved in the relevant events mentioned in the above Preliminary Investigation Report in relation to potential breaches of the FIFA Code of Ethics, 2018 edition (FCE). In view of the above, you are kindly asked to provide us, by no later than 21 September 2018, with any and all information in your possession concerning any FMF (or other) officials involved in the events described in the aforementioned Preliminary Investigation Report and in any activities that would represent potential violations of the FCE. […]"

31. On 17 December 2018, the FIFA Investigatory Chamber issued the Final Report regarding the result of the investigation made of the Appellant. The conclusion of the Final Report is the following:

"*The Investigatory Chamber of FIFA, following the investigation proceedings conducted against Mr Mugadza and in accordance with the provisions of the FIFA Code of Ethics, finds Mr*

Mugadza guilty of having violated the specific FCE articles cited in the present report (in particular art. 11 of the FCE 2009, art. 13, 17 and 19 of the FCE 2018, as well as their corresponding provisions in the other respective versions of the FCE)."

32. On 18 December 2018, the Adjudicatory Chamber of the FIFA Ethics Committee (the "Adjudicatory Chamber") opened proceedings against the Appellant, providing him with the opportunity to submit his opinion on the Final Report and to request a hearing.

33. On 20 December 2018, the Appellant replied to the Chairperson of the FIFA Adjudicatory Chamber that he did not require a hearing:

"*because the proceedings were clear and the final report is based on my personal submissions and confession.*

While I wait for the decision on the case against me, my only appeal is that be considered my active years of positive contribution towards football activities for the past seven years after the violation of the FIFA Code of Ethics".

34. On 24 January 2019, the FIFA Adjudicatory Chamber issued a decision (the "Appealed Decision"), finding that:

"*1. Mr Mugadza is found guilty of infringement of art. 11 (bribery) of the 2009 FIFA Code of Ethics.*

2. Mr Mugadza is hereby banned for fifteen (15) years from taking part in any kind of football-related activity at national and international level (administrative, sports or any other) as of notification of the present decision, in accordance with Article 7 let. j) of the 2018 FIFA Code of Ethics in conjunction with art. 22 of the FIFA Disciplinary Code.

3. Mr Mugadza shall pay a fine in the amount of CHF 3,000 within 30 days of notification of the present decision […]".

35. In support of such decision, the FIFA Adjudicatory Chamber:

i. found that the FCE was applicable to the case and that the Appellant was bound by its provisions;

ii. decided that "*the legal assessment*" of the case would be made pursuant to the 2009 edition of the FCE (the "FCE 2009") on the basis of the following reasons:

"9. […] to judge the conduct presently relevant based on the material provisions of the FCE editions that were force at the time of the questionable conduct (ratione temporis). Consequently, the provisions on bribery contained in the 2006 and the 2009 edition of the FCE would apply; however, in the light of the principle set out in art. 3 of the 2018 FCE (which establishes that in principle, a new code may apply to previous conduct) and bearing in mind that both provisions are identical, the adjudicatory chamber shall assess the present case based on the 2009 FCE".

iii. made the following legal assessment:

37. "As a football official bound by the FCE, Mr Mugadza was forbidden from accepting bribes from any third party. In this respect, art. 11 of the 2009 FCE establishes three cumulative requirements: (a) a gift or advantage must be offered, promised or sent to an official; (b) the official must be incited to breach some duty or to behave dishonestly for the benefit of a third party; (c) the official has breached the obligation to refuse (cf. CAS award 2011/A/2426, page 53).

38. *Based on the evidence at hand, it is clear that Mr Mugadza was involved in a match fixing scheme and received bribes from Mr Perumal. The promised bribes were disguised as "appearance fees" and amounted to USD 90,000 for the Merdeka tournament (of which USD 30,000 were paid, including a share of CHF 1,500 for Mr Mugadza) and USD 10,000 for the Manama tournament.*

39. *Mr Mugadza interactions with Mr Perumal were driven by his aim to gain a (pecuniary) advantage, i.e. a financial betterment. In relation to the Merdeka tournament, Mr Mugadza confirmed that "only one condition of the participation in the tournament motivated me; the fact that Mozambique MA was going to be paid USD 30,000.00 (thirty thousand dollars) per match and that the amount was going to be shared among players and officials". With regard to the Manama tournament, Mr Mugadza expressly admitted that he was "willing to facilitate fixing the results in exchange of cash" (cf. position before the investigatory chamber). In this sense, Mr Mugadza requested a bribe of USD 10,000, and Mr Perumal agreed to offer / pay such amount.*

40. *It is further noted that the ratio of equivalence between the (undue) advantage given and a specific action by the official obtaining the advantage appears to be given, as the (undue) advantages were being paid to Mr Mugadza in order to obtain the latter's participation in the manipulation of international matches. In relation to the Merdeka tournament, Mr Mugadza played a key role as an intermediary between Mr Perumal and the FMF officials and players. Mr Mugadza engaged in such role despite knowing that the tournament "would be played under some specific rules of the promoters" and that Mr Perumal would issue instructions to the players after the first half. The situation is even more clear for the Manama tournament, where Mr Mugadza confessed that his involvement in the match manipulation was solely motivated by the prospect of receiving bribes ("I was willing to facilitate fixing results in exchange of cash").*

41. *Mr Mugadza played a key role in the several match manipulations planned and carried out by Mr Perumal. He did so directly by approaching and involving team officials and players. Mr Mugadza was aware that by being offered and accepting the bribes, he was being incited by Mr Perumal to breach his duties as a football official and to behave dishonestly. Equally, it seems evident that the bribes were specifically given for Mr Mugadza's execution or omission of an act ("you can make good money for yourself", email of 21 February 2009). Accordingly, the adjudicatory chamber notes that incentive and misconduct were directly linked to each other.*

42. *Art. 11 of the 2009 FCE states that the undue advantage must be "for the benefit of a third party". The manipulation of matches is an (illegitimate) business with the sole aim of making (betting or other) profits by fixing the result of a match. The fact that the result of the manipulated matches would directly affect gain and loss of Mr Perumal is evidenced by the events following the match at the Merdeka tournament, when Mr Perumal claimed that because his instructions had not been followed, he had "lost millions of dollars".*

43. *In view of the above, the adjudicatory chamber concludes that the first two conditions of art. 11 of the 2009 FCE are met. The same applies to the third condition (obligation to refuse the bribe), since Mr Mugadza admits having received USD 1,500 in cash for the (failed) match manipulation attempt at the Merdeka tournament";*

iv. reached the following overall conclusion with respect to the commission of an infringement by the Appellant:

44. "Taking into account the evidence at hand, the adjudicatory chamber is comfortably satisfied that Mr Mugadza conspired (or at least attempted to conspire) with Mr Perumal to approach and recruit team officials and players for them to play as per Mr Perumal's instructions to manipulate the results of international matches.

45. In the light of the foregoing, the adjudicatory chamber considers that by being offered and promised as well as by accepting payments from Mr Perumal, Mr Mugadza has breached art. 11 par. 1 of the 2009 FCE.

46. Any other charges set out in the final report are deemed to be consumed by Mr Mugadza's breach of art. 11 par. 1 of the 2009 FCE";

v. defined the measure of the sanction to be applied for such infringement as follows:

47. "First, the adjudicatory chamber would like to highlight that accepting and receiving payments from a match-fixer to manipulate the results of football matches qualifies as one of the most serious breaches under the FCE. Match fixing contravenes the fundamental principle of fair play, and thus poses one of the biggest threats to sports in general.

48. As the assistant general secretary and team official of the FMF, Mr Mugadza held a crucial position in association football both at national and international level. Despite having the responsibility to serve as a role model, Mr Mugadza misled youth players and involved them into a match-fixing scheme. Furthermore, note is taken that Mr Mugadza and Mr Perumal had continuous discussions in June/July 2009 to engage in two additional match manipulations schemes. Not acts of mere negligence are at stake here but deliberate actions (see art. 6 par. 2 of the 2018 FCE). In view of all these circumstances, Mr Mugadza's degree of guilt must be regarded as very serious.

49. On the other hand, the adjudicatory chamber has taken note that Mr Mugadza has admitted most of the allegations made against him. He did so in an exemplary and upright manner. His confession was clear and concise, and included an acknowledgement of remorse ("I regret having been on the wrong side of the good course of football"). In his position before the adjudicatory chamber, Mr Mugadza abstained from disputing the contents of the final report but acknowledged that "the proceedings were clear and the final report is based on my personal submissions and confession". These circumstances do not relate to the question of Mr Mugadza's guilt, but support leniency.

50. The confession of a misconduct, under certain conditions, can constitute a mitigating circumstance in terms of sanctioning. In order for the confession to be constituted as a mitigating factor, it must be truthful, and it must contribute to establishing the relevant facts in the proceedings. In casu, the confession of Mr Mugadza has helped to clarify and establish the facts of the case. To the largest extent, the statements made by Mr Mugadza also correlated with the content of the written evidence included in the final report, which indicates that his confession can be seen as truthful. Consequently, the confession of Mr Mugadza, as well as his cooperation during the proceedings, shall be taken into account as a mitigating factor.

51. With a view to the track record of Mr Mugadza, it appears that following the events presently relevant, no further issues were recorded. Accordingly, in his submission to the adjudicatory chamber, Mr Mugadza filed a motion to "consider my active years of positive contribution towards football activities for the past seven years after the violation of the FIFA Code of Ethics". In this regard, the adjudicatory chamber would like to note that under the rules contained in the FCE, nothing else

than a proper and reputable behaviour is expected from any person bound by the FCE. Accordingly, the recent lack of records shall have only a limited mitigating effect.

52. Overall, taking the relevant factors of this case into account, the adjudicatory chamber concludes that only a ban from taking part in any football-related activity is appropriate. Moreover, bearing in mind the seriousness of the misconduct displayed by Mr Mugadza and the adjudicatory chamber's disapproval of such acts, only a severe ban would seem to be appropriate. The adjudicatory chamber determines that in casu, a ban of fifteen years would adequately reflect Mr Mugadza's misconduct. Furthermore, considering that the breaches took place in the context of international matches, the adjudicatory considers that only a worldwide scope would be appropriate.

53. Mr Mugadza has received bribes in the amount of at least USD 1,500. However, in order to ensure a sanctioning and a preventive effect, the fine must be substantially higher than the benefit Mr Mugadza obtained in cash as otherwise, it would only amount to a reclaiming of the respective benefit. The adjudicatory chamber thus considers a fine of CHF 3,000 to be proportionate.

54. The adjudicatory chamber notes that the sanction imposed lies within the minimum and maximum limits defined in the FCE 2018 and that it is equally covered by the sanctions foreseen in the 2006, 2009 and 2012 FCE (cf. art. 12 of the 2002 FIFA Disciplinary Code (FDC), art. 11 of the 2009 FDC, art. 6 of the 2006 FCE, art. 17 of the 2009 FCE, art. 6 of the 2012 FCE and art. 7 let. (e) of the 2018 FCE).

55. In conclusion, Mr Mugadza is hereby banned for fifteen years from taking part in any football-related activity (administrative, sports or any other) at national and international level. The ban shall come into force as soon as the decision is communicated (art. 42 par. 1 of the 2018 FCE). In addition, Mr Mugadza shall pay a fine of CHF 3,000".

36. On 28 February 2019, the FIFA Adjudicatory Chamber notified the Appellant of the Appealed Decision by email.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

37. On 21 March 2019, pursuant to Article R47 of the Code of Sports-related Arbitration (2019 edition) (the "Code"), the Appellant filed with Court of Arbitration for Sport (the "CAS") a Statement of Appeal against the Appealed Decision. In his Statement of Appeal, *inter alia*, the Appellant nominated Prof. Thomas Clay, Professor in Paris, France, as arbitrator.

38. On 17 April 2019, the Appellant filed his Appeal Brief pursuant to Article R51 of the Code. Furthermore, the Appellant made an urgent application for a stay of the Appealed Decision pursuant to Article R37 of the Code, in which he requested "*that the operation and/or effects of the current sanction, in terms of the Challenged Decision, be stayed or suspended pending the finality of the present proceedings*."

39. On 23 April 2019, the CAS Court Office notified the Appeal Brief to the Parties and invited the Respondent to file its answer to the request for a stay within 10 days.

40. On 6 May 2019, the Respondent filed its answer opposing the Appellant's request for a stay.

41. On 21 May 2019, the President of the CAS Appeals Arbitration Division ruled that:

"*The Application for the stay of the decision rendered by the Adjudicatory Chamber of the FIFA Ethics Committee on 24 January 2019, filed by Mr Sidio José Mugadza on 17 April 2019 in the matter CAS 2019/A/6219 Sidio Jose Mugadza v. FIFA, is denied […]*".

42. On 8 June 2019, FIFA filed its Answer pursuant to Article R55 of the Code.

43. On 11 June 2019, the Appellant, in a letter to the CAS Court Office, submitted that the Respondent had failed to meet the deadline, as extended by decision of the President of the CAS Appeals Arbitration Division, for the filing of its Answer and requested that the Panel, pursuant to Article R55 of the Code, proceed with the arbitration and deliver an award in the absence of the Respondent's Answer.

44. On 12 June 2019, the CAS Court Office confirmed the timely receipt of the Respondent's Answer.

45. On 14 June 2019, pursuant to Article R54 of the Code, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, informed the Parties that the Panel appointed to decide the present case was constituted as follows:

President:	Prof Luigi Fumagalli, Professor and Attorney-at-law, Milan, Italy
Arbitrators:	Prof Thomas Clay, Professor, Paris, France
	Dr Anna Bordiugova, Attorney-at-law, Kyiv, Ukraine

46. Prof Clay made appropriate disclosures to the Parties regarding his independence further to Article R33 of the Code, but no party raised any objection to the constitution of the Panel.

47. On 19 June 2019, the CAS Court Office informed the Parties of the Panel's decision to hold a hearing, pursuant to Article R57 of the Code, and of its availability for a hearing on 5 July 2019.

48. On 21 June 2019, the Appellant requested the hearing to be rescheduled, in order to solve some logistical challenges linked to the travel arrangements necessary for the Appellant and his counsel.

49. In a letter dated 1 July 2019 and after consultation with the Parties, the Parties and their witnesses were called to appear at the hearing to be held on 20 September 2019 in Lausanne, Switzerland.

50. On 16 September 2019, the Appellant transmitted to the CAS Court Office some documents (consisting of three letters) which "*the Appellant request[ed] be adduced as further exhibits* […] *in respect of the hearing on 20 September 2019*", with the justification that "*these documents are not voluminous in nature and are documents which the Respondent would already have knowledge and/or be in possession of".*

51. On 19 September 2019, the Respondent objected to the filing of evidence, in light of Article R44.1 of the Code, as no exceptional circumstances had been shown to justify it, and because those document "*are not relevant, […] [nor] do they serve to establish the*

facts in relation to the Appellant's conduct and involvement in the bribery schemes for which he has been sanctioned".

52. On 20 September 2019, the hearing in this matter was held at the CAS headquarters in Lausanne. The Panel was assisted at the hearing by Ms Kendra Magraw, CAS Counsel.

53. The Appellant attended the hearing in person and was represented by Mr Jan Nel and Mr Shane Wafer, counsel. FIFA was represented at the hearing by Mr Octavian Bivolaru, Ms Audrey Cech and Mr Miguel Liétard.

54. At the beginning of the hearing, preliminarily, the Parties confirmed that they had no objections to the composition of the Panel and made submissions with regard to the admissibility of the documents filed by the Appellant through the CAS Court Office on 16 September 2019. After hearing those submissions, the Panel decided to admit said documents, with the sole exception of a letter, written in a language other than English, filed without any translation into the language of the arbitration.

55. After the opening statements by the Parties, the Panel heard the testimony of the Appellant. In his declarations, the Appellant described his background, his involvement in football and the events which were the subject of the disciplinary proceedings conducted by FIFA. More specifically, the Appellant underlined, *inter alia*:

    i. that he is a teacher by profession, but that outside football he has no opportunity to find employment allowing him to make a living;

    ii. that English is only his third language. His poor command of English is the reason why in his correspondence to FIFA of 22 August 2018 he used inappropriate legal terminology, without understanding its meaning and implications;

    iii. that in 2008 and 2009, he had little information about the FIFA rules of ethics;

    iv. that it is his understanding that some matches are played as "Exhibition Matches", *i.e.* played according to the rules adopted by the organisers and to please the promoters.

56. After that the Parties made submissions in support of their respective cases, based on which the Panel determined that it had sufficient elements for its deliberation and closed the hearing.

V. SUBMISSIONS OF THE PARTIES

57. The following outline of the Parties' positions is illustrative only and does not necessarily comprise every submission advanced by the Parties. The Panel confirms, however, that it has carefully considered all the submissions made by the Parties, whether or not there is specific reference to them in the following summary.

A. The Position of the Appellant

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

    "*I. This appeal is upheld.*

II. The decision issued by the Adjudicatory Chamber of the FIFA Ethics Committee on 24 January 2019 is annulled.

III. No sanction is imposed on Mr Sidio Jose Mugadza.

Alternatively, to II

IV. The sanction imposed by the Adjudicatory Chamber of the FIFA Ethics Committee on 24 January 2019 is significantly reduced.

In any event

V. The Adjudicatory Chamber of the FIFA Ethics Committee shall be ordered to bear all arbitration costs and to reimburse Mr Sidio Jose Mugadza all the settled advances of costs including the minimum CAS Court Office Fee of CHF 1000.

VI. The Adjudicatory Chamber of the FIFA Ethics Committee shall be ordered to pay Mr Sidio Jose Mugadza a contribution towards the legal and other costs incurred in the frame work of these proceedings in an amount to be determined at a later stage or at the discretion of the Panel".

59. Those requests were in essence confirmed by the Appellant in his Appeal Brief: the Appellant requests the Appealed Decision to be set aside and either no, or a minimal, sanction imposed on him, with costs of the proceedings borne by FIFA.

60. The Appellant, in summary, disputes the Appealed Decision, which found him guilty of bribery according to Article 11 of the FCE 2009. In the Appellant's opinion, the Appealed Decision reflects a wrong legal assessment and is based on a biased evaluation of the facts and evidence. The Appellant claims that at no point did he participate in the arrangement of match manipulations at the Merdeka Cup 2008 or the Manama Cup 2009. Consequently, he did not breach the provisions of Article 11 of the FCE 2009, as he did not receive any advantage for an incitement to breach his duties. Nor does he find that the cumulative requirements for a breach of Article 11 of the FCE 2009 were met. Therefore, according to the Appellant, the Respondent has failed to prove to the standard of "comfortable satisfaction" that the Appellant is guilty of a violation under Article 11. Furthermore, the Appellant finds the sanction imposed by the Appealed Decision to be disproportionate and unreasonable to the alleged offence.

61. Preliminarily, the Appellant underlines two points regarding the rules applicable to his case and the burden of proof to establish the violation of which he is accused.

62. As to the first point, the Appellant notes that the alleged offences took place between 2008 and 2011. Consequently, the applicable provisions (Article 11) of the FCE 2009 are the only provisions which may have any bearing on the outcome of the proceedings, due to the principle of non-retroactivity.

63. As to the second point, the Appellant indicates that the burden of proof according to Article 99 of the FIFA Disciplinary Code (the "FDC") rests on FIFA. Consequently, the Respondent has the burden of proving that the Appellant committed said alleged violations to a degree of certainty. However, the Appellant claims that FIFA failed to meet its burden to the degree of "certainty" or "comfortable satisfaction" required by Article 97 FDC. In that respect, the Appellant notes the following:

i. the Respondent attempted to draw inferences and make determinations based on a manipulation of the actual evidence. For instance:

(a) the Appealed Decision states that the Appellant admitted to having facilitated the manipulation of the results of the matches played in the Manama Cup 2009 in exchange for cash. The FMF, however, never participated in said tournament, as the invitation was revoked and the team never competed. Consequently, the information stated in the Appealed Decision is flawed;

(b) in the Appealed Decision it is claimed that the Appellant conspired with Mr Perumal in 2009 and until 2011. However, no evidence is brought forward to suggest that the communications between him and Mr Perumal relate to the attempted manipulation of matches;

(c) the Appealed Decision states that the Appellant received a payment of USD 1,500 directly from Mr Perumal, which is a flawed information as the payment was received by FMF and paid out to the Appellant by the latter;

ii. the alleged confession contained in the Appellant's letter dated 28 August 2018 cannot be adopted as a basis for the findings reached in the Appealed Decision, as English is not the Appellant's native language. Thus, the Respondent's use of the Appellant's words "*is a bad faith attempt to manipulate the Appellant's lack of a proper grasp of the English language to suit their interpretation of the events*". Hence, in general, as "*English not being his native tongue, [the Appellant] used inappropriate legal terminology in his explanations without any awareness of its actual impact and/or consequences*".

64. In general terms, the Appellant asserts that for a charge of bribery according to Article 11 of the FCE 2009, a number of cumulative elements have to be present to find a violation:

i. the person committing the act of bribery must be a FIFA official;

ii. a gift or other advantage must be offered, promised or sent;

iii. the act must incite a breach of a duty or dishonest behaviour and be attributable to a third party; and

iv. the official has an obligation to refuse a bribe.

65. According to the Appellant, those cumulative conditions have not been met in respect to all the events ascribed to him.

66. More specifically, with respect to the allegation regarding his involvement in match-fixing schemes during the FMF U20 Team's participation in the Merdeka Cup 2008, the Appellant submits that:

i. the communications with Mr Perumal were not initiated by the Appellant. As it can be noticed in the wording of his first email, the Appellant was under the impression of corresponding with a company. Moreover, the participation in the event was not decided by the Appellant, but by his superiors at the FMF;

ii. his request to participate was made to allow him the opportunity to meet new partners and gain more experience, the only personal gain he wished to obtain from this event. Enough evidence has been shown that he was not aware of the manipulation attempts of Mr Perumal at the Merdeka Cup 2008, and that "*he was always under the impression that the team's participation at the tournament was legitimate and would be compensated with a legitimate appearance fee*". Moreover,

"*only after his team's performance and once Mr Perumal had spoken to the team was he aware of the attempts*". The "*knowledge that the tournament would be played under some specific rules of the promoters*" is not an indication of the Appellant's awareness of match manipulation, as it was deemed to be a "*standard statement*";

iii the amount of USD 90,000 promised, of which only USD 30,000 were effectively paid to the FMF, was understood as being a participation fee. Thus, it was never intended to be a bribe of any kind directly to or for the benefit of the Appellant for his assistance in organising the event. This is further supported by the decision of the Executive Board of FMF to have its own members of the financial team present, to be the ones to receive and distribute the participation fee among all players and officials, "*exercising their ethical duty to mitigate against the potential of bribery or other unethical behaviours occurring*". Moreover, the amount of USD 1,500 "*was requested by, received by and distributed by the Mozambique Football Federation*" to the Appellant.

67. With respect to the allegation regarding the involvement in match-fixing schemes during the preparation for the FMF U20 Team's participation in the Manama Cup 2009, the Appellant contends that his attempt in securing the payment of USD 10,000, considered to be a possible bribe, relates only to a participation fee, and was merely made for the benefit of the FMF. Hence, the payment was never intended to be for his personal benefit, and was the object of the email exchanges due to Mr Perumal's previous reluctance in completing agreed payments due to the FMF (when he paid USD 30,000 instead of the promised USD 90,000). Therefore, it cannot be considered to be a bribe or a gift. Moreover, regardless of the foregoing, such participation fee was never actually paid, as the participation of the FMF in the Manama Cup 2009 was never finally confirmed. The Appellant is aware that bribery does not only require delivered or sent fees, but stresses that "*any mention of fees payable were for the benefit and were to be paid directly to FMF*".

68. Finally, with respect to the proportionality of the sanction, the Appellant claims that the Respondent failed to provide sufficient legal basis to support the extent of the disciplinary measure imposed. The sanction imposed was unreasonably severe, considering that all of the findings that allegedly prove the offense are in error or based on little to no evidence. Moreover, even if the Appellant would have committed the alleged violations, the sanctions imposed are considered to be excessive compared to previous FIFA sanctions against other FIFA officials. Hence, if not dismissed in its entirety, the sanction should be reduced greatly.

B. The Position of the Respondent

69. In its Answer, the Respondent requested the CAS:

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

2. To confirm the decision rendered by the FIFA Ethics Committee on 24 January 2019 hereby appealed against;

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

70. In the Respondent's opinion, in summary, the Appellant violated Article 11 FCE 2009 by collaborating, accepting and failing to refuse or report the bribe. Thus, the Respondent submits that the FIFA Adjudicatory Chamber correctly applied the relevant provisions of the FCE, that the Appealed Decision rendered complied with the principle of proportionality and that the sanction imposed on the Appellant was, therefore, proportionate to the infringements committed.

71. More specifically, the Respondent submits that the Appellant maintained a relationship with Mr Perumal, a convicted match-fixer, and conspired with the latter with regard to the participation of the FMF U20 Team in various matches and tournaments (the Merdeka Cup 2008 and Manama Cup 2009) that were manipulated or attempted to be manipulated, and thus violated Article 11 FCE 2009 in the following way:

- with respect to the Merdeka Cup 2008, the Appellant conspired with Mr Perumal in order to be included in the Mozambique delegation. He then participated in the Merdeka Cup 2008, and was aware that Mr Perumal was attempting to manipulate the matches of the national team of Mozambique (being blamed by Mr Perumal and apologising in relation to the failure of such attempts), and received a payment of USD 1,500 together with the other members of the Mozambique delegation, in relation to his participation and/or involvement;
- concerning the Manama Cup 2009, the Appellant requested and accepted money for influencing and/or manipulating the results of the matches to be played by the national team of Mozambique, and potentially other matches. Moreover, he confessed to having conspired with Mr Perumal to manipulate and influence the result of the matches to be played by the team of Mozambique in the Manama Cup 2009 in exchange for financial gain;
- the Appellant failed to report the (attempted) manipulation of the matches of the FMF U20 Team by Mr Perumal and his "match fixing syndicate" to any authority or body, including FIFA, and through his conduct, manifestly abused his position within the FMF in order to act as a middleman between Mr Perumal and the respective association.

72. The Respondent argues that all the cumulative elements of the offence laid out in Article 11 FCE 2009 have been satisfied.

73. As to the condition that "*a gift or advantage must be offered, promised, sent to an official*", FIFA underlines that "any type or form of advantage" can be interpreted in a broad manner, including, but not limited to, money or any other benefit, and reminds that the charge of bribery does not require that the gift/advantage is actually received by the official. More in detail, FIFA submits the following:

i. throughout the preparation for the Merdeka Cup 2008, reference was made to a fee of USD 30,000 per match, corresponding to USD 90,000 in total, to be paid in relation to the involvement of the FMF U20 Team in the competition. The Appellant stated in his declaration to the FIFA Investigatory Chamber that the only element that motivated him in relation to the participation of said tournament was the promised amount that would be paid: "*Knowing that there was going to be some payment in cash for participants, I felt it was worth for me to be part of the delegation*". Contrary to the Appellant's submissions in this arbitration, the money

was then paid in Malaysia by Mr Perumal and not to the FMF, but was distributed to the delegation;

ii. the Appellant straightforwardly requested a monetary reward to ensure the participation of the FMF in the Manama Cup 2009, regardless of the fact whether such offer eventually materialised.

74. Based on the above, the Respondent submits that the Appellant's interactions with Mr Perumal were driven by his aim to gain a (pecuniary) advantage, *i.e*. a financial betterment, by being offered and accepting a remuneration of USD 1,500 in relation to the Merdeka Cup 2008, and requesting and being promised a payment of USD 10,000 for the Manama Cup 2009. In addition, according to the Respondent, the Appellant, by accepting and requesting the relevant amounts, was aware of Mr Perumal's intention to manipulate the results of the respective matches involving the FMF U20 Team, which entails that the amounts were related to such manipulation.

75. As to the condition that "*the official must be incited to breach some duty or behave dishonestly for the benefit of a third party*", the Respondent reaffirms the second element of Article 11 FCE 2009 relating to the purpose for which the advantage is offered and stresses that the emphasis is on the offeror's intent, not the offeree's. Thus, it is enough for the offeror to "incite" dishonest behaviour without there being the need for an actual breach of duty or dishonest conduct to occur.

76. In that regard, the Respondent argues that the extensive email correspondence between the Appellant and Mr Perumal clearly establishes that the Appellant engaged in match fixing schemes in order to receive bribes from Mr Perumal. The wording used by both individuals was clear and consistent, leaving no doubt that the Appellant was not only aware of Mr Perumal's match-making schemes and of the nature of his involvement, but was also willing to cooperate, benefiting from that scheme and acting deliberately and intentionally:

i. in relation to the Merdeka Cup 2008, the Respondent argues that the Appellant, by accepting the amount of USD 1,500 after the Mozambique delegation had been made aware by Mr Perumal of the attempted manipulation, was not only aware of the manipulation, but also involved in such manipulation. Further, he failed to report such breach of the FCE and subsequently maintained a correspondence with Mr Perumal. Statements made in said correspondence, such as the Appellant's apology for the financial loss incurred by Mr Perumal, due to the Mozambique team's failure to deliver the expected result, demonstrate, according to the Respondent, the Appellant's participation in the scheme;

ii. in relation to the Manama Cup 2009, the Respondent submits that the Appellant's participation in Mr Perumal's manipulation is evident from the content of the email correspondence exchanged, in which his contribution to the planning of the FMF U20 Team's participation in competition, the selection of the players and his deliberate neglect in informing his federation, are remarkable.

77. In addition, according to the Respondent, the Appellant's involvement is evident, as he was the main point of contact of Mr Perumal in the FMF, the facilitator of Mozambique's participation in the respective tournaments, involved in the selection of the members of the team and ensuring that they would cooperate in such schemes, operating without the

full knowledge of the federation. Therefore, his role was central in Mr Perumal's match-manipulation schemes, acting as an intermediary, or even as an accomplice.

78. As to the ratio of equivalence, the Respondent recalls that in cases of bribery, it is often difficult to establish a correlation between a payment and a particular act of an official. Consequently, objective indicators are important in this context, such as the amount of the payment or the act of the official, as well as the occurrence and frequency of contacts between the parties involved. In that respect, based on the email exchanges between the Appellant and Mr Perumal, it is evident that the advantages were being offered to him in order to obtain his participation in the manipulation of international matches, by selecting players who would agree to comply with Mr Perumal's instructions to manipulate matches. It can be presumed therefore that, by requesting and accepting undue financial advantages, the Appellant was being incited by Mr Perumal to breach his core duties as a football official and to behave dishonestly. Equally, it is evident that the bribes were specifically given for the Appellant's execution of an act. Accordingly, the incentive and misconduct were directly linked to each other. In summary, the manipulation of matches is an illegitimate business with the sole aim of making profits by fixing the result of a match. The Appellant assured Mr Perumal to have understood and agreed to participate in his match manipulation schemes. Thus, another requirement of Article 11 FCE 2009 has been met.

79. As to the condition that "*the official has breached the obligation to refuse*", finally, it is clear that the Appellant agreed to receive the bribe. In relation to the Manama Cup 2009, then, it is not relevant whether the Appellant actually received the amount of USD 10,000, that he requested and accepted to receive, or whether he planned to share such amount with others. Rather than to refuse the amount deliberately, he deliberately accepted it.

80. Having established the offence according to Article 11 FCE 2009, the Respondent submits that the sanction imposed on the Appellant is just and proportionate, keeping in mind that, when imposing a sanction and in order to restore *vis-à-vis* the public opinion and the trust into the relationship that has been damaged by the misconduct, the deciding body shall take into account several elements, including the consequences that the misbehaviour caused to the functioning or the reputation of the institution to which the person is directly or indirectly affiliated (in this case FIFA), the personality of the accused, the severity of the fault, the motives of the infringement, the existence of precedents, and the responsibilities and status of the person.

81. FIFA submitted that the FIFA Adjudicatory Chamber took into account such elements, and complied with the principle of proportionality, as well as with its own practice. The sanction was justified by the overall interest of football as the sanction imposed must serve both a repressive and a preventive purpose. Since acts of manipulation cause immense damage to football's integrity and threatens the credibility and reputation of FIFA, FIFA has to apply a zero-tolerance policy against any conduct or attempt of bribery. Engaging in match manipulation is deemed by the Respondent to be one of the worst possible infringements to the integrity of football and to the fundamental principle of fair play and, therefore, one of the biggest threats to sport in general. As the Appellant had a high position within the FMF, he consequently had a special responsibility towards the respective stakeholders. Thus, the Appellant's degree of guilt must be regarded as very serious.

82. The Respondent further points out that match manipulations are usually sanctioned with a lifetime ban from taking part in any football-related activity, as evidenced by several previous match manipulation cases (*CAS 2009/A/1920*, *CAS 2010/A/2172*, and *CAS 2017/A/5173*). However, the confession of misconduct, under certain conditions such as being truthful and contributing to establishing the facts relevant in the proceedings, can constitute a mitigating circumstance, in terms of sanctioning. Therefore, in view of the Appellant's cooperation and confession, the FIFA Adjudicatory Chamber rightfully considered that a ban of fifteen years from taking part in any football related activity adequately and leniently reflected the Appellant's misconduct. Such measure should be confirmed by CAS, and the appeal rejected also in this respect.

VI. JURISDICTION

83. The jurisdiction of CAS, which is not disputed by the Parties, derives from Article R47 of the Code, Article 82.1 of the FCE (2018 edition) and Article 57.1 of the FIFA Statutes in force.

84. Article R47 of the Code states that:

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

85. Article 82.1 of the FCE (2018 edition) provides that:

"[…] *decisions taken by the adjudicatory chamber are final, subject to appeals lodged with the Court of Arbitration for Sport (CAS) in accordance with the relevant provisions of the FIFA Statutes.*"

86. Article 57 of the FIFA Statutes currently in force so provides:

"*FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, intermediaries and licensed match agents.*"

87. None of the Parties have objected to CAS' jurisdiction. The jurisdiction of CAS is further confirmed by the Order of Procedure, duly signed by the Parties.

88. It follows that CAS has jurisdiction to decide on the present dispute.

VII. ADMISSIBILITY

89. Article 58.1 of the FIFA Statutes provides that:

"*Appeals against final decisions passed by FIFA's legal bodies* […] *shall be lodged with CAS within 21 days of notification of the decision in question*."

90. The Appealed Decision was issued on 24 January 2019 and was notified to the Appellant by email on 28 February 2019. On 21 March 2019, the Appellant filed his complete

Statement of Appeal, *i.e.* within 21 days of receipt of the Appealed Decision. Accordingly, the appeal was filed in due time and is admissible.

VIII. APPLICABLE LAW

91. Pursuant to Article R58 of the Code:

"*The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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.*"

92. Article 57 of the FIFA Statutes currently in force so provides:

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

93. The Parties agree that the applicable regulations are those set by FIFA and that Swiss law applies subsidiarily.

94. With respect to the specific FIFA regulations applicable to this case, the Panel notes that the Parties agree that the substantive provisions relevant to this arbitration are those contained in the FCE 2009. Such agreement corresponds to the findings in the Appealed Decision (para 35(ii) above). As a result, the Panel concludes that the commission of a violation by the Appellant must be established on the basis of the provisions of the FCE 2009.

95. The Panel, in fact, bound to follow the Parties' agreement, sees no reason to apply a different edition of the FCE. The Panel notes that the FCE 2009 came into force on 1 September 2009 (Article 21), *i.e*. after all the actions considered to amount to disciplinary violations had already occurred (see paras 5-23 above). At the same time, however, the Panel also notes that, according to its Article 2, the FCE 2009 also applies to facts committed before its entry into force, if it is equally or more favourable for the "*perpetrator*", and that, with respect to the infringement for which the Appellant was found responsible, the edition of the FCE preceding the FCE 2009, *i.e*. the 2006 edition, contained equivalent rules.

96. The rules of the FCE 2009 relevant to this case read as follows:

Article 11 "*Bribery*"

"*1. Officials may not accept bribes: in other words, any gifts or other advantages that are offered, promised or sent to them to incite a breach of duty or dishonest conduct for the benefit of a third party shall be refused.*
2. Officials are forbidden from bribing third parties or from urging or inciting others to do so in order to gain an advantage for themselves or third parties."

Article 17 "*Application of the FIFA Disciplinary Code*"

"*1. The Ethics Committee may pronounce any of the disciplinary measures defined in the FIFA Statutes and the FIFA Disciplinary Code.*

2. All organisational and procedural rules of the FIFA Disciplinary Code apply directly in the context of all proceedings conducted by the Ethics Committee, unless this Code of Ethics contains diverging rules or if the provisions of the FIFA Disciplinary Code manifestly cannot apply in respect of the objectives and content of this Code."

97. In addition to the FCE 2009, and as a result of its Article 17.1, also the following provisions of the FIFA Disciplinary Code ("FDC") appear to be relevant in this case:

i. in the FDC edition 2009 (corresponding to the edition of 2002, previously in force):

Article 10 "*Sanctions common to natural and legal persons*"

"*Both natural and legal persons are punishable by the following sanctions:*
a) warning;
b) reprimand;
c) fine;
d) return of awards."

Article 11 "*Sanctions applicable to natural persons*"

"*The following sanctions are applicable only to natural persons:*
a) caution;
b) expulsion;
c) match suspension;
d) ban from dressing rooms and/or substitutes' bench;
e) ban from entering a stadium;
f) ban on taking part in any football-related activity."

Article 15 "*Fine*" […]

"*2. The fine shall not be less than CHF 300, or in the case of a competition subject to an age limit not less than CHF 200, and not more than CHF 1,000,000.*"

ii. in the FDC edition 2019 currently in force (corresponding in this respect and in all material aspects relevant in this arbitration to all preceding versions of the FDC):

Article 35 "*Evidence, evaluation of evidence and standard of proof*"

"*1. Any type of proof may be produced.*
2. The competent judicial body has absolute discretion regarding the evaluation of evidence.
3. The standard of proof to be applied in FIFA disciplinary proceedings is the comfortable satisfaction of the competent judicial body."

Article 36 "*Burden of proof*"

"*1. The burden of proof regarding disciplinary infringements rests on the FIFA judicial bodies.*
2. Any party claiming a right on the basis of an alleged fact shall carry the burden of proof of this fact. During the proceedings, the party shall submit all relevant facts and evidence of which the party is aware at that time, or of which the party should have been aware by exercising due care."

98. The Panel notes that those rules, as set in the FDC, correspond to a large extent, and are identical in relation to the aspects relevant in this case, to those set in the recent versions of the FCE, and specifically of the 2018 edition, as also mentioned by the operative part of the Appealed Decision. In light of such coincidence, the Panel finds it unnecessary to formally identify the exact edition of the set of rules applicable in this case, as they all contain provisions corresponding to those mentioned above.

99. Thus, the Panel is satisfied to primarily apply the various regulations of FIFA and, subsidiarily, Swiss law.

IX. SCOPE OF THE PANEL'S REVIEW

100. According to Article R57 of the Code:

> "*the Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. […].*"

101. As a result, the Panel notes that, according to Article R57 of the Code, the Panel hears the case *de novo* and is not limited to considerations of the evidence that was adduced before the FIFA Adjudicatory Chamber: the Panel can consider all new evidence produced before it.

X. MERITS

102. The subject of the present dispute is the Appealed Decision, which found the Appellant responsible for a violation of Article 11 of the FCE 2009 and, as a result, imposed on him a ban for 15 years from taking part in any football-related activity and a fine of CHF 3,000. The Appellant challenges the Appealed Decision and submits that he did not breach the provisions of Article 11 of the FCE 2009, and, in any case, that the sanction imposed by the Appealed Decision is disproportionate and unreasonable. On the other hand, the Respondent seeks the confirmation of the Appealed Decision, because in its opinion the FIFA Adjudicatory Chamber correctly applied the relevant provisions of the FCE, and the sanction imposed on the Appellant was proportionate to the infringement committed.

103. As a result of the Parties' requests and submissions, there are two main issues that need to be addressed by this Panel:

    i. is the Appellant responsible for the violation contemplated by Article 11 of the FCE 2009?

    ii. if so, what are the consequences to be drawn from such finding?

104. The Panel will consider each of those issues separately and in sequence

i. Is the Appellant responsible for the violation contemplated by Article 11 of the FCE 2009?

105. The Appealed Decision found the Appellant responsible for the violation ("*Bribery*") contemplated by Article 11 of the FCE 2009, in essence, because he conspired (or at least attempted to conspire) with Mr Perumal, a convicted match-fixer, to approach and recruit team officials and players for them to play as per Mr Perumal's instructions to manipulate the results of international matches and tournaments (the Merdeka Cup 2008 and the Manama Cup 2009). Such conclusion was reached by the FIFA Adjudicatory Chamber on the basis of the emails exchanged between the Appellant and Mr Perumal, as well as of the admissions contained in the letter of the Appellant to FIFA of 22 August 2018.

106. The Appellant disputes the evidence on which the Appealed Decision was based and submits that the conditions set by Article 11 of the FCE 2009 for the finding of "*Bribery*" are not met.

107. The Panel does not agree with the Appellant's contentions and finds that the FIFA Adjudicatory Chamber correctly found the Appellant responsible for a violation under Article 11 of the FCE 2009.

108. In such respect, the Panel preliminarily notes that the evidence on which the Appealed Decision is based is convincing and that there are no reasons not to take it into account. In fact, the Panel remarks that:

    i. the email correspondence between the Appellant and Mr Perumal concerning the Merdeka Cup and the Manama Cup has not been disputed; and

    ii. the admissions contained in the declaration of 22 August 2018 are so clear and detailed that they cannot be the result of a misunderstanding or, as the Appellant contended before CAS, of his inappropriate use of legal terminology of which he could not appreciate the meaning because of a linguistic issue. Indeed, the Panel had the opportunity at the hearing to verify the perfect command of English by the Appellant, corresponding to the good level of the language evidenced by the text of such declaration. Although the Appellant stated in the hearing that his English had significantly improved in the intervening years since the events in question and the appeal, he still conceded that he spoke English at that time and furthermore never claimed that the confession was written or dictated by anyone other than himself. In addition, the Appellant, having received the letters of FIFA of 11 July 2018 and of 20 August 2018, was aware of the legal relevance of the correspondence and of the possibility to be assisted by an attorney, as he specifically confirmed, by giving reasons, that he did not need legal assistance. Finally, those declarations were confirmed nine months thereafter, in a letter to the chairman of the FIFA Adjudicatory Chamber, when the Appellant was confronted with their consequences and given, but declined, the opportunity to request a hearing in his case, and confirmed that the findings contained in the Final Report of the FIFA Investigatory Chamber were based on his "*confession*", without disputing it.

109. Such evidence makes it clear that the Appellant conspired with Mr Perumal to manipulate (or to attempt to manipulate) the results of the matches of the Merdeka Cup 2008 and of the Manama Cup 2009.

110. Such conspiracy was admitted by the Appellant in the letter sent on 22 August 2018 to the FIFA Investigatory Chamber, in which he plainly regretted his "*past unethical conduct*" and "*having been part and having attempted to corrupt the system*". In the declaration attached to that letter, then, the Appellant gave details (and whereabouts) of the payment of USD 1,500 he received from Mr Perumal, and indicated that "*after the failed manipulation of results in the Merdeka Cup 2008, Mr. Perumal informed me on how match fixing works and he made me aware of how all was done* […] *. I was fully aware that Manama Cup Edition 2009 competition would involve manipulating results. I was also willing to facilitate fixing the results in exchange of cash. My intention in the Manama Cup 2009 Edition was to manipulate matches played by the Mozambique Under 20 national team*", and confirmed that he was "*at some point during [his] career involved in misconduct*".

111. The conspiracy is (irrespective of the admissions of 22 August 2018) then evidenced by the emails sent to, and received from, Mr Perumal, which leave no room for doubt. For instance, the following messages can be highlighted, among the others:

    i. on 2 October 2008, Mr Perumal requested the Appellant, with respect to the Merdeka Cup, to "*ensure the selected team will co-operate and work closely with the promoters and sponsors during the tournament*";

    ii. after the Merdeka Cup, on 28 October 2008, Mr Perumal sent an email to the Appellant complaining that he "*trusted [the Appellant] so much on this project and you fucked me up really bad sidio. […] Why did you cheat me on the last game. If the coach was not going to allow you to answer the phone why didnt you tell me earlier. I didnt bring you guys here to fucking win the tournament. […] Dont be surprise if i come to mozambique to look for that bastard coach. Tell him i am going to write Moyampique FA that he took money for replacing the goalkeeper in the match against vietnam. I will do my very best to put him in trouble*";

    iii. on 2 November 2008, Mr Perumal insisted that "*the manner i was taken for a ride has made me very very mad. U should be on my side and not the coaches. You should have told me he is not going to let you use the phone. Then we could have conspired with the players. How am i to trust you guys and my bosses will never agree to pay for mozambique anymore*";

    iv. on 21 February 2009, the Appellant was informed by Mr Perumal about the Manama Cup 2009, and was requested to "*convince your FA to send team with the same set of players who played in Malasia. This time we dont tell anyone anything. Just deal with me you and players. […] You can make good money for yourself. WE do it nicely this time. You dont fuck me up. What do you say. […]. Dont tell your FA it is the same company that brought you to Malaysia […]*";

    v. on 23 February 2009, the Appellant responded by using the subject "*Good Idea*" to plan the participation at the Manama Cup 2009, in a message indicating "*let me convince these guys and see if I can bring people who will listen to my voice*". In another email of the same day, the Appellant, then, indicated that "*I will not bring any of those two coaches who claimed to be professional. […] Lastly, for me to be very authorative on the whole trip, I will need you to put aside 10,000 USD for the Football Federation, just as participation fee, then we can do our game the way we want. Confirm with me and I will convince the board members. I need a break through and will not fuck you up*";

vi. on 23 February 2009, Mr Perumal wrote the following: "*the boys trust me and i trust them. Just dont bother about the coaches. Just make it look like a normal invitation and bring the team. You have to be honest with me not like the last time*";

vii. on 24 February 2009, several emails were exchanged between the Appellant and Mr Perumal. The Appellant in such correspondence:

a. stated that:

"*We are now aware of the game, its play to instructions and if you cannot score, you have to concive*";

"*The boys will be more than willing to be your stewards.* [...] *We will not fuck with anymore*";

"*Please make sure that you don't mention your previous company name nor your name. I am only the one aware of that at the moment*";

"*I will bring you almost all the boys who where in Malaysia. The boys already know their master*";

"*To night I am going to speak to the Vice President* [...] *He will not know the deal behind*";

b. and received the following answer:

"*Alright Sidio, there wont be any mention of my previous company or any match fees.* [...] *On the other hand you speak to the boys who came to malaysia that they are to work with me quietly and not to discuss this with anyone. You try and bring as many boys as possible from the Malaysia group*";

viii. on 26 February 2009, the Appellant sent an email to Mr Perumal, informing him about the selection of the players: "*my coach has started the selection of the squad, but we are just using the same players who participated in Malaysia so that we will be speaking the same language. The players were so desciplined that they did not spill the secrets of Kuala Lumpur. Do not be afraid, the players already know you and they will not listen to anyone else*".

112. Those messages show, to the comfortable satisfaction of the Panel, that the Appellant was aware that the matches played at the Merdeka Cup 2008 or to be played at the Manama Cup 2009 were (to be) manipulated, and conspired for such purpose.

113. On the basis of such evidence, the Panel holds that the elements for a finding of a violation of Article 11 of the FCE 2009 are met. In fact, they show that:

i. a gift or an advantage was offered, promised or sent to the Appellant. In that regard, the Panel notes that in order for this condition to be satisfied it is not necessary that the "bribe" consists in the payment of a sum of money or that a monetary payment is concretely made or the other advantage actually given: it is sufficient that such "*gift*" or "*advantage*" is promised. In the case of the Appellant, a monetary compensation of USD 1,500 was paid to him in respect of his participation in the Manama Cup 2008, and a payment was promised also with respect to the Merdeka Cup 2009: the USD 10,000 mentioned in the correspondence "*to be put aside*" for the FMF, was indeed to be mentioned in the official correspondence, unless

problems arose, and, as Mr Perumal wrote in a message of 21 February 2009, the Appellant could "*make good money*" for himself;

ii. the gift or advantage was offered, promised or sent to the Appellant to incite a breach of duty or a dishonest conduct for the benefit of the third party. Indeed, the Appellant received or was promised payments for his participation in the conspiracy to manipulate the matches of the Merdeka Cup and of the Manama Cup: he knew (or got to know) of the "*special rules*" ("*if you cannot score, you have to concede*") applicable to those matches, played to "*please*" the promoters; he knew (or got to know) that Mr Perumal and his associates had lost money for the failure to comply with those rules at the Merdeka Cup, notwithstanding Mr Perumal's expectations ("*I trusted you so much on this project and you fucked me up really bad sidio. […] Why did you cheat me on the last game*") and "*was willing to fix matches in exchange of cash*"; he was requested, and agreed, to send to the Manama Cup the same players who took part in the Merdeka Cup, boys "*who would listen to his voice*", knowing "*their master*" and willing to be Mr Perumal's "*stewards*", and would not "*spill the secrets of Kuala Lumpur*", where the Merdeka Cup 2008 was played;

iii. the Appellant failed to refuse such gift or advantage, but indeed accepted it or its promise.

114. Nor can the Appellant invoke, as he did at the hearing, the existence of "Exhibition Matches", played by teams according to the arrangements of the organizers, including the prior definition of the results – a category to which the Merdeka Cup 2008 and the Manama Cup 2009 would belong. Indeed, no such category exists, and the FCE as well as the FDC apply (with the prohibition of bribery and manipulation) to all matches played under the FIFA rules.

115. In light of the foregoing, the Panel confirms that the Appellant is responsible for the violation contemplated by Article 11 of the FCE 2009.

ii. What are the consequences to be drawn from such finding?

116. Articles 10 and 11 of the FDC (2009 edition), applicable in the context of the FCE 2009, as a result of the reference contained in its Article 17.1, provide for different kinds of sanctions, ranging from a reprimand to the ban on taking part in any football related activity. Such sanctions, and chiefly the sanctions of the fine (of CHF 3,000) and of the ban (for 15 years) imposed by the Appealed Decision, are contemplated by the subsequent editions of the FDC and are now provided for also by the edition of the FCE currently in force.

117. The applicable regulations give the hearing body a wide discretion in deciding the kind and measure of the sanction. The Panel finds, however, that some criteria must be adopted to guide the exercise of such discretion. In the Panel's opinion, therefore, when imposing a sanction, account has to be taken (in general terms or with respect to the violation of "*Bribery*") of the following relevant factors:

- the nature of the violation;
- the impact of the violation on the public opinion;

- the importance of the competition affected by the violation;
- the damage caused to the image of FIFA and/or other football organizations;
- the substantial interest of FIFA, or of the sporting system in general, in deterring similar misconduct;
- the offender's assistance to and cooperation with the investigation;
- the circumstances of the violation;
- whether the violation consisted in an isolated or in repeated action(s);
- the existence of any precedents;
- the value of the gift or other advantage received as a part of the offence;
- whether the person mitigated his guilt by returning the advantage received, where applicable;
- whether the offender acted alone or involved other individuals in, or for the purposes of, his misconduct;
- the position of the offender within the sports organization;
- the motives of the violation;
- the degree of the offender's guilt;
- the education of the offender;
- the personality of the offender and its evolution since the violation;
- the extent to which the offender accepts responsibility and/or expresses regret.

118. The Panel underlines that precedents might provide helpful guidance for the exercise of such discretion. However, each case must be decided on its own facts and, "*although consistency of sanctions is a virtue, correctness remains a higher one: otherwise unduly lenient (or, indeed, unduly severe) sanctions may set a wrong benchmark inimical to the interests of sport*" (*CAS 2011/A/2518*, para 10.23). In the case of the Appellant, then, the Panel notes that most of the precedents invoked by the Parties referred to non-comparable situations, where no "Bribery" was involved or when the infringement was committed by a referee.

119. Overall, and in any case, the principle of proportionality must be respected. In that regard, the Panel notes that, as recognized by CAS in several compelling precedents (*ex multis CAS 2005/C/976&986*, paras 139-140), the principle of proportionality under Swiss law (which applies subsidiarily in this arbitration) implies that there must be a reasonable balance between the kind of the misconduct and the sanction. More specifically, to be observed, the principle of proportionality requires that: (i) the measure taken by the disciplinary body is capable of achieving the envisaged goal; (ii) the measure is necessary to reach the envisaged goal; and (iii) the constraints which the affected person will suffer as a consequence of the measure are justified by the overall interest to achieve the envisaged goal. In other words, to be proportionate a measure must not exceed what is reasonably required in the search of a justifiable aim.

120. On the basis of an overall examination of all relevant factors, the Panel comes to the conclusion that, in the Appellant's case, a ban on taking part in any football-related

activity and a fine are sanctions appropriate to the kind of infringement, but that the length of the ban in the Appealed Decision is excessive.

121. In the Panel's opinion, in fact, when bribery (and chiefly so if connected to a conspiracy for match-fixing) has been found, as in the case of the Appellant, the most proper measure, in terms of deterrence and retribution, appears to be the exclusion from the sporting system that the offender corrupted (by accepting a bribe) or which gave the occasion for the bribe to be offered and accepted. In addition, a pecuniary sanction, such as the fine, appears appropriate with respect to infringements which (such as bribery) involve the promise or payment of a benefit of (some) value.

122. However, the Panel notes that the relevant elements, guiding the exercise of the discretion in setting the quantity of the sanction, lead to the determination of the ban on taking part in any football-related activity for a shorter period than the period set by the Appealed Decision. More specifically, the Panel finds that a ban on taking part in any football related activity for 7 years appears to be more appropriate to the Appellant's case. Therefore, the appeal should be allowed in that respect and the duration of the ban re-determined in 7 years. The Panel underlines that such reduction does not amount to a "discount" granted by CAS only because an appeal was filed. It is the result of a careful evaluation of all the relevant factors and consists in the measure that the Panel, in the exercise of its *de novo* review of the dispute, deems proper to the Appellant's case.

123. In the case at stake, in fact, the Panel notes that the violation, for which the Appellant is found responsible, did not impact on the image of FIFA and affected competitions of minor resonance in international football. In addition, the Appellant had no precedents, had a junior position within the FMF at the time of events in question, had received little (if any) education regarding ethics in football, the "gift or other advantage" he received as a bribe was of trivial value (USD 1,500), and the finding of a violation were based (also) on the admissions made in the correspondence of 22 August 2018. Finally, the Panel takes particular account both of the Appellant's age at the time of the events, of the fact that he did not take the initiative to be given a "gift or other advantage" and, above all, of the fact that there has been no recurrence of the offence since the events in question, and further notes the significant period of time (10 years) that has passed since the infringement was committed, which allowed the Appellant to recognise his mistake and acknowledge his obligation as a football officer.

124. Those elements, in favour of the Appellant, cannot however lead to a minimal sanction. In fact, the Panel remarks that the action was not isolated, but protracted over some time (when after the Merdeka Cup 2008 the Appellant got again in touch with Mr Perumal with regard to the Manama Cup 2009), and involved other individuals, and chiefly the young players of the FMF U20 Team.

125. A ban on taking part in any football-related activity for 7 years: appears capable of achieving the envisaged goal of punishing the severe infringement for which the Appellant is responsible; is necessary to reach the envisaged goal; and the constraints which the Appellant will suffer as a consequence of the sanction are justified by the overall interest to eradicate match-fixing as such. In other words, in the Panel's opinion, this sanction is proportionate to the infringement, since it does not exceed what is reasonably required in the search of a justifiable aim.

126. On the other hand, the Panel finds the measure of the fine to be appropriate and proportional to the infringement: in fact, it roughly corresponds to the double of the financial advantage actually received by the Appellant with respect to the Merdeka Cup 2008, or, if put in another way, to the restitution of such financial advantage and the payment of a sanction of equal amount.

127. In light of the foregoing, the Panel concludes that the Appellant, for the violation contemplated by Article 11 of the FCE 2009, of which he is found responsible, should be imposed a ban on taking part in any football-related activity for 7 years. The Appealed Decision should be modified accordingly. On the other hand, the fine of CHF 3,000 already imposed by the Appealed Decision should be confirmed.

XI. COSTS

128. The Panel observes that Article R65 of the Code, which is applicable to this proceeding, provides the following:

> *"R65.1 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.* […]
>
> *R65.2 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 the 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.* […]
>
> *R65.3 Each party shall pay for the costs of its own witnesses, experts and interpreters. In the arbitral award, 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.*
>
> *R65.4 If the circumstances so warrant, including the predominant economic nature of a disciplinary case or whether the federation which has rendered the challenged decision is not a signatory to the Agreement constituting ICAS, the President of the Appeals Arbitration Division may apply Article R64 to an appeals arbitration, either ex officio or upon request of the President of the Panel."*

129. Since the present appeal is lodged against a decision of an exclusively disciplinary nature rendered by an international federation, no costs are payable to CAS by the Parties beyond the Court Office fee of CHF 1,000 paid by the Appellant with the filing of his Statement of Appeal, which is in any event retained by CAS.

130. Furthermore, pursuant to Article R65.3 of the Code, and in consideration of the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the Parties, in particular that the Appellant's appeal was partially upheld and that FIFA was not represented by outside counsel, the Panel rules that each Party shall bear the legal fees and other expenses incurred in connection with the present arbitration procedure.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 21 March 2019 by Sidio José Mugadza against the decision rendered by the Adjudicatory Chamber of the FIFA Ethics Committee on 24 January 2019 is partially upheld.

2. Point 2 of the decision rendered by the Adjudicatory Chamber of the FIFA Ethics Committee on 24 January 2019 is modified as follows:

   Mr Mugadza is banned for 7 (seven) years from taking part in any kind of football-related activity at national and international level (administrative, sports or any other) as of 28 February 2019.

3. The decision rendered by the Adjudicatory Chamber of the FIFA Ethics Committee on 24 January 2019 is confirmed for the remaining point.

4. The present arbitration procedure shall be free, except for the CAS Court Office fee of CHF 1,000 (one thousand Swiss francs), which has already been paid by Sidio José Mugadza and is retained by the CAS.

5. The Parties shall bear their own expenses sustained in connection with these arbitration proceedings.

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

Seat of arbitration: Lausanne, Switzerland

Date: 27 March 2020

THE COURT OF ARBITRATION FOR SPORT

President of the Panel

Anna Bordiugova
Arbitrator

Thomas Clay
Arbitrator