CAS 2019/A/6409 Musa Hassan Bility v. Fédération Internationale de Football Association

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President:	Prof. Dr. Martin Schimke, Attorney-at-Law in Dusseldorf, Germany
Arbitrators:	Mr. João Nogueira Da Rocha, Attorney-at-Law in Lisbon, Portugal
	Mr. Rui Botica Santos, Attorney-at-Law, Lisbon, Portugal
Ad hoc Clerk:	Me Marianne Saroli, Attorney-at-Law in Montreal, Canada

in the arbitration between

Musa Hassan Bility, Republic of Liberia

Represented by Mr. Paolo Torchetti, Attorney-at-Law with Ruiz-Huerta & Crespo Sports Lawyers, Valencia, Spain

Appellant

and

Fédération Internationale de Football Association (FIFA), Switzerland

Represented by Mr. Miguel Liétard Fernández-Palacios, Director of Litigation and Mr. Alexander Jacobs, Senior Legal Counsel, Zurich, Switzerland

Respondent

I. PARTIES

1. Musa Hassan Bility ("Mr. Bility" or the "Appellant") is a football administrator who was formerly the President of the Liberian Football Association ("LFA") between 2010 and 2018 except for the period of May to September 2013 when he was suspended by the Confédération Africaine de Football ("CAF"). Between 2012 and 2013, he was also a member of the FIFA Marketing and TV Committee, and, has since March 2017 served on the Executive Committee of CAF.

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

II. INTRODUCTION

3. This appeal concerns the decision of the Adjudicatory Chamber of the FIFA Ethics Committee (the "Adjudicatory Chamber") on 12 February 2019 whereby the Appellant was found to have offered on different occasions substantial benefits in breach of Article 19 (conflict of interest), Article 20 (offering and accepting gifts or other benefits) and Article 28 (Misappropriation of funds) of the 2018 edition - FIFA Code of Ethics (the "2018 FCE"). As a result, the Appellant was banned for 10 years from taking part in any kind of football-related activity at national and international levels (administrative, sports or otherwise) and was fined CHF 500,000.

III. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations found in the parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While 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 ("Award") only to the submissions and evidence it considers necessary to explain its reasoning.

A. The Proceedings before FIFA

a) Allegations against the Appellant

5. In 2017, the Investigatory Chamber of the FIFA Ethics Committee (the "Investigatory Chamber") received allegations of financial mismanagement as well as improper use within the LFA of the FIFA and CAF fundings by the LFA and the Appellant. These allegations included a letter from Ms. Rochell Woodson, a former member of the LFA

Executive Committee, and related to events that took place between 2012 and 2017, a period during which the Appellant served as President of LFA. Moreover, similar allegations had been made by journalists in various media articles. The allegations related to the following facts:

i. The 2015 FIFA Ebola Grant

6. First, there were allegations of misappropriating a USD 50,000 grant given by FIFA to the LFA in 2015 for a contracted partnership with the Liberian National Red Cross Society ("LNRCS") as part of the "Fight against Ebola" project (the "Ebola Grant").

7. In February 2015, FIFA offered financial assistance to fight the outbreak of Ebola in Sierra Leone, Liberia and Guinea in the amount of USD 50,000 for each of the respective member associations. It appears that the FIFA Finance Committee approved the financial support which in turn had to be used in partnership with a reputed organization at local level, notably UNICEF.

8. As such, it appears that the LFA proposed to work in collaboration with the LNRCS to provide Ebola relief to communities across Liberia and that the Appellant told the Late Secretary General of the LFA, Mr. Alphonso Armah, that a Partnership Memorandum of Understanding ("MOU") needed to be signed with the LNRCS.

9. It is further alleged that Mr. Armah and the General Secretary of the LNRCS concluded on 10 February 2015 a MoU between the LFA and LNRCS, to which was attached a schedule detailing how the funds were set to be spent and disbursed.

10. In this respect, an amount of USD 50,000 was received by the LFA on 20 February 2015 and paid in its FIFA Financial Assistance Programme ("FAP") account while a withdrawal of USD 44,500 was made on 28 February 2015.

11. Notwithstanding, these funds were allegedly misused by the Appellant and never provided to the LNRCS. In her letter dated 24 February 2017, Ms. Woodson contended that *"Few days after the MOU was prepared and series of meetings had at the Red Cross offices, the whole issue was downplayed and abandoned as Mr Bility and his cronies shared the USD 50,000 amongst themselves and the FIFA assistance to the Ebola epidemic fight was never implemented".*

ii. Renovations of Antoinette Tubman Stadium

12. Second, there were allegations in relation to the renovations of the Antoinette Tubman Stadium ("ATS"). In that respect, the LFA operated from offices at the ATS, which were allegedly provided free of charge as part of the agreement relating to the LFA's operation of that stadium on behalf of the Government of Liberia. It seems that under an agreement with the Government of Liberia, the LFA was responsible for the maintenance of the ATS in exchange for its continued use as the national football stadium and a venue in which most Liberian Premier League matches are played.

13. In her letter dated 24 February 2017, Ms. Woodson alleged the use of grant funds provided by CAF for renovation of the ATS as follows:

"Between 2014 and 2015, CAF, upon the request of Mr Bility, sent…the full sum of USD 125,000 as its contribution to the renovation and lightening [sic] of the Antoinette Tubman Stadium (ATS), to date the lights are not fixed neither was the ATS renovated. Now due to poor management and filthiness of the ATS and due to integrity issued [sic] and breached in the implementation of the 2010 agreement with the government, the government has retaken over the ATS".

iii. Loans made to the LFA

14. Third, FIFA identified, as part of a "Mission Visit" undertaken to Liberia in September 2017, a potential conflict of interest relating to transactions between the LFA and Srimex, an oil and gas import company based in Monrovia, owned by the Appellant who was also acting as its CEO up until 30 November 2017.

15. Srimex appears to have loaned money to the LFA between 2012 to 2017 and is consistently the largest individual creditor of the LFA listed in its annual Financial Statements.

16. The allegations here pertain to the loans made by Srimex to the LFA, and related repayments made by the LFA to Srimex, the Appellant's company.

iv. Accommodations provided by the Stone Haven Guest House for the Liberian National Football team

17. Fourth, an allegation was made to FIFA that the LFA had funded stays by the Liberian National Football team at the Stone Haven Guest House ("Stone Haven") which was owned by the Appellant or his family. In that respect, FIFA was provided with a scanned copy of a MoU dated 26 January 2012 between the LFA and Stone Haven which suggested that the Liberian National Football team was staying at the Stone Haven for a period of 180 days and a payment of "315,000" was due on signing the agreement, constituting 50% of the overall amount due.

b) Proceedings before the Investigatory Chamber

i. Preliminary investigation

18. Further to those allegations, the Investigatory Chamber initiated a preliminary investigation and on 24 November 2017 engaged the company Control Risks to *"perform forensic accounting review services necessary to identify, quantify and analyse any potential or actual abnormal or adverse issues in relation to financial and administrative transactions, statements and procedures at the LFA."*

19. On 10 April 2018, following a forensic accounting review into the LFA, Control Risks produced a report (the "Control Risks Report").

20. According to the Control Risks Report, many of the aforesaid allegations appeared to have merit, which seems to be supported by interviews with senior members of the LFA's management team, members of the LFA's Executive Committee and the Chair of the LFA's Finance Committee. The Control Risks Report found that the Appellant:

> *"• Exerted a significant level of control over the day to day operations of the LFA and often made decisions on major issues without consulting the Executive Committee*
>
> • *Directed how FIFA funds were used, including restricting funding intended for development of Youth and Women's football in Liberia*
>
> • *Presided over an organisation which has financial records that are not fit for purpose in that they routinely*
>
> • *Fail to provide appropriate evidence in relation to transactions, including the recipient of funds and on numerous occasions appear to have been falsified or backdated*
>
> • *Was responsible for signing cheques for significant expenditure and appears to have directed the LFA's Finance Department to make payments without adequate or contemporaneous documentary support.*
>
> • *Failed to act when deficiencies in supporting documentation in relation to payments made by the LFA were notified to him by the LFA's auditors, PKF.*
>
> • *Did not share financial information with the Executive Committee and Finance Committee, limiting their understanding of the operations of the LFA and how funds received by the Association were disbursed.*
>
> • *Was aware that certain transactions with the LFA could be deemed to be conflicts of interest and agreed to a mechanism whereby these would not be immediately apparent when the records of the LFA were examined by third parties.*
>
> • *Made unilateral decisions regarding issues that fell under the remit of senior individuals within the LFA or the Executive Committee or other Standing Committees."*

21. In addition to the foregoing findings, the Control Risks Report identified another issue in relation to the ATS: an amount of USD 354,000 was reported by the LFA to FIFA in the PKF's Agreed-Upon Procedures ("AUP") report relating to the year 2015 as being spent on stadium renovations in 2015 and originating from FIFA funds. From this amount, it seems that payments of USD 164,000 cannot be accounted for. According to the Control Risks Report, entries in the LFA's QuickBooks accounting system and supporting documentation in relation to these payments shows that they were paid to the construction company, Musons Group Inc ("Musons"). Yet, Jallah Corvah, the LFA Treasurer explained that this documentation was falsified. In addition, Control Risks found, among the documents provided by the LFA, a letter from Musons, which states

that Musons was only paid USD 190,000 for the renovations undertaken. The Control Risks Report also noted that no tender process appeared to have been undertaken for the stadium renovation.

22. The Investigatory Chamber analysed the Control Risks Report and related documentation on the basis that these allegations could constitute potential violations of the FIFA Code of Ethics ("FCE").

23. From the documents and information collected during the preliminary investigation, Ms. María Claudia Rojas, the Chairperson of the Investigatory Chamber, determined that there was a *prima facie* case against the Appellant for potential violations of the FCE and that the Investigatory Chamber should open investigation proceedings accordingly.

ii. Formal investigation

24. On 18 May 2018, the Appellant was notified that formal investigation proceedings were opened against him for possible violations of Articles 13, 15, 17, 19, 20 and 21 of the 2012 edition of the FCE ("2012 FCE") which would be led by Mr. José Ernesto Mejia as chief of investigation.

25. On 5 July 2018, the Appellant was invited for an interview on 22 August 2018 at the FIFA headquarters in Switzerland.

26. On 10 July 2018, the Appellant requested to postpone the interview to 19 September 2018 as he was attending the Holy Pilgrimage in Saudi Arabia on that date. He also informed that he would attend such interview with his legal representative.

27. On 17 July 2018, the Appellant's request was granted, and an interview was set to take place at FIFA's headquarters on 19 September 2018.

28. On 27 August 2018, the Appellant provided a power of attorney appointing the Swiss law firm White & Case SA to represent him.

29. On 11 September 2018, White & Case SA requested to postpone the interview by 10 to 14 days to assist and prepare the Appellant.

30. On 12 September 2018, the Appellant's request to postpone was granted with the condition that he bears any related costs. As such, the interview was rescheduled to 26 September 2018. Later that same day, the Appellant confirmed his and his legal representative's presence for the interview on 26 September 2018.

31. On 13 September 2018, White & Case SA requested to be provided, prior to the interview, the questions that Mr. Mejia anticipated asking the Appellant.

32. On 17 September 2018, the Appellant was referred to previous correspondence from Mr. Mejia, namely, one dated 5 July 2018 which listed and describes some of the alleged violations of the FCE.

33. On 21 September 2018, the Ethics Committee, after being informed that the visa application was still pending, warned the Appellant that should he not be able to travel to Switzerland, the interview would be cancelled, and the related costs would be at his expense. Further, on that same day, White & Case SA withdrew from its representation of the Appellant due to a potential conflict of interest.

34. On 24 September 2018, the law firm Schellenberg Wittmer Ltd. notified that they were now representing the Appellant and requested to postpone the interview, expressing their client's willingness to attend by telephone conference or in an alternative location given the status of his visa application.

35. Later that day and by reference to the letter of 21 September 2018, the Appellant was reminded that no further postponements would be granted given that the interview had already been rescheduled twice upon his request. As such, the interview was confirmed for 26 September 2018 at FIFA's headquarters, and he was invited to inform whether he would attend in person.

36. In response, Schellenberg Wittmer Ltd. requested the Ethics Committee to reconsider its position, arguing that the refusal to postpone the interview breached the Appellant's right to be heard who was unable to travel due to his pending visa request.

37. On 25 September 2018, an overview of the procedural steps undertaken during the investigation proceedings was sent to the Appellant who was asked to confirm whether he would attend the interview in person. On the same day, Schellenberg Wittmer Ltd. confirmed their attendance by telephone conference.

38. On 26 September 2018, an interview by telephone conference, with the Appellant, accompanied by Schellenberg Wittmer Ltd., was held.

39. On 4 October 2018, the Appellant requested to have full access to the file in possession of the Investigatory Chamber and to be provided with a copy of his interview transcript.

40. On 8 October 2018, the Investigatory Chamber informed him that documents and information pertaining to any investigation are only shared upon determination of the chief of investigation.

iii. The conclusion of the Investigatory Chamber

41. On 17 December 2018, the Investigatory Chamber informed the Appellant that it had concluded its investigation proceedings and that a final report (the "Final Report") would be submitted to the attention of the Chairperson of the Adjudicatory Chamber in accordance with Article 65 of the 2018 FCE.

42. The Investigatory Chamber concluded that the Appellant managed FIFA funds in a fraudulent manner for his own personal benefit, contrary to the FCE and that he breached his obligations as the person responsible for Association funds and exploited his position to enrich himself and/or to favour the enrichment of his associates.

43. In turn, the Investigatory Chamber found that the conduct of the Appellant, as a FIFA official, could constitute violations of Article 13 (General rules of conduct), Article 15 (Loyalty), as well as their corresponding articles in the 2012 FCE, namely Articles 13, 15, respectively in addition to the following violations:

- **Misappropriation of funds in accordance with Article 21 par. 2 of the FCE**

44. The Investigatory Chamber found that the Appellant misappropriated FIFA funds allocated to the LFA in 2015 and therefore breached article 21 par. 2 of the 2012 FCE, as well as its corresponding provision in the 2018 FCE, i.e., Article 28 - which also specifically forbids the misappropriation of FIFA funds in conjunction with third parties. In that respect, the Investigatory Chamber made the following findings:

"The charge of misappropriation is to be analysed in the context (…) of misappropriation of the 2015 FIFA Ebola Grant and of the 2015 FIFA FAP funds for the renovation of the ATS.

(…) In the present case, it has been established that Mr Bility has mismanaged both the FIFA Ebola Grant and FIFA FAP funds allocated to the LFA in 2015. (…)

In addition to the above, it has been established that Mr Bility had a central/main role, in his position as President of the LFA, in the financial decision-making of the association, in particular related to FIFA funds.

After analysing the various divergent positions and statements given by Mr Bility (who had himself three different versions of the relevant events), the LFA Treasurer, First Vice-President, Chair of the Finance Committee, and other LFA officials, as well as the documents provided by the LFA, it is impossible to establish how the FIFA Ebola Grant was spent. However, it is strongly implied, by the relevant persons mentioned above, that Mr Bility took both the decision not to cooperate with the LNRCS, and the one on how to disburse the FIFA funds.

Mr Bility's involvement in the first decision entails that the FIFA Ebola Grant was not used for its authorized purpose. The reason given by Mr Bility for his decision not to involve the LNRCS (fear of contagion155) cannot be accepted, since various methods of collaboration would have been available, without putting at risk the employees or officials of the LFA (such as communication via telephone, making payments to the LNRCS by bank transfer or cheque, etc).

As to the actual disbursement of the FIFA funds, all the above elements suggest that Mr Bility was the decision maker in this respect, apparently enabling payments to members of the LFA Executive Committee (although several of those do not recall receiving such

amounts). In this respect, Mr Bility's attempts to shift responsibility on the former LFA General Secretary (who has died in the meantime, and therefore cannot corroborate such statements) or the Executive Committee, are also to be disregarded, as they are directly contradicted by the very members of the aforementioned body, the LFA Treasurer or even by previous conflicting positions. Moreover, it should be noted that the above persons represent intermediaries and related parties as defined in the FCE 2012 (but also third parties according to art. 28 of the FCE 2018).

As to the renovation works for the ATS, the situation is the following: in 2015, the LFA applied for funds through the FIFA FAP programme; according to the relevant application forms, signed by Mr Bility on behalf of the LFA, the total amount of USD 750,000 as FAP funds were granted to the association; according to the respective planned budget presented to FIFA (compiled by the LFA and approved by Mr Bility), the mount of USD 375,000 was earmarked for "Infrastructure", of which USD 225,000 for "Maintenance of ATS Stadium".

Notwithstanding the above, the Independent Auditor's Report for the year 2015 of the LFA specifically states that "US$380,780.03 was spent on the renovation of Stadiums. Out of this amount, US $363,625 was spent from FIFA Financial Assistance Programme."

However, when analyzing how this amount was spent, a series of irregularities were found.

First, it appears that, in direct violation of the respective FIFA regulations which stipulate that, for any payments surpassing USD 50,000 from FIFA funds, the relevant association has to provide quotations from a minimum of three contractors, no such tender process was conducted in the present case for the ATS renovation contract, which was signed with the company Musons Group for a price of USD 804,370. This is evidenced both from the quotations provided by the LFA (one of which was undated, and the other dated more than four months after the signing of the contract with Musons), and from a Management Letter from the same external auditors which had compiled the Independent Auditor's Report, which specified that ""It was observed during the audit that there was no competitive bidding process done for the renovation of the Kakata and Antoinette Tubman Stadiums in Margibi and Montserrado Counties respectively. The contract to renovate the two stadiums was single handedly given to Musonda Construction Group."

Second, it appears that the documents supporting the various payments made by the LFA to Musons in 2015, for a total of USD 354,000, in relation to the renovation of the ATS and Kakata Stadium (of which USD 331,000 related to ATS) were falsified, in view of a series of anomalies and deficiencies identified by Control Risks during its forensic audit. Finally, a letter from Musons to the LFA dated 16 October 2015, two months after the date of the last payment made to the company for the renovation works, clearly states that the "total amount received to date for the project is US $ 190,0000". Therefore, it appears that, although payments of USD 331,000 were allegedly made to Musons for the renovation of the ATS, the company only received USD 190,000 for such

works. Consequently, the amount of USD 141,000 paid from FIFA FAP funds, is unaccounted for. Mr Bility was directly involved not only in the application for FAP funds (his signature being on the respective application forms, which included the planned budget), but also in the choosing of the contractor (according to the testimonies of the LFA Vice President, Treasurer and Project Director), the signing of the contract with Musons. Moreover, Mr Bility's central role in the financial decision-making of the association (in particular related to FIFA funds) has already been established.

In summary, it appears that the amount of USD 354,000 of FIFA funds allocated to the LFA in 2015 through the FAP programme, funds which the association was entrusted to spend dutifully and competently, has been disbursed in a completely irregular and improper way, as it was paid to a company selected in violation of the applicable process, and based on falsified documents. Furthermore, a considerable amount of USD 141,000 seems to be unaccounted for (and thus practically disappeared). Mr Bility's involvement in this unauthorized use (and thus illicit, in view of the respective FIFA regulations) of FIFA funds was direct and intentional, since he, as president and head of the LFA, had the ultimate executive authority for the spending of such funds. His signature was not only on the relevant application forms for the FAP funds (guaranteeing that such funds would be used in accordance to their planned budget/purpose), but also on the contract with the company to whom such funds were disbursed." (…)

- **Accepting gifts and other benefits in accordance with Article 20 of the FCE**

45. The Investigatory Chamber found that the Appellant accepted, through the related party Srimex, gifts or benefits (corresponding to payments) which is in breach of Article 20 par. 2 of the 2012 FCE in addition to breaching Article 20 of the 2018 FCE, which also prohibits the acceptance or receipt of any gifts or benefits. In that respect, the Investigatory Chamber made the following findings:

"The charge related to receipt of benefits is to be analysed in the context (…) the loans allegedly made by Srimex to the LFA, and related repayments made by the LFA to Srimex, Mr Bility's company.

In the present case, it has been established that, between 2013 and 2017, amounts of (at least) USD 595,720 were paid by the LFA to Srimex, a company Mr Bility was the owner and CEO of (and which therefore represented a related party as defined in both FCE 2012 and FCE 2018). These payments seem to relate to various loans that Srimex/Mr Bility made to the LFA during the same period. However, such loans are not independently verifiable, as no evidence exists, other than the breakdown of the respective amounts in the accounting system used by the LFA (without any supporting documents such as contracts or receipts). Moreover, the loans, which would be considered as "related party transactions" in accordance with the relevant international practices, were not disclosed in the respective financial statements of the LFA for the years 2014, 2015 or 2016 (which explicitly state that no related party transactions have taken place). Finally, according to the documents and information provided by the LFA, it appears that the amount "loaned" by Srimex/Mr Bility to the

association in the period 2013 – 2017 was of USD 516,995. In view of the above, it appears that an amount of approximately USD 78,725 received by Srimex/Mr Bility cannot be covered or related to the "loans" made to the association, and therefore was undue. Such an amount did not have a symbolic/trivial value and did not exclude any influence for the execution/omission of acts related to Mr Bility's official activities or falling within his discretion (as President of the LFA). Furthermore, the payments did not appear to have any legal basis, and therefore created an undue pecuniary advantage for Mr Bility, being contrary to his duties. Finally, the payments created an evident conflict of interest, since Mr Bility was at the same time the owner of Srimex and President of the LFA." (…)

- **Conflicts of interest in accordance with Article 19 of the FCE**

46. The Investigatory Chamber found the Appellant to be in a conflict of interest as to the relations between the LFA and the companies Stone Haven Guest House and Srimex, and to have performed his duties where such conflict of interest appeared to influence his performance, which is in breach of Article 19 of the 2018 FCE and the corresponding Article 19 of the 2012 FCE. In that respect, the Investigatory Chamber made the following findings:

"The charge related conflict of interest is to be analysed in the context (…) the relations between the LFA under Mr Bility's presidency and two entities closely related to him – Stone House Guest House (his family's accommodation business) and Srimex (the company he owned/owns). In this respect, it shall be pointed out that the relevant duties in the present case were the ones of Mr Bility as President of the LFA.

(…) the LFA apparently made various payments in relation to accommodation of the Liberian national team or other accommodation services to Stone Haven Guest House, owned by Mr Bility's wife and managed by his son. The latter persons also represent related parties as defined by the FCE (2012 and 2018). The total amount of such payments, made between 2012 and 2016, is approximately USD 500,000, and is supported by various documents, some of which are contested by Mr Bility. Mr Bility admitted, in his interviews, that, due to financial difficulties, the LFA used at several times Stone House Guest House for accommodation, free of charge except for the food costs. However, Mr Bility failed to explain how it would be possible, according to the same logic, that in the same period of "financial difficulties" (2012 to 2015) the LFA spent approximately USD 300,000 as accommodation costs (for other hotels). In the case of the relationship between Srimex and the LFA, the gaining of an advantage is even more evident, since, according to the documents provided by the LFA, and as mentioned previously, Srimex – which Mr Bility owned - received payments of (at least) USD 595,720 from the association between 2013 and 2017. Moreover, such payments, which appear to be related to various "loans" allegedly made by Srimex/Mr Bility to the LFA, are not supported by any evidence or documentation, other than the financial accounting system of the association. In view of the above, Mr Bility gained without any doubt "advantages" for related parties (and himself, indirectly) within the meaning of the definition presently relevant.

In order to create a conflict of interest, or at least the appearance of it – which is sufficient under art. 19 par. 1 FCE 2018 –, these secondary interests must be suited to influence the official's ability to perform his duties with integrity in an independent and purposeful manner. The private or personal interests relevant here did negatively influence (and therefore detract, as mentioned in art. 19 par. 2 of the FCE 2012) Mr Bility's ability to perform his duties with integrity in relation to the disbursement of the relevant LFA funds, and potentially even FIFA funds, which he oversaw, given his central role (in his position as President of the LFA) in the financial decision-making of the association.

In addition, according to art. 19 par. 1 FCE 2012, persons bound by the Code shall not perform their duties in cases with an existing or potential conflict of interest (or even in case there is a danger that a conflict of interest might affect such performance, in accordance with art. 19 par. 3 of the FCE 2018). As it was shown above, Mr Bility never stopped performed his duties as LFA President (or at least as CEO of Srimex) when it came to the use of his family hotel by the association, or to the various payments made between his company and the LFA." (…)

c) Proceedings before the Adjudicatory Chamber

47. On 18 December 2018, and based on the Final Report, adjudicatory proceedings were opened against the Appellant before the Adjudicatory Chamber in accordance with Article 68 (3) of the FCE.

48. On the same day, the Appellant requested an extension of the deadline to request a hearing and to provide his position.

49. On 21 December 2018, the Appellant was granted an extension of time and informed of the composition of the Adjudicatory Chamber panel.

50. On 4 January 2019, the Appellant requested a hearing, and requested a further extension of the deadline to provide his position.

51. On 5 January 2019, the Appellant was provided with the procedural outline of the hearing scheduled for 24 January 2019 and granted a new extension of the deadline to submit his position.

52. On 11 January 2019, the Appellant requested the Adjudicatory Chamber to order the Investigatory Chamber to provide all supporting evidence, and to summon and examine all witnesses it had relied upon by (including Ms. Woodson), claiming that its investigation was flawed and incomplete and reserved his right to present witnesses statements in support of his position. The Appellant further requested to postpone the hearing.

53. By letter dated 14 January 2019, the Appellant was provided with an exceptional and final extension of the deadline to submit his position and as such, the hearing of 24 January 2019 had to be postponed. He was also informed that the *"investigation files*

(attached to the final report) contained all the facts and gathered evidence which were relevant to the possible rule violations and recommendation to the adjudicatory chamber" and was referred to Articles 65 and 66 of the FCE.

54. On 19 January 2019, the Appellant requested to be provided with further documents, arguing that the "case file is still not complete".

55. On 23 January 2019, the Appellant was notified that a hearing would be held on 12 February 2019 and was asked to confirm whether he intended to call any witnesses all while being advised that FIFA did not intend to do so.

56. On 29 January 2019, the Appellant asked for a new invitation letter for his visa application and reiterated his request for the summoning and examination of all witnesses relied upon by the Investigatory Chamber, including Ms. Woodson, as well as for his cross-examination.

57. On 30 January 2019, the Appellant was reminded that he had previously been asked to inform by 4 February 2019 whether he intended to call any witnesses and if so, to send a copy of their respective passport, and that he would be responsible to ensure their appearance.

58. On 4 February 2019, the Appellant submitted his position together with a list of exhibits and reserved his right to produce additional evidence. He also submitted the affidavits of Messrs. Ansu Dulleh, Samuel Karn and Joseph Kollie, confirmed his intention to call them as witnesses and requested invitation letters for their visa applications. He further reiterated his request for the summoning and examination of the witnesses cited in the Final Report.

59. On 5 February 2019, the Appellant was, further to his request for the summoning of the witnesses cited in the Final Report, referred to the letter dated 30 January 2019. His list of witnesses, on the other hand, was accepted by the Adjudicatory Chamber.

60. On 6 February 2019, the Appellant added to his list of witnesses Messrs. Musa Shannon and Jallah Corvah, who were mentioned in both the Control Risks Report and Final Report and requested an invitation letter for Mr. Corvah for his visa application.

61. On 7 February 2019, the Appellant requested that the hearing be postponed given that that none of his witnesses had received an entry visa at that time.

62. On 8 February 2019, the Adjudicatory Chamber responded to the Appellant that he was, as per Article 75 par. 2 of the FCE, responsible to ensure the appearance of any witnesses and that the visa applications could have been initiated since 18 December 2018. As such, his request to postpone the hearing was dismissed and he was invited to attend the hearing, either in person or represented by a Swiss-based legal representative.

63. On the same day, the Appellant invoked his due process rights and reiterated his request for a postponement of the hearing, arguing that the visa applications could only be

initiated once the Adjudicatory Chamber accepted on 5 February 2019 his witnesses' appearance and that the failure to obtain the visas in time wasn't his fault.

64. Later that day, the Adjudicatory Chamber confirmed the hearing on 12 February 2019 and reiterated that it was the responsibility of the Appellant to ensure the appearance of any witnesses he requested.

65. On 11 February 2019, the Appellant notified his inability to travel to Switzerland for the hearing due to visa issues and requested to postpone the hearing. In response, the Chairperson of the Adjudicatory Chamber confirmed the hearing of 12 February 2019, on the basis that the Appellant had been provided on 7 January 2019 with a first invitation letter for the hearing of 24 January 2019, informed on 15 January 2019 of the new hearing date of 12 February 2019 and that he waited until 29 January 2019 to request another invitation letter, which was provided to him within less than 24 hours. But later that day, in a separate letter, the Chairperson offered to the Appellant the possibility to reiterate his requests for postponement at the beginning of the hearing, and that the panel would decide then.

66. Still on 11 February 2019, the Appellant criticized the Adjudicatory Chamber, claiming it would be solely responsible for his and his witnesses' absence at the hearing. He further requested that, should the hearing take place, he be allowed to file a written statement *in lieu* of the oral statement and to question Mr. Ruedi Bronnimann, Deputy Secretary to the Adjudicatory Chamber and Mr. Mejia. Finally, he informed that his legal representatives would show a PowerPoint presentation in support of his case and asked for a confirmation that the necessary technical equipment would be available during the hearing.

67. On 12 February 2019, a hearing was held at the FIFA headquarters. The Appellant did not attend the hearing but was represented by legal representatives, who were in turn allowed to display the PowerPoint presentation and plead the request for postponement. At the outset of the hearing and after having heard the Appellant's legal representatives and Mr. Mejia, the panel deliberated and decided not to postpone the hearing.

68. On the same day, the Adjudicatory Chamber passed the following decision (the "Decision"):

> *"III. has therefore decided*
>
> 1. *Mr Musa Hassan Bility is found guilty of infringement of art. 19 (Conflicts of interest), art. 20 (Offering and accepting gifts or other benefits) and art. 28 (Misappropriation of funds) of the FIFA Code of Ethics.*
>
> 2. *Mr Musa Hassan Bility is hereby banned from taking part in any kind of football-related activity at national and international level (administrative, sports or any other) for a period of ten years as of notification of the present decision, in accordance with article 7 lit. j) of the FIFA Code of Ethics in conjunction with Article 22 of the FIFA Disciplinary Code.*

3. *Mr Musa Hassan Bility shall pay a fine in the amount of CHF 500,000 within 30 days of notification of the present decision. Payment can be made either in Swiss francs (CHF) to account no. 0230—325519.70J, UBS AG, Bahnhofstrasse 45, 8098 Zurich, SWIFT: UBSWCHZH8OA, IBAN: CH85 0023 0230 3255 1970 J or in US dollars (USD) to account no. 0230—32 551 9.71 U, UBS AG, Bahnhofstrasse 45,8098 Zurich, SWIFT: UBSWCHZHSOA, IBAN: CH95 0023 0230 3255 1971 U, with reference to case no. "Adj. ref. no. 15/2018 (Ethics E18—00002)"in accordance with art. 7 let. e) of the FIFA Code of Ethics.*

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

5. *Mr Musa Hassan Bility shall bear his own legal and other costs incurred in connection with the present proceedings.*

6. *This decision is sent to Mr Musa Hassan Bility. A copy of the decision is sent to the CAF and to LFA. A copy of the decision is also sent to the chief of investigation, Mr José Ernesto Mejia."*

69. On 24 July 2019, the grounds of the Decision were notified to the Parties. The relevant points developed by the Adjudicatory Chamber in the Decision, read as follows:

i. Temporal application of the FCE

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

ii. Violation of Article 28 of the FCE (Misappropriation of funds)

"3. <u>Legal assessment</u>

A. Wording of the relevant provision

91. According to art. 28 of the FCE, persons bound by the Code shall not misappropriate funds of FIFA, the confederations, associations, leagues or clubs, whether directly or indirectly through, or in conjunction with, third parties.

92. Although the content of the provision does not include a specific definition of the concept of misappropriation of funds, the adjudicatory chamber analysed the infringement by using the following legal terms: the illegal use of funds of another person/entity for one's own use or other unauthorized purpose.

93. In this respect, as per the relevant regulations, the members associations shall disburse the development funds received from FIFA in compliance with the respective budget approved by the latter.

B. Persons involved

94. The adjudicatory chamber points out that, according to the Final Report and documents in possession of the FIFA Ethics Committee, Mr Bility exerted a strong level of control over the LFA, in his position as president, and made decisions without consulting with those individuals or with the Executive Committee as required by the LFA Statutes. Moreover, Mr Bility appears to have controlled spending within the LFA (being the only one, apart from the LFA Treasurer — Mr Jallah Corvah —who had access to the banking information of the association), including the approval process and information sharing across the LFA's bodies/committees. Finally, the LFA Treasurer indicated during his interview that he took orders in relation to accounting from the LFA President (Mr Bility), and stated that the President authorised every payment made (adding that "sometimes we do the payment before we do documentations...").

95. In view of the above, Mr Bility appears to have been the approval authority of all the relevant transactions in relation to FIFA funds, in particular the use of the respective funds.

C. Illegal use of FIFA funds for one's own use or other unauthorized purpose

2015 FIFA Ebola Grant

96. Mr Bility claims that he did not used the relevant funds illegally (in a manner prohibited by FIFA regulations or Liberian law), nor were such funds utilised for his own use or other unauthorized purposes. Moreover, he alleges that the Investigatory Chamber failed to prove/demonstrate that the funds were not used for the Ebola relief effort.

97. His first argument is that, while it is undisputed that the LFA and the LNRCS signed the MoU - which specified the distribution of the FIFA Ebola Grant funds, soon after the LFA and Mr Bility allegedly realised that such MoU cannot be implemented, as it would endanger the life/health of LFA staff. In particular, Mr Bility claims to have considered that it would be too dangerous to distribute the funds directly to the LNRCS.

98. However, no explanation is provided as to why transferring funds to an international organisation would constitute a serious threat to the health of LFA personnel or why no solution could be found for the FIFA funds (which were received merely 10 days after the signing of the MoU) to be transferred or transmitted to LNRCS for the implementation of the relevant relief efforts.

99. Similarly, it is not clarified why it would be perfectly justified and safe for the FIFA funds to be distributed directly by the LFA Executive Committee members

and Secretary General for awareness and prevention work in their respective communities, without putting all these persons in danger of contracting the disease (for example Messrs Dulleh and Karn, who, in their respective statements, claimed to have bought and distributed medical supplies in their respective communities).

100. In view of the above, the adjudicatory chamber considers that the arguments brought forward by Mr Bility to explain the failure to implement the MoU between the LFA and LNRCS cannot be sustained.

101. Furthermore, the panel finds it surprising, to say the least, that no proof exists or could be provided by Mr Bility of the decision of the LFA Executive Committee (as well as reasons behind such decision) to not proceed with the implementation of the MoU. Furthermore, it is all the more relevant that the only information on the aforementioned decision come from the statements of Mr Bility, and from the writ- ten affidavits of Mr Dulleh and Mr Karn, made almost four years after the facts, which directly contradict the statements of other members of the LFA Executive Committee made in December 2017 (claiming that the LFA Executive Committee did not even meet at the time of the Ebola epidemic and receipt of the FIFA Ebola Grant).

102. Most importantly, and irrespective of the above, no proof could be found that FIFA was informed of the LFA (Executive Committee)'s unilateral decision to disregard and not implement the MoU with LNRCS, a legal document signed merely weeks before. It is very important to stress that the Ebola Grant funds were allocated/donated by FIFA based on the understanding that such funds would be distributed by the LFA in cooperation with an organisation specialized in humanitarian activities, for a very specific purpose - to help the fight against Ebola. The entire reason for the signature of the MoU between the LFA and LNRCS was to show the association's commitment to such cause, and to guarantee the distribution of the FIFA funds to this end.

103. The above is further reflected in the content of the MoU, which contains the following wording: "WHEREAS, FIFA, the mother body of The LFA request a Partnership with a Non Governmental Organization to implement its assistance for the fight against the deadly Ebola disease; And WHEREAS, the LNRCS also being a full member of the international Committee of the Red Cross I Red Crescent Society was selected by The LFA as partner to implement the goals of FIFA [...]NOW, THEREFORE, for and in consideration of the covenants and stipulations, the PARTIES hereto have agreed, affirmed and expressed their understanding and consent to the terms and conditions contained in this MOU as follows:[…] That the grant of United States dollars fifty thousands, (USD 50,000.00) given by FIFA shall be used to implement the desire goals of FIFA to help eradicate Ebola from liberia through this Partnership MOU".

104. In view of the above, the Panel considers that, it cannot be implied, by no means, that the LFA had "discretion with respect to the specific use of the

funds", as Mr Bility suggests in his defence statement. To the contrary, as the entity donating the relevant funds, and in view of their significant amount (USD 50,000), FIFA would have had to be immediately informed of any change in the disbursement of such, in particular the non-respect of the MoU signed few weeks earlier and which specified the exact implementation of the FIFA Ebola Grant.

105. In this respect, Mr Bility's claim of having directed the former LFA Secretary General to inform FIFA of the "change of plans" regarding the Ebola funds is not supported by any evidence (in particular given the fact that the respective former General Secretary has been deceased since before the start of the present proceedings, and that the claim is not corroborated by any witness or written documents). Furthermore, as president of the LFA at the time, and in view of the seriousness of the matter (distribution of a significant FIFA fund to help fight a deathly epidemic), Mr Bility should have ensured that not only FIFA is duly informed of the change before it was operated, but also that it approves/endorses it.

106. In conclusion, the Panel considers, in the absence of any contemporaneous written evidence, that no justified reasons existed for the failure to implement the MoU with the LNRCS. Furthermore, the LFA had no discretion with respect to the specific use of the FIFA Ebola Grant funds, and had to disburse such in cooperation with a partner NGO, which was the LNRCS, as clearly designated in the MoU. Moreover, there is no evidence that FIFA, the donor of the respective funds, was informed (and more importantly, asked for approval) before the unilateral "change of plans" regarding the distribution/use of the FIFA Ebola Grant funds, which would render such use illicit. Finally, the adjudicatory chamber is not convinced (to its comfortable satisfaction), by the statements and documents provided by Mr Bility, that the decision to not implement the MoU with the LNRCS was duly taken by the LFA Executive Committee. To the contrary, the various testimonies provided by senior officials of the LFA (in particular Mr Corvah - the LFA Treasurer, and Ms Sheba Brown - the chair- person of the LFA Finance Committee) indicate Mr Bility took such decision himself.

107. With respect to the distribution of the amount of USD 44,500 of the FIFA Ebola Grant, Mr Bility claims that, "to the best of his knowledge", these funds went to their intended purpose - the Ebola relief efforts. However, Mr Bility fails to clarify what "the best of his knowledge" is, since he had already provided significantly different and conflicting versions of the use of the FIFA funds (par. 20 above and p. 14-16 of the Final report).

108. In his statement of defence, Mr Bility claims that approximately 30% of the FIFA funds were distributed in cash to the members of the LFA Executive Committee (an amount of USD 1,500 to each), while the remaining 70% was delivered to the former Secretary General for implementation of an "Ebola Awareness Program". With respect to the distribution to the LFA Executive Committee, the

affidavits of Messrs Dulleh and Karn, as well as the email from Ms Rochell Woodson enclosed to the statement of defence (as Appendices MB-7, MB-8 and MB-21) directly conflict with the statements of various members of the said committee, according to which such members did not appear to receive any amounts related to the FIFA Ebola Grant.

109. More importantly, Mr Bility has not managed to clarify the decision taken by the LFA Executive Committee on 8 January 2018, almost three years after the distribution of the Ebola funds, when he "suggested" that all members of the committee "replenish" to FIFA the amount of USD 1,500 previously received in relation to the Ebola fund, informing that the respective project was not implemented by the LFA Secretariat, as instructed by the Executive Committee. In particular, Mr Bility failed to explain his sudden request to ask all the members of the said committee to reimburse an amount that he claims was duly and legally distributed almost three years before, or his sudden discovery that the respective Ebola project was not implemented three years later.

110. In view of the above, the Panel considers that any payment made from the FIFA Ebola Grant funds to the members of the LFA Executive Committee, in which Mr Bility was involved, was not authorized by FIFA (who was not even made aware of such distribution). Therefore, regardless of whether the amounts previously paid to the LFA Executive Committee members were reimbursed (which is not claimed or proven by Mr Bility), this would not "heal" the original disbursement of the funds, for an unauthorized purpose. Moreover, the Panel is convinced, to its comfortable satisfaction, that Mr Bility was involved in the aforementioned distribution of FIFA funds in 2015, a fact that is underlined by his "suggestion" made in January 2018 to the members of the LFA Executive Committee to "replenish" such amounts.

111. As to the alleged disbursement of the Ebola fund as reported in the documentation presented to Control Risks by the LFA Treasurer, as well as the latter's testimony, Mr Bility claims that he had no responsibility in this respect, even in case that the relevant documentation was falsified (as implied and explained in the Control Risks report). In this respect, the Panel would like to refer to pars. 96-97 above describing Mr Bility's role within the LFA, in particular concerning the financial decision-making, whereby various LFA officials, including the LFA vice-president and Treasurer indicated that Mr Bility was directly involved in the approval of such decisions/payments, even going as far as to sign "the majority of cheques".

112. Moreover, the alleged distribution of the Ebola fund as presented in the documentation of Mr Corvah (according to which the amount of USD 44,500 was disbursed in its entirety on 28 February 2015) contradicts the scenario provided by Mr Bility according to which approximately 30% of such fund was distributed to the LFA Executive Committee members.

113. In conclusion, the adjudicatory chamber finds that the FIFA Ebola Grant fund was not disbursed in accordance with the MoU with the LNRCS (which was not respected by the LFA), and that FIFA was never informed of that fact, or of the real use of the funds. Moreover, there are several and serious inconsistencies regarding the distribution of part of the Ebola funds to the LFA Executive Committee, and the documents provided by the LFA Treasurer, who clearly stated in his testimony that Mr Bility was approving/authorising LFA payments, appear to have been falsified, in or- der to disguise or cover the (real) use of the Ebola funds.

Renovation of the ATS

114. Mr Bility claims that all FIFA funds provided in relation to the renovation of (stadia) infrastructure were, to the best of his knowledge, used in accordance with their intended purpose and that, even in case part of such funds would have been mis- appropriated, he was not involved and cannot be made responsible for such.

115. In this respect, the adjudicatory chamber turns to the content of the Final report, which consistently shows Mr Bility's significant role in respect to the use of FIFA funds for the renovation of the ATS.

116. First, Mr Bility signed the application forms on behalf of the LFA for the FIFA Assistance Programme (hereinafter "FAP"), based on which a total amount of USD 750,000 FAP funds was granted to the LFA in 2015, of which the amount of USD 225,000 was earmarked for "Maintenance of ATS Stadium".

117. Second, he was involved in the selection and awarding of the ATS renovation contract to the company Musons (according to various senior officials of the LFA and, partly, his own statements).

118. Third, Mr Bility signed the relevant contract between the LFA and Musons, for a total amount of USD 804,370.

119. While Mr Bility tried to mitigate his responsibility in relation to the distribution of the FAP funds for the renovation of the ATS, the Final report has clearly indicated that, although only the amount of USD 225,000 was allocated to the renovation/maintenance of the ATS according to the relevant 2015 FAP documents, a considerably higher amount of USD 331,000 was apparently paid in 2015 by the LFA for such renovation works (according to the relevant payment documents to Musons). Mr Bility was not able to explain the difference, although he was the one who signed both the FAP application documents, and the contract with Musons.

120. Furthermore, a document from Musons dated two months after the last alleged payment made to the company for the renovation works clearly states that the company had only received an amount of USD 190,000 for the project, meaning

an amount of USD 141,000 (from the total USD 331,000 paid to Musons) is unaccounted for.

121. The explanation provided by Mr Bility in the case of the latest discrepancy is, in the view of the Panel, not satisfactory, since the amount of USD 162,188 allegedly received by the company BBLTM in relation to the renovation of the ATS in 2015 (purposely after the contract with Musons was cancelled) does not correspond with the unaccounted sum (USD 141,000). Furthermore, and regardless of the above, any payment made by the LFA to BBLTM in relation to the renovation of the ATS does not explain why the relevant payment documentation dated February - August 2015 mentions Musons as beneficiary.

122. As for the payment documentation provided by the LFA Treasurer/Finance Department, Mr Bility admits that such documentation was deficient, and even potentially falsified, but refutes any responsibility in this respect, as president of the LFA, claiming that he was "only responsible for executing the decisions of the Executive Committee regarding the allocation of the budgets and funds, but not involved in their implementation".

123. In the adjudicatory chamber's opinion, this argumentation is flawed, both in view of the description of Mr Bility's de facto role in the financial decision-making within the LFA (cf. par. 94 above and p. 14-16 of the Final report) and in light of the particular aspects of the matter: the fact that his signature was not only on the relevant application forms for the FAP funds (guaranteeing that such funds would be used in accordance to their planned budget/purpose), but also on the contract with the company to whom such funds were disbursed, which lead to the mismanagement and disappearance of the significant amount of USD 141,000.

124. In summary, the adjudicatory chamber finds that the FIFA funds granted to the LFA in 2015 through the FAP programme have been disbursed in an inadequate and unethical manner. First, the funds were disbursed to a company selected in violation of the applicable process. Second, and more importantly, an amount of USD 141,000 (allegedly paid to the company) seems to be unaccounted for (as the company claims to not have received it). Mr Bility's involvement in this unauthorized, and thus illicit, use of FIFA funds was direct, given his position as president of the LFA which provided him with the ultimate executive authority for the expenditure of such funds. His signature was not only on the relevant application forms for the FAP funds (guaranteeing that such funds would be used in accordance to their planned budget/purpose), but also on the contract with the company to whom such funds were paid.

4. <u>Conclusion</u>

125. In this regard, the adjudicatory chamber underlines that FIFA entrusted the use and control of FAP funds to Mr Bility, as president of the LFA. Nevertheless,

Mr Bility disbursed the FIFA funds in full disregard of the relevant FAP projected budget and without proper justification or approval from the other responsible bodies of the LFA (in particular the executive committee).

126. Consequently, the adjudicatory chamber concludes that Mr Bility used the FAP funds of the federation for unauthorized purposes.

127. In the light of the foregoing, the adjudicatory chamber finds that Mr Bility, on the different occasions as outlined above, misappropriated funds of FIFA, directly and indirectly through, or in conjunction with, third parties. Therefore, he has breached art. 28 par. 1 of the FCE."

iii. Violation of Article 20 of the FCE (Offering and accepting gifts or other benefits)

"*3. Legal assessment*

134. The relevant allegations concerning the acceptance of gifts and other benefits cover the period from 2013 to 2017. During this period, the FCE 2012 version was in force, and art. 20 par. 1 of the FCE 2012 stipulates that persons bound by the Code may only offer or accept gifts or other benefits to and from persons within or outside FIFA or in conjunction with intermediaries or related parties as defined in the Code, which

a) have symbolic or trivial value;
b) exclude any influence for the execution or omission of an act that is related to their official activities or falls within their discretion;
c) are not contrary to their duties;
d) do not create any undue pecuniary or other advantage and
e) do not create a conflict of interest.

Any gifts or other benefits not meeting all of these criteria are prohibited. Further, according to art. 20 par. 2 of the FCE, if in doubt, gifts shall not be offered or accepted. In all cases, persons bound by the Code shall not offer to or accept from anyone within or outside FIFA cash in any amount or form.

135. The adjudicatory chamber considers that there are important objective indicators to conclude that the amount of USD 78,725.30, part of the payments made by the LFA to Srimex - Mr Bility's company - in relation to the loans made by the company to the association, can be considered a benefit received by Mr Bility in violation of art. 20 of the FCE.

136. First, it has been established that, between 2013 and 2017, amounts of (at least) USD 595,720 were paid by the LFA to Srimex, a company Mr Bility was the owner and CEO of (and which therefore represented a related party as defined in both FCE 2012 and FCE 2018).

137. These payments seem to relate to various loans that Srimex/Mr Bility made to the LFA during the same period. However, such loans are not independently verifiable, as no evidence exists, other than the breakdown of the respective amounts in the accounting system used by the LFA (without any supporting documents such as contracts or receipts). Moreover, the loans, which would be considered as "related party transactions" in accordance with the relevant international practices, were not disclosed in the respective financial statements of the LFA for the years 2014, 2015 or 2016 (which explicitly state that no related party transactions have taken place).

138. Furthermore, according to the documents and information provided by the LFA, it appears that the amount "loaned" by Srimex/Mr Bility to the association in the period 2013- 2017 was of USD 516,995. Such an amount did not have a symbolic/trivial value and did not exclude any influence for the execution/omission of acts related to Mr Bility's official activities or falling within his discretion (as President of the LFA). Furthermore, the payments did not appear to have any legal basis, and therefore created an undue pecuniary advantage for Mr Bility, being contrary to his duties.

139. With respect to Mr Bility's claim that he did not gain any personal financial benefits from the Srimex transactions, since the purpose of the loans was to enable the LFA to continue to operate in periods of financial hardship and since such loans were interest free, the Panel considers that such arguments miss the point. Regardless of the exact role of the loans, or the fact that no interest was charged, the significant amounts loaned by Srimex to the LFA created a very dangerous financial dependency of the latter on this private company, owned by Mr Bility, the president of the association. This situation placed Mr Bility in a privileged and authoritative position, which went way beyond his official role within the association (as described previously), being at the same time its elected leader and main creditor, which would enable him to impose his will on the other stakeholders by threatening (explicitly or implicitly) to cut the financing.

140. Furthermore, the payments made by the LFA to Srimex between 2013 and 2017 (as reimbursement of the relevant loans) show that a significant amount of USD 72,812 (over 10% of the total of USD 595,720 paid by the LFA) related to "presidential activities". In other words, Mr Bility's company consistently financed his (non-descriptive) activities as president of the association, and then the LFA paid back such loans. Furthermore, no evidence exists to attest that the payment of the reimbursement of the relevant loans to Mr Bility via Srimex, in particular the amount related to "presidential activities", had been pre-approved by the relevant bodies of the association, to ascertain their objective relevance and necessity. The adjudicatory chamber considers that such a situation is certainly not complying to any ethical standards, let alone contrary to the content of art. 20 of the FCE regarding the receipt of gifts and benefits as described before.

141. In addition, despite Mr Bility's argumentation that the LFA owed Srimex already the amount of USD 369,343 on 1 January 2013 (moment at which the LFA started to use transactional listings for its operations), it cannot be disputed that during the period 2013 - 2017 the LFA paid to Srimex considerably more (USD 595,720) than the amounts apparently loaned by Srimex (USD 516,995), most of which were not even paid directly to the association. The difference of USD 78,725 represents an excess amount that was received by Mr Bility (via Srimex) in the aforementioned period, which would qualify as a benefit in view of the fact that the balance of USD 369,343 allegedly owed by the LFA before 2013 is not verifiable, and that no evidence was brought by Mr Bility from his company that would attest to the payment of the respective loans.

142. Finally, Mr Bility denies any involvement or any responsibility in relation to possible repayments/refunds made by the LFA to Srimex using FIFA funds and claims that, even if FIFA funds were used, this would not constitute an issue since Srimex loaned money for FIFA-approved purposes (and therefore the FIFA funds were not diverted from their assigned purpose). However, the Panel considers that a very important detail is not mentioned or dealt with by Mr Bility in his argumentation: the fact that FIFA was never informed, during the period 2013-2017, that a commercial company was effectively financing the LFA (acting like a financial institution), that such company was owned by the LFA president, and even less so that funds provided to the association as part of FIFA programmes and designated to specific projects were being transferred to such private entity. Most importantly, FIFA had never given its (express) approval for its funds to be used for the repayment of debts contracted by the LFA with its president's company.

143. In view of the above, and for the reasons presented in the final report based on the analysis made in the Control Risks report, the (excess) amount of USD 78,725.30 paid by the LFA to Srimex can be considered, in the opinion of the adjudicatory chamber, as an undue advantage to Mr Bility.

4. <u>Conclusion</u>

144. In view of the above considerations, the adjudicatory chamber concludes that Mr Bility received benefits in relation to the payments made by the LFA to Srimex (company owned by Mr Bility) that did not meet the criteria set out in art. 20 of the FCE, and were therefore prohibited. Therefore, Mr Bility is found to have breached art. 20 par. 1 of the FCE."

iv. Violation of Article 19 of the FCE (Conflict of interest)

"3. <u>Legal assessment</u>

156. A conflict of interest arises if a person has, or appears to have, secondary interests that are suited to detract from his ability to perform his duties with

integrity in an independent and purposeful manner. Secondary interests, in turn, include, but are not limited to, gaining any possible advantage for the persons bound by the FCE themselves, or related parties as defined in the FCE.

157. According to documents provided by the LFA, and as mentioned previously (cf. par. 128 ff above), Srimex — which Mr Bility owned — received payments of (at least) USD 595,720 from the association between 2013 and 2017. Moreover, such payments, which appear to be related to various "loans" allegedly made by Srimex or Mr Bility to the LFA, are not supported by any documentation apart from the financial accounting system of the association. In view of the above, Mr Bility gained "possible advantages" for related parties (and himself, indirectly) within the meaning of the definition presently relevant.

158. With respect to the approval of the relevant Srimex transactions by the LFA Executive Committee, the Panel considers that the Control Risks report specifically addresses this issue (p. 64-66) and notes that significant doubt exists as to whether such approval was provided, in particular since no reference to any loans or transactions with Srimex was made in the minutes of the said committee's meetings during the relevant period.

159. Furthermore, the inference that the LFA Executive Committee members were aware of and (tacitly) approved such transactions because the Srimex balance was mentioned in the LFA Financial Statements is at best incomplete. Since LFA Financial Statements were produced at the end of each financial year (as such documents normally are), the Executive Committee members would only be informed of the association's outstanding debt towards Srimex post factum, after the relevant Srimex loans had been contracted.

160. Consequently, it cannot be claimed or proven that the LFA Executive Committee approved the Srimex transactions retrospectively, which appears to have been the intention of the LFA Treasurer (Mr Corvah) when informing the Chair of the LFA Finance Committee - Ms Brown (in emails dating from March 2011 and March 2016) of various significant amounts (USD 34,507 and USD 31,000 respectively) having been already loaned by " the president" to the LFA, which would have to be repaid to him. Moreover, these correspondences were the only remembrance Ms Brown had of any requests for approval of transactions with Srimex. In addition, Mr Adolph Lawrence (LFA vice president until 2014) explicitly stated: "there were no approvals, we didn't know anything" ; "if he [N.B. Mr Bility] wanted money, if Srimex wanted money, he would, you know, he'd authorise the Treasurer to write a cheque and he would sign it and give it, pay it to Srimex without Executive Committee approval. Nothing."

161. In the adjudicatory chamber's view, the above cannot prove that the relevant loans and credits were approved by the LFA responsible bodies before being contracted from Srimex, nor that such bodies had the necessary oversight as to each amount owed, its purpose or the date when the loan was made. In fact, it appears that during Mr Bility's tenure as president of the LFA, the association

would end each fiscal year with considerable debt (sometimes greater than the annual budget of the LFA, cf. par. 219 and 256 of the Statement of defence) towards the same commercial entity, owned by Mr Bility, and that most of the amounts loaned by such company to the LFA between 2013 — 2017 (USD 456,095 out of USD 516,995) were not paid into the association's accounts, thus having no visible trail or any evidence of occurrence.

162. *With respect to the Stone Haven Guest House, Mr Bility's claim that the said accommodation was only used due to the impossibility to find other hotels that would lodge the Liberian national team is contradicted by the documentation provided by the LFA Treasurer and Financial Department (cf. pp. 54-56 of the Control Risks report). These documents clearly show that LFA received invoices from and made payment to the respective guesthouse related to accommodation and other costs for a total of USD 22,925 during 2015 and 2016, a period when it is not disputed that the LFA had the financial resources to secure other accommodation. This is further illustrated by the LFA accounting system (pp. 56—57 of the Control Risks report), according to which a long list of hotels and guesthouses were used by the LFA for accommodation services between 2013 and 2017 (for a total amount of USD 101,081), while further accommodation costs to the extent of USD 199,500 could not be linked to specific lodging.*

163. *Furthermore, and regardless of Mr Bility's claim that the relevant MoU between the LFA and the Stone Haven Guest House was forged (which was not proven, in any case), no reasonable explanation and no evidence was provided in relation to the falsification of several invoices and other payment documentation from 2012 indicating costs/payments for a total of approximately USD 146,000 incurred by the LFA with the guest house.*

164. *In particular, Mr Bility was not in a position to explain why the LFA Treasurer, who - according to all the various sources presented in the final report - was directly reporting to the president (who would in turn authorized all payments, or at least all significant payments made by the LEA), would provide forged documents to FIFA and Control Risks during the relevant forensic audit, much less so to prove such forgery. Further, the Panel considers that the accused's claim according to which the Control Risks report "acknowledges that these documents may have been falsified" is erroneous, as evidenced by a lecture of the respective section of the report (p. 53).*

165. *Moreover, the adjudicatory chamber would like to stress that Mr Bility's allegation that the Stone Haven Guest House never charged the LEA in relation to the accommodation of the Liberian national team is not correct. In fact, Mr Bility expressly admitted in his interview of December 2017 (cf. p. 52 of the Control Risks report) that a 2012 receipt (signed by his son on behalf of the guest house) for an amount of USD 12,000 as accommodation costs in relation to a match of the Liberian national team was genuine and that the payment the LEA made to the guesthouse in this respect was legitimate. This statement and admission therefore not only contradicts Mr Bility's position in his statement of*

defence, but also the content of the document from the alleged auditors of the Stone Haven Guest House (enclosed to the respective submission as Appendix MB-24) which states that no payments were made by the LEA to the guesthouse in 2012.

166. *In the panel's view, Mr Bility's claim that the LEA Executive Committee not only knew about the use of the Stone Haven Guest House for the accommodation of the Liberian national team but also "formally approved the arrangement (but not the falsified Stone Haven MoU)" is, at the very least, an incorrect interpretation of the statements of the former Chair of the LEA Financial Committee. In her interview of December 2017, Ms Brown was specifically asked whether she was aware of the MoU between the LFA and the guesthouse, and whether it was discussed by the LFA Finance or Executive committees, to which she replied that such MoU was discussed at the Executive Committee, but that she was not aware of any details. This statement merely indicates that a MoU between the LEA and the Stone Haven Guest House was addressed by the LFA Executive Committee, but does not prove the approval of such document. This is further supported by a clear statement of Mr Musa Shannon (former LFA vice-president and member of the Executive Committee): "The President would say «The National Team will stay here». But was it like, «What do you think? Do you think it's a good idea?» No, that discussion — that was not the type of discussion. It was like, «The National Team will stay here», and there was no reservation about that". Moreover, the statement of Ms Brown directly contradicts Mr Bility's claim that the respective MoU is falsified or did not exist, thereby affecting the credibility of his arguments in this respect.*

167. *Notwithstanding the above, the adjudicatory chamber would like to stress that the LFA Executive Committee's awareness or even approval of the "arrangement" with the guesthouse for the accommodation of the Liberian national team does not erase by any means the situation of clear conflict of interest in which Mr Bility found himself in, due to his (or his family's) ownership of the Stone Haven Guest House.*

168. *Moreover, it appears that the members of the LFA Executive Committee were not aware of the payments made by the association to the guesthouse (as mentioned previously), as can be inferred from the wording used by Messrs Dulleh and Karn in their respective affidavits (enclosed to Mr Bility's position) - " That, to the best of his knowledge, Stone Haven Guest House never charged the Liberia Football Association any money for accommodation of the Liberian National team" (emphasis added). Therefore, insofar as the aforementioned payments cannot be (completely or unequivocally) discarded, they would represent, in the opinion of the Panel, an advantage gained by Mr Bility's family, and thus constitute secondary interests that could influence Mr Bility's ability to perform his duties, as president of the LFA, with integrity in an independent and purposeful manner.*

169. With respect to Mr Bility's duties, as mentioned above and in the context of art. 19 of the FCE, it has not been disputed that, in his position as LFA president, he was involved in the decision of the LFA to use Stone Haven Guest House as the accommodation of the Liberian national team on several occasions. Moreover, the unambiguous statement of Mr Shannon mentioned previously (cf. par. 166 above) indicates that Mr Bility appears to have either made such decision on his own, or at least imposed it on the Executive Committee (which would not be unusual, given his de facto role and powers within the LEA, as explained in the final report and before). This conduct and situation would directly infringe art. 19 par. 3 of the FCE, which specifically mentions that persons bound by the Code shall not perform their duties (in particular preparing or participating in the taking of a decision) in situations in which there is a danger that a conflict of interest might affect such performance.

170. In conclusion, Mr Bility, in his position as president of the LEA and being family-related to the owners of Stone Haven Guest House (or even owning it himself), was at least involved in the association's decision to use said guesthouse for the accommodation of the Liberian national team, in relation to which payments were made by the LFA. This placed him in a situation of conflict of interest, in accordance with the content of the relevant FCE provision (art. 19), the violation of which he is therefore found guilty of."

v. Applicable sanctions

"G. Sanctions and determination of sanctions

a) Sanction

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

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

173. When evaluating, first of all, the degree of the offender's guilt, the seriousness of the violation and the endangerment of the legal interest protected by the relevant provisions of the FCE need to be taken into account. In this respect, it is important to note that as the President of the LFA Mr Bility was the highest representative of a FIFA member association, while also serving as a member of a FIFA committees and, more recently, as a member of the supreme body of CAF. As such, Mr Bility holds (or held, respectively) several very prominent and

senior positions in association football both at national and international level. In these functions, he has a responsibility to serve the football community as a role model. Yet, his conduct revealed a pattern of disrespect for core values of the FC E, violating the provisions on conflict of interests, accepting gifts and/or other benefits and misappropriation of funds on various occasions. In addition, no acts of mere negligence are at stake here but deliberate actions (see art. 6 par. 2 of the FCE). In view of these findings, the official's degree of guilt must be regarded as very serious.

174. *With regard to the circumstances of the case, the adjudicatory chamber emphasises that the FIFA funds that were misused or misappropriated in relation to the development of football in Liberia (renovation of the national stadium) and, more importantly, the fight against the deadly Ebola epidemic. This entails that Mr Bility' conduct was highly detrimental to his association, resulting in the waste of a significant amount which could have benefitted all its stakeholders, but also to the development of football in Liberia and the well-being of its people in general, since the FIFA Ebola Grant, used or distributed in cooperation with the LNRCS, would have helped the latter in its efforts to eradicate Ebola and prevent the disease from making more victims. It must also be borne in mind that Mr Bility committed the additional offences of conflict of interest and accepting gifts and/or other benefits, on various occasions and over a course of several years.*

175. *As far as the official's motive is concerned, the adjudicatory chamber notes that Mr Bility had personal interests involved in his actions presently relevant, especially when it comes to the charges of conflicts of interest and acceptance of benefits related to the Stone Haven Guest House and Srimex (entities which he and his family owned or controlled). He sought to materially benefit from his actions and abused his supreme position in the LFA for his personal benefit. Accordingly, Mr Bility's motive in the present case must be qualified as an aggravating factor in the case.*

176. *Another circumstance that is, according to the case law of FIFA's judicial bodies, suited to mitigate the culpability of an offender is remorse or confession. In this connection, the adjudicatory chamber notes that Mr Bility has not demonstrated, at any point during these proceedings and in spite of the evidence against him, awareness of wrongdoing.*

177. *Finally, on the mitigating side, the only element which could be taken into account by the adjudicatory chamber is the fact that Mr Bility has been rendering valuable services to football, to the development of the game in Liberia and Africa, as well as to FIFA for several years.*

178. *To sum up, the adjudicatory chamber deems that the guilt of Mr Bility in the present case is particularly serious, and only few aspects exist that mitigate the degree of his guilt.*

b) Determination of the sanction

179. With regard to the type of sanction to be imposed on Mr Bility, the adjudicatory chamber deems - in view of the serious nature of his misconduct (cf. par. ".174 et seqq. above) - only a ban on taking part in any football-related activity is appropriate in view of the inherent, preventive character of such sanction in terms of potential subsequent misconduct by the official. In the light of this, the adjudicatory chamber has chosen to sanction Mr Bility by banning him from taking part in any football-related activity (art. 7 par. 1(j) of the FCE; art. 56 par. 2(f) of the FIFA Statutes; art. 11(f) and art. 22 of the FDC).

180. With regard to the scope and duration of a ban (see art. 9 par. 2 and 3 of the FCE), the Adjudicatory Chamber points out that, where art. 28 par. 3 of the FCE (misappropriation of funds) does not establish a maximum for the respective violation, art. 19 par. 4 of the FCE (conflicts of interest) and art. 20 par. 5 of the FCE (offering and accepting gifts or other benefits) do — to the extent of two years (in general) or five years (in serious cases and/or in the case of repetition). Moreover, art. 11 of the FCE foresees that, where more than one breach has been committed, the sanction other than monetary sanctions shall be based on the most serious breach, and increased up to one third as appropriate, depending on the specific circumstances.

181. In the present case, the Panel considers that, while all breaches are serious (or rather extremely serious), the principal violation committed by Mr Bility was that of misappropriation of (FIFA) funds.

182. In view of the above, and in accordance with the content of arts. 11, 23 par. 6 and 25 par. 2 of the FCE, the adjudicatory chamber concludes that, in the present case, the duration the ban to be imposed does not have a maximum limit. Furthermore, according to the well-established case law of CAS, lifetime bans are admissible under the Code (see, e.g., CAS 2014/A/3537). That being said, when determining the scope and duration of the ban in a specific case, the adjudicatory chamber has to be guided by the principle of proportionality.

183. After having taken into account all relevant factors of the case (cf. par. ".174 et seqq. above), the adjudicatory chamber deems that a ban on taking part in any football-related activity for eight years is proportionate for the violation of art. 28 of the FCE, which is the most serious breach committed by Mr Bility. This sanction shall be increased by two years for the violation of arts. 19 and 20 of the FCE, in line with the content of art. 11 of the FCE. With regard to the scope (geographical area, art. 9 par. 4 of the FCE), only a worldwide effect is appropriate since Mr Bility committed FCE violations while being a member of a FIFA committee and his misconduct related to FIFA funds. Limiting the ban to association or confederation level, in turn, would neither prevent him from future misconduct nor adequately reflect the Chamber's disapproval of his conduct.

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

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

186. The amount of the fine shall not be less than CHF 300 and not more than CHF 1,000,000 (art. 6 par. 2 of the FCE in conjunction with art. 15 par. 1 and 2 of the FDC). In the case at hand — in view of Mr Bility's serious misconduct and the amount of (FIFA) funds misappropriated or misused at the clear detriment of football and FIFA, and the fact that he held and continues to hold very prominent official positions in association football —, the adjudicatory chamber determines that the amount of CHF 500,000 is proportionate. Accordingly, Mr Bility shall pay a fine of CHF 500,000.

(the "FIFA Ethics Committee's substantive findings"*)*

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

70. On 1 August 2019, the Appellant filed his Statement of Appeal with the Court of Arbitration for Sport (CAS) against the Decision in accordance with Article R47 *et seq*. of the Code of Sports-related Arbitration (the "Code"). In his Statement of Appeal, the Appellant nominated Mr. João Nogueira da Rocha, Attorney-at-Law in Lisbon, Portugal as an arbitrator.

71. On 26 August 2019, FIFA nominated Mr. Rui Botica Santos, Attorney-at-Law, Lisbon, Portugal as arbitrator.

72. On 3 September 2019, following an agreed-upon extension of time, the Appellant filed his Appeal Brief in accordance with Article R51 of the Code.

73. On 19 September 2019, the CAS Court Office informed the Parties that Prof. Dr. Martin Schimke had been appointed as the President of the Panel by the President of the CAS Appeals Arbitration Division (the "Division President") in accordance with Article R54 of the Code.

74. On 27 September 2019, the CAS Court Office, on behalf of the Division President , confirmed the appointment of the Panel as follows:

President:	Prof. Dr. Martin Schimke, Attorney-at-Law, Dusseldorf, Germany
Arbitrators:	Mr João Nogueira da Rocha, Attorney-at-Law in Lisbon, Portugal
	Mr. Rui Botica Santos, Attorney-at-Law, Lisbon, Portugal

75. On 14 October 2019, the CAS Court Office informed the Parties of the appointment of Me Marianne Saroli, Attorney-at-Law, Montreal, Canada as ad hoc clerk.

76. On 1 November 2019, following an agreed-upon extension of time, FIFA filed its Answer in accordance with Article R55 of the Code.

77. On 12 November 2019, FIFA notified the CAS Court Office of its preference for a hearing to be held in this procedure.

78. On 13 November 2019, the Appellant also expressed his preference for a hearing to be held in this procedure.

79. On 25 November 2019, Prof. Dr. Martin Schimke disclosed by email the following information:

*"**TO WHOM IT MAY CONCERN***

I am impartial, and independent of each parties, and intend to remain so, however, I wish to call the parties` attention to the following fact:

I have just been informed that partners at Bird & Bird have been instructed by FIFA on a commercial matter, which involves advising FIFA on international broadcast and advertising regulation. It is purely a commercial matter for FIFA and does not relate to any of FIFA's sports regulatory or player-related functions whatsoever. In no way am I, or will I be, involved in this work, and assure that I have no access to the matter files whatsoever.

Best regards,

Martin Schimke"

80. On 26 November 2019, the CAS Court Office acknowledged receipt of Prof. Dr. Martin Schimke's email of 25 November 2019 and forwarded it to the Parties. The CAS Court Office reminded the Parties that, pursuant to Article R34 of the Code, an arbitrator may be challenged if the circumstances give rise to legitimate doubts over his independence. The CAS Court Office also reminded the Parties that a challenge shall be brought within seven (7) days after the ground for the challenge has become known. No objection being raised in relation to Prof. Dr. Schimke's independence, neither party has challenged his continued appointment as arbitrator within the prescribed deadline.

81. On 3 February 2020, the CAS Court Office, on behalf of the Panel, called the Parties and their witnesses to appear at a hearing scheduled for 27 March 2020 in Lausanne, Switzerland.

82. On 5 March 2020, FIFA and the Appellant respectively, signed and returned the order of procedure in this appeal.

83. On 11 March 2020, in view of the COVID-19 outbreak worldwide, the Parties were invited to provide their positions to the Panel with respect to the hearing scheduled on 27 March 2020.

84. On 13 March 2020, FIFA expressed that the most appropriate measure was to postpone the hearing to a later date. On the same date, the Appellant did not oppose to FIFA's position.

85. On 16 March 2020, in view of the Parties' positions, and on behalf of the Panel, the CAS Court Office confirmed that the hearing scheduled on 27 March 2020 was postponed until a later date.

86. On 16 October 2020, the CAS Court Office, on behalf of the Panel, called the Parties and their witnesses to appear at a hearing scheduled for 28 January 2021 at the CAS Court Office in Lausanne, Switzerland.

87. On 7 January 2021, the Parties were advised by the CAS Court Office that, in light of the ongoing COVID-19 situation and the related restrictions imposed by the Swiss government, the Panel had decided that the hearing scheduled on 28 January 2021 would not be held in person in Lausanne. The Panel instead intended to hold the hearing by video-conference. The Parties were further informed that the Panel would be prepared to postpone the hearing in case all parties unanimously requested a postponement until a later date and as such, were invited to liaise in this regard and inform the CAS Court Office, by 11 January 2021, of their positions in this regard.

88. On 11 January 2021, the Appellant requested that the hearing be postponed and be held in person when possible. On the same day, FIFA informed the CAS Court Office that it did not object to such a request.

89. On 12 January 2021, the Parties were advised by the CAS Court Office that, in view of their agreement, the Panel had decided to postpone the hearing scheduled for 28 January 2021.

90. On 21 February 2022, after several unsuccessful attempts to schedule an in-person hearing, the CAS Court Office confirmed that a hearing would be held on 20 May 2022 at the CAS Court Office in Lausanne, Switzerland.

91. On 20 May 2022, a hybrid hearing took place in person and by videoconference. The Panel was assisted throughout the hearing by Mr. Fabien Cagneux, Managing Counsel

at the CAS, and Ms. Marianne Saroli, *ad hoc* clerk. At the hearing, the Panel was joined by the following:

For Mr. Musa Hassan Bility:

Mr. Musa Hassan Bility via video-conference
Mr. Paolo Torchetti, Legal Counsel, via video-conference
Mr. Jallah Corvah, Treasurer of the LFA, via video-conference

For FIFA:

Mr. Miguel Liétard Fernández-Palacios, Director of Litigation, in person
Mr. Alexander Jacobs, Senior Legal Counsel, in person
Mr. Jonathan Brown, Partner, Forensics, in person

92. At the outset of the hearing, the Parties confirmed that they had no objection as to the constitution of the Panel. At the conclusion of the procedure, the Parties expressly stated and confirmed that their right to be heard had been fully respected.

V. SUBMISSIONS OF THE PARTIES

A. The Position of the Appellant

93. In his statement of appeal and his Appeal Brief, the Appellant requested the following relief:

"1. To accept the Appellant's appeal.

2. To issue an award allowing the appeal and vacating the Decision declaring that the Appellant did not violate the FCE:

a. that FIFA has not met it burden of proof; and/or

b. FIFA applied the incorrect FCE.

3. In the alternative, to reduce the sanction and fine to a proportionate amount as low as a reprimand and an elimination of the fine.

4. Independently of the type of the decision to be issued, the Appellant requests the Panel:

a. to fix a sum of 15,000 CHF to be paid by the Respondent to the Appellant to contribute to the payment of his legal fees and costs; and

b. order the Respondent to pay the entirety of the administration costs and fees.

5. The Appellant reserves the right to amend the request for relief in the filing of the appeal brief."

94. The Appellant's submissions, in essence, may be summarised as follows:

a) As to the temporal application of the FCE

- As a factual matter, the Appellant submits that he did not violate either the 2012 FCE or the 2018 FCE.

- But subsidiarily, the 2018 FCE was incorrectly applied by the Adjudicatory Chamber and as such, the Decision violates the principle of *nulla poena sine lege praevia.*

***b)* As to *principles of non-retroactivity and* lex mitior**

- The principles of non-retroactivity and *lex mitior* constitute fundamental legal principles. By applying the 2018 FCE to the case, the Decision violates these principles.

- Moreover, the Decision refers to article 3 of the 2018 FCE, which stands for the principle of *lex mitior*, without offering any analysis or attempting to apply these principles in any way.

- The Adjudicatory Chamber ruled that none of the provisions of the 2012 FCE would be more beneficial to the Appellant, claiming its application would lead to the same result, on the basis that the 2012 FCE created the same offences as the 2018 FCE and that the maximum sanctions in the 2018 FCE are equal or less to those in 2012 FCE.

- But the Appellant contends that the fundamental difference between the 2012 and 2018 versions of the FCE is the mandatory minimum sanction.

- With respect to the offence for misappropriation of funds, Article 21 par. 2 of the 2012 FCE and Article 28 of the 2018 FCE are different. While the 2018 FCE prohibits behavior that *"gives rise to the appearance of suspicion"*, the 2012 FCE does not. Furthermore, the mandatory minimum fine of *"CHF 100,000 as well as a ban on taking part in any football-related activity for a minimum of five years"* in the 2018 FCE is not listed in the 2012 FCE. So, the Adjudicatory Chamber violated Article 3 of the 2018 FCE by applying the 2018 FCE to this case and automatically imposing to the Appellant a minimum of five years prohibition from football activity.

- The same applies to the allegations against the Appellant relating to accepting or receiving benefits and conflicts of interest as each provision imposes a mandatory minimum sanction.

- For sake of completeness, the Appellant clarified at the hearing the following: he is not arguing that there a difference in substance of what the violations are. Rather, he is arguing that the only difference in substance between the 2012 FCE

and the 2018 FCE is the mandatory minimum sanction, in particular with respect to the offence for misappropriation of funds.

c) As to the predictability of the sanctions, contradictory awards and public order

- The principle of predictability is trite law where previous CAS panels have identified and applied it repeatedly (*CAS 2014/A/3765*). It is fundamental as the offences and sanctions must be clearly and previously defined by law and must preclude the adjustment of existing rules to enable an application of them to situations or conduct that the legislator did not intend to penalize (*CAS 2014/A/3765*).

- From this, the Appellant underlines that there is a difference between procedural and substantive law. As a result, the substantive portions of the FCE that was in force at the time of the factual allegations should be applied to the substance of the case. But the procedural matters should be governed by the FCE in force at the time of the procedural act in question (*CAS 2016/A/4501*).

- Not only the Decision explicitly relied on the wrong FCE but also refused to apply the 2012 FCE that applied to the years in question. As it was generally confirmed in CAS 2017/A/5006, a code of ethics cannot be retroactively applied to substantive matters. Under Article 190(2)(e) of the PILA, a contradictory award is a violation of public policy. Likewise, this inability to refer to the correct FCE deprives the Appellant of his right to be heard.

- This case is analogous to 4A_558/2011 Matuzalem v. FIFA ("*Matuzalem*") as it deprives the Appellant of the right to work while imposing a substantial fine of CHF 500,000.

- While the Appellant earns his living as the principal of Srimex, there are limits under Swiss law to the extent to which a person can waive his freedom and personal rights are protected.

d) As to the burden and standard of proof

- The burden of proving that there was a violation of the FCE rests on FIFA and this is in line with CAS jurisprudence (*CAS 2011/A/2426; CAS 2011/A/2625*).

- As to the standard of proof, this case shall be judged and decided on the "basis of personal convictions" pursuant to Article 97(3) of the FIFA Disciplinary Code ("FDC"). In that respect, the CAS has regularly established that such standard corresponds to the "comfortable satisfaction" standard, this being higher than a balance of probability but less than beyond a reasonable doubt.

- Against this background, the Appellant reminds that the panel in CAS 2011/A/2625 ruled that the comfortable satisfaction standard cannot be met

where there are several plausible interpretations of the facts, even if it is the most plausible interpretation, because of this doubt.

- With this, the Appellant submits that FIFA has not met its burden as it cannot prove to a level of comfortable satisfaction that he committed any of the violations. In fact, FIFA has no evidence, or its evidence is insufficient, to establish that the Appellant profited from or misappropriate any funds or that he received any gifts or benefits or that he had placed himself in a clear situation of conflict of interest.

- While some evidence presented by FIFA may show that the accounting methodologies at the LFA were substandard and that there were several individuals responsible for these procedures, the Appellant did not profit at all.

- Moreover, FIFA relied on the existence of incomplete financial records produced by the LFA Financial Department and inferred from it, that the Appellant misappropriated funds. Likewise, with respect to the Ebola Grant, FIFA disregarded evidence proving that some amounts had been spent to fight Ebola.

- As to the renovation of the ATS, FIFA concluded - despite Mr. Corvah's explanations that some documentation was faulty and incomplete - that there was a misappropriation of funds because the invoices did not match the payment dates.

- Moreover, and contrary to what FIFA sustains, there is no evidence suggesting that some paperwork had been forged or manipulated. It appears that FIFA's assertion is based on the opinion of auditors employed by Control Risks who (unless otherwise evidenced) do not necessarily have the qualifications and technical ability to determine whether documents and signatures are authentic.

e) As to Article 28 of the FCE (Misappropriation of funds)

Ebola Grant

- The Appellant submits that the Ebola Grant was used legally and in accordance with its intended purpose, i.e. for Ebola relief efforts in affected Liberian communities, as established by contemporaneous documentary evidence. But when the LFA received the Ebola Grant in February 2015, the circumstances of the spread of the Ebola virus had changed and the objectives of the MoU were no longer attainable.

- The situation was particularly dangerous in Liberia and the concern was therefore to limit exposure with medical workers as it appeared that any interactions with them would expose members and personnel of the LFA to high risks.

- Consequently, it was decided that approximately USD 44,500 would be distributed in cash to the members of the Executive Committee in order to pursue the objectives and to avoid exposure to the virus. In turn, the Ebola Grant of USD 50,000 in partnership with the LNRCS was not distributed as planned, and agreed per the MoU, for these particular reasons.

- The LFA Executive Committee was involved in such decisions and approved the distribution of the Ebola Grant, which was distributed in cash by the Finance department and Treasurer, not the Appellant.

- FIFA is thus wrong to assert that there was misappropriation of funds only because the MoU with the LNRCS was never implemented. The non-implementation of the MoU, which occurred for overriding good reasons, is not sufficient to assert a misappropriation of funds as defined in the FCE. In any event, the Appellant was not involved in the agreement between the LNRCS and the LFA.

- It is worth noting that the Appellant, aside from the Ebola Grant received from FIFA, personally donated his own money (roughly USD 55,000) to the Ebola cause.

Renovation of the ATS

- The FIFA funds were used legally and in accordance with their intended purpose, i.e. for the renovation of football infrastructure in Liberia. It is undisputed that the renovation works were carried out.

- FIFA is wrong to assert that there was a misappropriation of funds only because no tender process was carried out, in the absence of a legal tender obligation. And even if (*quod non*) there had been a tender obligation, the absence of a tender process is not tantamount to misappropriation of any funds by the Appellant.

- There is no evidence which personally links any such alleged misappropriation to the Appellant as he was not involved in the stadium renovation process and had nothing to do with invoices, receipts and other payment documentation.

- The Decision states that the paperwork provided by the LFA regarding the payments made in relation to the renovation of the stadium was deficient, but the Appellant submits that this is an issue of the LFA Finance Department and the Treasurer, who admitted that he did not act in accordance with his professional duties.

- The only amount at issue with respect to the alleged misappropriation of funds is the allegation that USD 164,000 was not paid to Musons, but the Appellant

submits that Musons provided a letter to the LFA confirming receipt of the amounts. Ultimately, Musons did not fulfil its obligations under the contract it signed with the LFA, and a new firm was hired to complete part of the work.

- The Appellant retrieved partial receipts that demonstrate payment for such work after Musons.

f) As to Article 20 of the FCE (Offering and accepting gifts or other benefits)

Loans made to the LFA

- The Appellant, in addition to acting as the LFA President at the time, ran a highly profitable business, Srimex, which provided loans to the LFA to pay for resources that it was not able to afford in the short run or paid amounts to third parties on behalf of the LFA. This is confirmed by other members of the LFA, such as Ansu Dolleh and Samuel Kahn.

- The Decision accepts that these were in fact *bona fide* interest free loans used for the benefit of the LFA as it mentioned that repayments of USD 595,720.30 were correctly made as FIFA only takes issue with an alleged excess of USD 78,725.30. Yet, a review of the relevant documentation reveals that there was an outstanding balance prior to the period under review that was accounted for in the amount of USD 369,343, this being confirmed in the overview documents and Excel spreadsheets within the Control Risks Report.

- The Appellant gained no financial advantage, and the loans were interest free.

- There was nothing nefarious concerning the loans as members of the LFA executive Committee knew of these circumstances and this was not hidden from FIFA in any way.

- FIFA has not even made an attempt to show that the loans extended to the LFA may have affected the performance of the Appellant's duties as President of the LFA, i.e. that a potential conflict of interest occurred.

- Lastly, the Appellant submits that no FIFA funds were diverted from their intended purpose for the (partial) repayment of these loans.

g) As to Article 19 of the FCE (Conflict of Interest)

Transactions with Srimex

- Everyone at the LFA, including the Treasurer and the members of the Executive Committee, was fully aware of the Appellant's position within Srimex. This fact was never hidden from the LFA Executive Committee or anyone else at the LFA.

- In each year from 2011 onwards, the loans from Srimex had been disclosed as a separate line item in the year-end Financial Statements of the LFA and these loans constituted the largest or one of the largest liabilities for the LFA in each of the years under review.

- There is no record of any LFA Executive Committee member or staff ever disputing the year-end Financial Statements of the LFA. All the loans were provided by Srimex without interest, with the consequence that neither Srimex nor the Appellant attained any personal benefit because of the relationship with the LFA.

Stone Haven

- The Liberian National Football Team occasionally had to stay at Stone Haven because other hotels would not accommodate them.

- The Appellant's affiliation with Stone Haven was of public knowledge and he has never denied that it was owned by his wife. Moreover, such cooperation had been approved by the LFA Executive Committee.

- In 2012, the LFA did not pay for the accommodations at Stone Haven, which was used at the expense of the Appellant's family to help the LFA. In fact, the amounts received were not any profit but only amounts paid for food and upkeep. for food and other perishables that were consumed.

- Neither the Appellant nor his family gained any financial or other advantage from accommodating the Liberian National Football Team at Stone Haven in 2012.

h) As to the proportionality of the sanction

- The Decision, which imposes a ban from taking part in any football-related activity for ten years, as well as a CHF 500,000 fine on the Appellant, is grossly disproportionate.

- In the present case, the Appellant did not commit any of the violations. Therefore, the Appellant should not be sanctioned at all. Subsidiarily, his sanction should be reduced, i.e.: the suspension for prohibition from football activities and the fine must be further reduced to either a warning or reprimand, or at the most a prohibition of one year, and that the fine to FIFA must be entirely cancelled.

- The Appellant underlines that the FIFA rules recognize that a sanction must be proportionate to the level of guilt such as Article 9 of the 2012 FCE. This sanction is a violation of the principle of proportionality particularly in comparison to the sanctions imposed on other persons who have been found to

have violated the various code of ethics (see CAS 2011/A/2426, TAS 2011 A/2433).

- By reference to TAS 2016 A/4474 and CAS 2016/A/4501, the Appellant submits that the comparable sanction of a 4- and 6-year ban for a behavior which is more serious than in the present case demonstrates the disproportionality of the ban against the Appellant.

- Here, the Appellant's career in football will be ended should a ten-year ban be confirmed. The Appellant submits that this is tantamount to a lifetime ban.

- Article 9 of the 2012 FCE gives the CAS the legal authority to fix the sanction as it sees fit and to consider mitigating factors.

- *In casu*, the Panel should take into account that the Appellant cooperated with FIFA, attended the audits and provided relevant information.

- Given that a fine of CHF 500,000 deprives the Appellant of the right to work, the Matuzalem argument cannot be ignored when considering whether the fine can be reduced.

- Sanctions imposed by a sport federation or association that seriously harm *"the economic development of individuals who practice that sport as a profession"* are allowed only if the interests of the federation justify the infringement of those individuals' personal rights.

B. The Position of FIFA

95. In its Answer, FIFA requested the following relief:

> *"(a) Rejecting the reliefs sought by the Appellant;*
> *(b) Confirming the Appealed Decision;*
> *(c) Ordering the Appellant to bear the full costs of these arbitration proceedings; and*
> *(d) Ordering the Appellant to make a contribution to FIFA's legal costs."*

96. FIFA's submissions, in essence, may be summarised as follows:

a) As to the violations of Articles 28, 20 and 19 of the FCE

- The Panel takes due note of the submissions set out by FIFA in its Answer. In doing so, the Panel observes that FIFA's position aligns with the reasoning and conclusions of the Decision and for this reason, the Panel need not reiterate a summary of FIFA's position. The Decision – and therefore FIFA's position - in this respect, speaks for itself.

b) As to the temporal application of the FCE

- The Adjudicatory Chamber correctly applied the 2018 FCE to the matter at hand.

- Article 3 of the 2018 FCE outlines the circumstances upon which the 2018 FCE may apply, that is:

  "1. This Code applies to conduct whenever it occurred, including before the enactment of this [2018] *Code.*
  2. An individual may be sanctioned for a breach of this [2018] *Code only if the relevant conduct contravened the Code applicable at the time it occurred.*
  3. The sanction may not exceed the maximum sanction available under the then-applicable Code."

- This means that the 2018 FCE may be applied before it was enacted and whenever the relevant conduct occurred although it must be shown that the relevant conduct also contravened the 2012 FCE at the time of the relevant events (i.e., between 2012 and 2017) for it to be sanctionable under the 2018 FCE. Also, Article 3 states that the 2018 FCE may be applied if the sanction imposed under the 2018 FCE does not exceed the maximum sanction available under the 2012 FCE. On that last point, FIFA highlights that Article 3 makes no mention of minimum sanction.

- In the matter at hand, the circumstances outlined in Article 3 are all present and therefore the 2018 FCE is applicable.

- Contrary to what the Appellant asserts, the scope of application of the misappropriation charge described under Article 28 of the 2018 FCE and Article 21 par. 2 of the 2012 FCE both refer to the "appearance of suspicion" with only minor variations in their respective wording, namely "funds of FIFA" and "FIFA assets"; "intermediaries or related parties" and "third parties". The punishable conduct of misappropriation contained in the 2012 FCE is thus kept in the 2018 FCE.

Article 21 par. 2 and 3 of the 2012 FCE	**Article 28 of the 2018 FCE**
1. (…)	*1. Persons bound by this Code shall not misappropriate funds of FIFA, the confederations, associations, leagues or clubs, whether directly or indirectly through, or in conjunction with, third parties.*
2. Persons bound by this Code are prohibited from misappropriating FIFA assets, regardless of whether carried out directly or through, or in conjunction with, intermediaries or related parties, as defined in this Code.	*2. Persons bound by this Code shall refrain from any activity or behaviour*

3. Persons bound by this Code must refrain from any activity or behaviour that might give rise to the appearance or suspicion of improper conduct as described in the foregoing sections, or any attempt thereof.	*that might give rise to the appearance or suspicion of a breach of this article.* *3. Violation of this article shall be sanctioned with an appropriate fine of at least CHF 100,000 as well as a ban on taking part in any football-related activity for a minimum of five years. The amount of misappropriated funds shall be included in the calculation of the fine. The sanction shall be increased accordingly where the person holds a high position in football, as well as in relation to the relevance and amount of the advantage received.*

- Moreover, the Appellant wrongly claims that, for each of the alleged violations, the 2018 FCE has a mandatory minimum sanction that is not part of the 2012 FCE. In fact, Article 9 par. 2 of the 2018 FCE enables the Adjudicatory Chamber to impose a lower sanction than the minimum or even impose alternative sanctions when mitigating factors exist and if deem appropriate considering all the circumstances of a case.

- The Adjudicatory Chamber did not violate Article 3 by applying the 2018 FCE and imposing a minimum five-year prohibition from football activity. As stated earlier, Article 3 says that *"the sanction may not exceed the maximum sanction available under"* the 2012 FCE. And there was no maximum limit available for the suspension under Article 6 of the 2012 FCE.

c) As to the burden and standard of proof

- FIFA has amply met his burden of proof that, in accordance with Article 49 of the FCE, lies with the Ethics Committee. The Appellant, on the other hand, has not substantiated any of his arguments.

- Also, pursuant to the *"Beweisnotstand"* principle acknowledged by Swiss law, the Appellant has a certain duty to participate in the administration of evidence. In particular, *"the more detailed are the factual allegations* (made by FIFA), *the more substantiated must be their rebuttal (…) The onus of proof remains on FIFA, but the evidential burden of contesting the facts submitted by FIFA and adducing evidence shifts"* (*CAS 2014/A/3537*).

- For cases involving violations of the FCE, consideration should be given to the fight against corruption in sport as well as to the nature and restricted powers of investigation authorities within sport governing bodies in contrast to national authorities (*CAS 2009/A/1920*). Therefore, direct evidence in relation to

misappropriation activities will be the exception and indirect evidence will be the standard.

- Also, FIFA disagrees with the Appellant's approach regarding an analogous application of CAS 2011/A/2625 to argue that *"where there are several plausible interpretations of the facts the comfortable satisfaction standard cannot be met"*.

- In the present case, FIFA adduced direct evidence of the facts at the basis of the violations of the FCE. The Appellant argued, without success, that such documents were forged, failing to provide any evidence that could shed doubts on their accuracy.

- Moreover, CAS panels have confirmed that the *"personal conviction"* standard does not require hearing bodies to *"establish the objective truth"*. And CAS has already established that according to Swiss laws, sporting measures imposed by Swiss associations are subject to Swiss civil law and must be clearly distinguished from criminal penalties (*CAS 2010/A/2266*; *CAS 2013/A/3324*).

- Hence, the Appellant's arguments in relation to the enhanced applicable standard of proof shall be disregarded. This Panel shall decide whether it is comfortably satisfied that the Appellant is guilty of misappropriation of funds, conflicts of interests and offering and accepting of gifts or other benefits (Articles 28, 19 and 20, respectively, and the 2018 FCE 2018) without the necessity to *"establish the objective truth"*.

d) As to the proportionality of the sanction

- Given that misappropriation is one of the most serious offences under the FCE, it follows that the Adjudicatory Chamber can impose bans from taking part in any football-related activity from five years up to a lifetime ban considering the principle of proportionality and all circumstances of the case, while bearing in mind that the sanction must serve a repressive, preventive and restorative purpose.

- While this Panel has power to review a case de novo in accordance with Article R57 of the Code, it can only amend a disciplinary decision of a FIFA judicial body in cases in which it finds that the relevant FIFA judicial body has exceeded the margin of discretion accorded to it by the principle of association autonomy.

- FIFA must apply a zero-tolerance policy against any conduct, from any football stakeholder worldwide, directly or indirectly, to misappropriate funds. From this, FIFA takes a strong stance against any potential unethical act, especially of misappropriation, which is very damaging to the good governance, integrity and viability of football.

- FIFA wishes to underline that the Appellant has actively sought to hamper the elucidation of the facts and the real turn of events by giving false and contradicting testimonies and fabricating documents that are far from revealing the truth.

- Although it was not considered by the Adjudicatory Chamber, it must be recalled that the Appellant has already been *"banned for six months by CAF for an infringement of confidentiality obligations"* which is equivalent to a breach of Article 16 of the 2018 FCE and that Srimex has been *"found guilty of evading taxes"*. All these facts demonstrate that the Appellant is a recidivist delinquent.

- The Appellant claims to have fully cooperated with FIFA, insinuating that this should be taken in consideration when evaluating the sanction imposed. But the standard rule is that officials should not breach FIFA's regulations and shall fully cooperate with FIFA when requested (Article 18 of the 2018 FCE), and therefore this cannot be used as a mitigating circumstance.

- With respect to the Appellant's attempt to seek a reduction of the fine imposed, FIFA underlines that making a comparison of his situation and the one faced by the player Matuzalem is quite farfetched and cannot be relied upon.

VI. JURISDICTION

97. The jurisdiction of the CAS derives from Article R47 of the Code in connection with Article 56 para. 1 of the 2021 FIFA Statutes.

98. Article R47 of the Code provides as follows:

"An appeal against the decision of a federation, association or sports-related body may be filed with the 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."

99. Article 56 para. 1 of the 2021 FIFA Statutes reads as follows:

"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, football agents and match agents."

100. The jurisdiction of the CAS is not contested by the Parties. Moreover, all Parties confirmed the CAS jurisdiction by the execution of the Order of Procedure, and no party objected to the proceedings or the jurisdiction of the CAS.

101. It follows, therefore, that CAS has jurisdiction in this appeal.

VII. ADMISSIBILITY

102. Article R49 of the Code provides as follows:

"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. […]"

103. Article 57 para. 1 of the 2021 FIFA Statutes reads as follows:

"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question."

104. The Decision was rendered on 12 February 2019 and its grounds were notified to the Parties on 24 July 2019. The Appellant's Statement of Appeal was filed on 1 August 2019, i.e., within the expiry of 21-day deadline to file with the CAS. No objection was filed to the contrary. The Statement of Appeal further complied with the requirements of Article R48 of the Code.

105. It, therefore, follows that this Appeal is admissible.

VIII. APPLICABLE LAW

106. Article R58 of the Code provides as follows:

"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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.

107. Article 56 para. 2 of the 2021 FIFA Statutes provides the following:

"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."

108. Considering those provisions, the Panel must decide the present dispute in accordance with, primarily, the FIFA Regulations, in particular, the FCE and, additionally, Swiss law.

109. But given that the Appellant argues that the Adjudicatory Chamber applied the incorrect FCE to his case, the Panel must determine which version of the FCE applies to this proceeding which relates to events that occur between 2012 and 2017.

110. In principle, the 2012 FCE should apply to events that took place between 2012 and 2017. Yet, the Panel recalls the contents of Article 3 of the 2018 FCE which provides that: *"This Code applies to conduct whenever it occurred, including before the enactment of this Code. An individual may be sanctioned for a breach of this Code only if the relevant conduct contravened the Code applicable at the time it occurred. The sanction may not exceed the maximum sanction available under the then-applicable Code."*

111. The Panel also recalls this particular excerpt from CAS 2017/A/5003:

> *"139. According to well-established CAS jurisprudence, intertemporal issues in the context of disciplinary matters are governed by the general principle tempus regit actum or principle of non-retroactivity, which holds that (i) any determination of what constitutes a sanctionable rule violation and what sanctions can be imposed in consequence must be determined in accordance with the law in effect at the time of the allegedly sanctionable conduct, (ii) new rules and regulations do not apply retrospectively to facts occurring before their entry into force (CAS 2008/A/1545, para. 10; CAS 2000/A/274, para. 208; CAS 2004/A/635, para. 44; CAS 2005/C/841, para. 51), (iii) any procedural rule – on the contrary – applies immediately upon its entry into force and governs any subsequent procedural act, even in proceedings related to facts occurred beforehand, and (iv) any new substantive rule in force at the time of the proceedings does not apply to conduct occurred prior to the entry into force of that rule unless the principle of lex mitior makes it necessary.*
>
> *140. Article 3 FCE (2012 edition) departs from the traditional lex mitior principle by reversing it so that the new substantive rule applies automatically unless the old rule is more favourable to the accused. The CAS has previously held that even if the starting point of Article 3 FCE (2012 edition) is different, the approach is equivalent to the traditional principle of lex mitior (CAS 2016/A/4474, at para. 147)."*

112. In view of the foregoing, the Appellant's allegedly sanctionable conduct arose before the entry into force of the 2018 FCE. The Adjudicatory Chamber, however, found that the Appellant breached Articles 28, 20 and 19 of the 2018 FCE and made the following observations:

> *"6. The relevant events took place between 2012 and 2017, at a time before the 2018 FCE came into force. With regard to the applicability of the FCE in time, art. 3 of the 2018 FCE stipulates that the 2018 FCE shall apply to conduct whenever it occurred. Accordingly, the material rules of the 2018 FCE shall apply, provided that the relevant conduct was sanctionable at the time (with a maximum*

sanction that was equal or more) and unless the 2012 or 2009 editions of the FCE would be more beneficial to the party (lex mitior).

7. In this context, following the relevant case law and jurisprudence, the adjudicatory chamber notes that the spirit and intent of the 2009 and 2012 editions of the FCE (which were applicable in the relevant period 2012 — 2017) is duly reflected in the below articles of the 2018 FCE, which contain equivalent provisions:

— Art. 20 of the 2018 FCE has a corresponding provision in the 2012 FCE (art. 20) and in the 2009 FCE (art. 10);
— Art. 19 of the 2018 FCE has a corresponding provision in the 2012 FCE (art. 19) and in the 2009 FCE (art. 5).

8. Furthermore, art. 28 of the 2018 FCE has a corresponding provision in the 2012 FCE (art. 21 par. 2). While the 2009 FCE does not contain a corresponding provision, this is irrelevant, since all the events that are connected to the respective infraction (misappropriation of funds) date from 2014 and later, after the entry into force of the 2012 FCE (25 July 2012).

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

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

113. In accordance with Article 3 of the 2018 FCE, *"an individual may be sanctioned for a breach of this Code only if the relevant conduct contravened the Code applicable at the time it occurred"*. It follows that the potential breach needs to be established in relation to the FCE applicable at the time of the conduct, as well as at the time of the current code. In this respect, the Panel remarks that "misappropriation", "conflict of interests" and "offering and accepting gifts and other benefits" were all punishable conducts in the 2012 FCE and continued to be punishable under the 2018 FCE.

114. While some differences between the 2012 FCE and 2018 FCE do exist, they are negligible and do not undermine the substance of the relevant provisions in both the 2012 FCE and 2018 FCE, which – on their face – remained the same in each version.

115. In short, the Panel considers that even if (*quod non*) the 2012 FCE should have been applied here, there is no crucial differences between the relevant provisions of the 2012 FCE and those of the 2018 FCE. Therefore, it is not relevant which version of the FCE is applied to this case. Accordingly, the application, as contended by the Appellant, of the "incorrect" FCE does not constitute a violation of his right to be heard as the

application of the "correct" FCE would have led to the same outcome (*CAS 2019/A/6489*).

116. For the Panel, this debate regarding the applicable FCE has no practical consequences to the sanction imposed (*CAS 2018/A/6038*).

117. The Panel finds that the Appellant is also not prejudiced by the application of the 2018 FCE as opposed to the application of the 2012 FCE. And besides, the *de novo* proceedings before the CAS cure any purported procedural violations that occurred.

118. For these reasons, the Panel accepts to apply the 2018 FCE to the present matter.

IX. MERITS

119. On one hand, the Appellant requests the Panel to set aside the Decision, which sanctioned the Appellant with a ten-year ban from taking part in any football-related activity (administrative, sports or any other) at national and international level and a fine of CHF 500,000 for violations of Articles 28, 20 and 19 of the 2018 FCE. On the other hand, FIFA seeks full confirmation of the Decision.

120. On the account of the Parties' requests and submissions, the Panel must determine whether the Appellant violated Articles 28, 20 and 19 of the 2018 FCE, and, if so, the appropriate sanction. But prior to doing so, the Panel must address some preliminary issues, including the alleged procedural violations in the FIFA proceedings, which party bears the burden of proof, and the standard of proof.

A. Preliminary issues

a) Were the Appellant's procedural rights violated in the proceedings before FIFA?

121. In his submissions, the Appellant stated that his ability to defend himself and his right to be heard were disregarded during the FIFA proceedings and he requested that the Panel takes judicial notice of these procedural irregularities which have adversely affected him.

122. This said, the Panel notes that Article R57 of the Code states:

> *"[t]he Panel has 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 […]"*

123. It follows that, under Article R57 of the Code, the Panel considers both fact and law *de novo* on appeal. By means of this, the *de novo* principle allows the Panel to decide the appeal on the evidence before it, whether or not the same evidence was available to the FIFA Ethics Committee, subject only to its rejection of any fresh evidence under the discretion vested in it under paragraph 3 of Article R57 of the Code.

124. Consequently, any procedural defects which (may or may not have) occurred in the internal proceedings of a federation are cured by the present proceedings before the CAS (see *CAS 96/156* and *CAS 2001/A/345*) and any argument in this regard is dismissed as moot.

b) What is the applicable burden and standard of proof?

125. With respect to the burden of proof, the Panel notes that, under Article 49 of the 2018 FCE, FIFA bears the burden of establishing the Appellant's alleged violations of the 2018 FCE.

126. The standard of proof, as set out in Article 48 of the 2018 FCE, is of comfortable satisfaction, after evaluation of all the evidence, bearing in mind the seriousness of the alleged offence. This standard, which has been confirmed in other CAS cases (*CAS 2017/A/5086; CAS 2016/A/4501*), is more onerous than the civil standard of balance of probabilities, but it is not as high as the criminal standard of proof beyond reasonable doubt (*CAS 2017/A/5006*, para 180).

127. Notwithstanding, the Panel is also mindful that, under Swiss law, each party bears the burden of proving any fact or allegation on which it relies. Whether the burden of proof has been discharged will be decided only when all the evidence has been presented and if the Panel is comfortably satisfied that a fact has been established (*CAS 2019/A/6344*).

128. The Panel must therefore decide whether FIFA has discharged its burden of proving that the Appellant violated Articles 28, 20 and 19 of the 2018 FCE. That said, the Appellant has an evident interest to adduce sufficient evidence to show he did not violate Articles 28, 20 and 19 of the 2018 FCE (*CAS 2019/A/6349*).

c) Evaluation of the evidence

129. With respect to the evaluation of the evidence, the Panel refers to *CAS 2019/A/6439,* which noted the following:

> *"The "evaluation of the evidence" concept, which refers to the judicial process of weighing and assessing the evidence on the record (appréciation des preuves). The Panels reminds that under Swiss arbitration law, the deciding body is free in its evaluation of the evidence (libre appréciation des preuves). This principle is expressly recalled by Article 9(1) of the IBA Rules of Evidence, according to which "the Arbitral Tribunal shall determine the (...) relevance, materially and weigh of evidence" (see Berger/Kellerhals, International Arbitration in Switzerland, 2nd Ed., London, 2010, para 1328)."*

d) Witnesses called upon by FIFA in its Answer did not appear at the hearing

130. In present case, FIFA relies extensively on evidence obtained in the framework of a forensic audit of the LFA carried out by Control Risks and by the Investigatory Chamber.

131. FIFA also relies on statements and transcripts of individuals, including those interviewed by Control Risks, who were not available for questioning and cross-examination at the hearing of 20 May 2022.

132. In this respect, the Appellant invited the Panel to draw an adverse inference against FIFA, claiming to have been deprived of his right to be heard, to cross-examine the witnesses and to test the veracity of evidence during a *de novo* hearing. The Appellant also stressed that these individuals were key witnesses under FIFA's remit whose roles were central to the issues in dispute.

133. In response, FIFA argued that some of these individuals had originally confirmed their attendance for the initial hearing scheduled on 27 March 2020, which was postponed for more than two years due to the Covid-19 outbreak. Despite its best effort, FIFA claimed that those individuals either could not be located, were not available or were simply unresponsive. Nonetheless, FIFA submitted that no adverse inference could be drawn from these individuals who are not "FIFA witnesses" *per se* whereas the transcripts of their interviews gathered in the framework of the forensic audit are documentary evidence, not witness evidence.

134. FIFA then reminded the Panel that recordings and transcripts of those individuals' interviews were available, insisting that the documentary evidence in file was more than enough to establish the allegations against the Appellant. Furthermore, FIFA stated that the Appellant had full access to the transcripts and ample opportunity to comment on them.

135. The Panel accepts that the transcripts are part of the Control Risks Report, which was commissioned by FIFA. Be that as it may, the Panel notes that the Appellant had the right to take part and participate in the proceedings before the FIFA Judicial Bodies and now before the CAS, to adduce evidence and to express his views on all the facts and allegations of the case.

136. And even if (*quod non*) the Panel were to consider the transcripts as witnesses' statements, the fact that they cannot be verified under cross-examination does not mean that they should be disregarded. Ultimately, what really matters is how the Panel will assess such evidence.

137. As noted by the panel in CAS 2011/A/2625, *"the statements of persons who were not available for examination should not be rejected in their entirety, but that this circumstance should be taken into account when weighing the evidentiary value of such statements."*

138. Furthermore, the Panel recalls that Article R57(4) of the Code states as follows: *"If any of the parties, or its witnesses, has been duly summoned and fails to appear at the hearing, the Panel may nevertheless proceed with the hearing and deliver an award"*.

139. In view of the foregoing, the Panel is satisfied that the transcripts should be considered as documentary evidence on file and shall be assessed by the Panel as such. Of course, the Panel appreciates that it would have been desirable for the individuals cited in the Control Risks Report to have been available for questioning and cross-examination. Though, the Panel considers it was no fault of either Party that these individuals could not testify.

140. The Panel acknowledges that the Appellant has been provided with the opportunity to submit any submissions or contradicting evidence he wished to. The Appellant even referred to and commented on some passages of the interview transcripts in his submissions. Accordingly, the Panel does not consider there has been any violation of his right to be heard.

141. With the above principles in mind, the Panel undertakes the below analysis.

B. Main Issues

a) Is the Appellant a person bound by the FCE?

142. The Panel underlines that Article 2 of the 2018 FCE defines the persons covered by the FCE as follows:

> *"2 Persons covered*
> *1.*
> *This Code shall apply to all officials and players as well as match agents and intermediaries, under the conditions of art. 1 of the present Code.*
> *2.*
> *The Ethics Committee is entitled to investigate and judge the conduct of persons who were bound by this or another applicable Code at the time the relevant conduct occurred, regardless of whether the person remains bound by the Code at the time proceedings commence or any time thereafter."*

143. While *"Official"* was not defined in the 2018 FCE, it was defined in 2018 FIFA Statutes as follows:

> *"13 Official: any board member (including the members of the Council), committee member, referee and assistant referee, coach, trainer and any other person responsible for technical, medical and administrative matters in FIFA, a confederation, a member association, a league or a club as well as all other persons obliged to comply with the FIFA Statutes (except players and intermediaries)."*

144. Therefore, the Panel considers that the Appellant was bound by the FCE at the time of the alleged conduct, by virtue of his positions as an LFA and FIFA football official.

b) Did the Appellant violate Article 28 of the FCE (Misappropriation of funds)?

145. According to Article 28 of the 2018 FCE, persons bound by the FCE are precluded from misappropriating funds of FIFA, the confederations, associations, leagues or clubs, whether directly or indirectly through, or in conjunction with, third parties. Additionally, persons bound by the FCE shall also refrain from any activity or behaviour that might give rise to the appearance or suspicion of a breach of article 28 of the 2018 FCE.

146. Article 28 of the 2018 FCE states as follows:

> *"28 Misappropriation of funds*
> *1.*
> *Persons bound by this Code shall not misappropriate funds of FIFA, the confederations, associations, leagues or clubs, whether directly or indirectly through, or in conjunction with, third parties.*
>
> *2.*
> *Persons bound by this Code shall refrain from any activity or behaviour that might give rise to the appearance or suspicion of a breach of this article.*
>
> *3.*
> *Violation of this article shall be sanctioned with an appropriate fine of at least CHF 100,000 as well as a ban on taking part in any football-related activity for a minimum of five years. The amount of misappropriated funds shall be included in the calculation of the fine. The sanction shall be increased accordingly where the person holds a high position in football, as well as in relation to the relevance and amount of the advantage received."*

147. FIFA asserts several violations in this respect, as illustrated by various actions of the Appellant, namely by the Ebola Grant and the renovations of the ATS. Each will be separately addressed below.

i. The FIFA Ebola Grant funds

148. The FIFA Ebola Grant is the first example of an alleged misappropriation of funds (and more specifically of FIFA funds) allegedly committed by the Appellant.

149. FIFA submits that the budget and funds approved by FIFA for the purposes of the FIFA Ebola Grant was not respected by the LFA and that the distribution of those funds was made in violation of the respective regulations, which stipulated that *"a member association or confederation that has received FAP funds shall use them in compliance with the detailed budget per category which is listed in FAP form […] and has been approved by the FIFA general secretariat"*. In particular, the member association is responsible for ensuring that the funds received from FIFA are used in accordance with the concrete terms of the related application approved by FIFA.

150. On the other hand, the Appellant argues that the Ebola Grant was used legally in full compliance with its intended purpose, that he never received any FIFA funds at any point in time and he did not personally enrich himself.

151. As a threshold matter, the Panel takes notes of the following undisputed facts:

- The FIFA Finance Committee approved financial support to contribute to fight the outbreak of Ebola in Liberia in the amount of USD 50,000.

- These funds, which were paid in the context of the FIFA FAP, had to be used in partnership with a reputed organization at local level, such as UNICEF.

- The LFA accepted the financial support and the terms of the related application approved by FIFA and proposed to work in collaboration with the LNRCS.

- On 10 February 2015, the MoU was signed between the LFA and LNRCS, which explicitly stipulated that FIFA requested the partnership between LFA and LNRCS for the implementation of the financial assistance in the fight against Ebola:

  "WHEREAS, FIFA, the mother body of The LFA request a Partnership with a Non Governmental Organization to implement its assistance for the fight against the deadly Ebola disease; And WHEREAS, the LNRCS also being a full member of the international Committee of the Red Cross / Red Crescent Society was selected by The LFA as partner to implement the goals of FIFA [...] NOW, THEREFORE, for and in consideration of the covenants and stipulations, the PARTIES hereto have agreed, affirmed and expressed their understanding and consent to the terms and conditions contained in this MOU as follows: [. . .] That the grant of United States dollars fifty thousands, (USD 50,000.00) given by FIFA shall be used to implement the desire goals of FIFA to help eradicate Ebola from liberia through this Partnership MOU".

- On 20 February 2015, FIFA transferred USD 50,000 to the LFA as the FIFA Ebola Grant to be used in accordance with the MoU.

- On 28 February 2015, USD 44,500 were withdrawn in cash from the LFA's bank account.

152. What is at issue, however, is whether the Ebola Grant funds was used or not for Ebola relief efforts in affected Liberian communities.

153. At the outset, the Panel understands that FIFA allocated USD 50,000 to the LFA in support of an initiative that was arranged allegedly with the LNRCS to provide Ebola relief to communities in Liberia. At the hearing, the Appellant testified that FIFA had told that the LFA could deal with whoever they wanted. While this seems undisputed by FIFA, those FIFA funds were to be transferred to the LFA only under the premise that the LFA would collaborate with the LNRCS and used the funds in accordance with the MoU.

154. The Panel appreciates that FIFA transferred the Ebola Grant funds to the LFA ten days following the MoU was signed but that the implementation of the MoU was aborted shortly after. The Panel further appreciates that the Appellant himself confirmed in his submissions that the FIFA Ebola Grant was not used in accordance with the MoU. Instead, the LFA, without ever informing FIFA, decided to use the funds differently.

155. The Appellant defended that the decision to abort the implementation of the MoU and not to disburse the FIFA Ebola Grant funds in partnership with the LNRCS arose from the fact that the circumstances of the spread of the Ebola virus had changed and that the objectives of the MoU were no longer attainable.

156. It is not clear for the Panel why or how the situation had changed so drastically during these ten days that would suddenly impede the implementation of the MoU, especially when the Appellant does not rely on any document in support of this allegation. As pointed out by FIFA, the only documents provided by the Appellant in relation to the Ebola crisis consist of mere informative articles that talk about the general situation in West Africa, mentioning that the Ebola crisis went on in Liberia from 2014 to 2016 or two articles that were issued in August and December 2014, i.e. several months before the events at stake.

157. The Panel does not question the Appellant's fear of the Ebola virus or the dangerousness of the situation. What the Panel questions is the number of withdrawals that took place in the days after the USD 50,000 was paid into the LFA account by FIFA.

158. At the hearing, the Appellant said that the Ebola virus was getting worse every day during that time. Though, the Panel remarks that the bank statements in file show that the LFA continued to make purchases during that time (football material, jerseys, etc.) which, insofar as the FIFA Ebola Grant funds are concerned, did not appear to serve the fight against Ebola, but rather serve activities that could allegedly not even be carried out at that time because it was *"getting worse and worse"*. For the Panel, this is an example of how the LFA could still carry out its financial activities during that time yet was not able to properly use the FIFA Ebola Grant funds for their intended purpose.

159. All told, the Panel is not willing to accept those arguments to explain the abortion of the implementation of the MoU.

160. The Appellant further argued that the LFA Executive Committee (or the Emergency Committee as stated at the hearing) was involved in this decision to abort the implementation of the MoU. Yet, the Panel notes that several members of the Executive Committee stated that meetings were not taking place at that time and that they had no knowledge of how the funds were spent. There are also no trails of any minutes of the LFA Executive Committee meetings for the year 2015 in support of the Appellant's argument.

161. While it is undisputed that the MoU was not implemented, and that FIFA transferred USD 50,000 to the LFA, two questions remain: what happened to the USD 50,000 and was the FIFA Ebola Grant ever distributed?

162. The Appellant is adamant that these funds were used for their intended purpose and provided various explanations in the course of the proceedings before FIFA and the CAS.

163. First, it appears that the Appellant mentioned on 11 March 2017 during a radio interview that a portion of the FIFA Ebola Grant was distributed to members of the LFA Executive Committee, stating that he had given ten members USD 1,500 each for them to carry out Ebola awareness work communities and kept the remaining amount of USD 35,000 for himself.

164. Then, during the interview carried out by Control Risks on 15 December 2017, the Appellant stated having authorised the disbursement of USD 44,500 in cash (plus the payment of USD 500 as bank charges) and directed that the remaining USD 5,000 be held as a contingency, for use in connection with the Ebola relief efforts. He further stated that the amount distributed to the LFA Executive Committee was separate from the FIFA Ebola Grant funds and constituted a personal donation he made.

165. Next, during the interview of 26 September 2018 conducted by the Investigatory Chamber, the Appellant maintained that a portion of the Ebola Grant was distributed to ten members of the LFA Executive Committee, but that the remaining amount was instead *"given to the secretariat to do various things that they have"*.

166. As it concerns the distribution among the members of the LFA Executive Committee, there was seemingly a decision of the LFA Executive Committee dated 8 January 2018 whereby the Appellant apparently *"suggested"* that all members of the Executive Committee *"replenish"* to FIFA the amount of USD 1,500 previously received in relation to the Ebola awareness campaign, informing that the respective project was not implemented by the LFA Secretariat, as instructed by the Executive Committee. The Appellant, however, did not put forward any evidence or plausible reason to explain the decision dated 8 January 2018.

167. Despite the above, the Appellant testified at the hearing that he had nothing to do with how the FIFA Ebola Grant was used and spent.

168. From the evidence on file, the Panel notes that an amount of USD 44,500 was indeed withdrawn in cash eight days following receipt by the LFA of the FIFA Ebola Grant funds. That said, the Panel takes note of Mr. Corvah's admission that such documentation presented some issues, which would question its authenticity. With this, the Panel remarks that a disbursement of the USD 44,500 was listed in the PKF audit report for the 2015 financial year while the Control Risks Report says that *"no detailed breakdown of the expenditure was provided by the Auditors and no indication as to the recipient."*

169. More importantly, the Panel notes the absence of any proof that the amounts allegedly given to the LFA Executive Committee members were actually used for the purpose that those funds were given for by FIFA. Likewise, he did not bring forward any member of the LFA Executive Committee to explain how they used the USD 1,500. Beyond the Appellant's word, the Panel has not been provided with the necessary information and supporting documentary evidence related to the use of the allocated FIFA funds by the LFA and the Appellant.

170. But for the Panel, the pivot here is that FIFA was never notified in advance of such change of plan.

171. In his defence, the Appellant asserts having directed the late Secretary General to inform FIFA that the MoU would no longer be implemented, and that the LFA would rather disburse the FIFA Ebola Grant funds directly. The Panel appreciates that such assertion cannot be confirmed by the Secretary General, who is now deceased. Nonetheless, the Appellant failed to provide any evidence to attest that the LFA requested the approval of FIFA to distribute the FIFA Ebola Grant funds directly to the communities without the cooperation of the LNRCS and in complete disregard of the MoU. There is not even evidence showing that FIFA was at least informed of it or made aware of it verbally.

172. While it is unclear what the LFA and the Appellant ended up using those funds for, the documentary evidence reveals that most definitely it was not to fight for Ebola and that without FIFA's authorisation, the LFA and the Appellant had no discretion to do so. Let alone the fact that the LNRCS was not even involved in the decision-making for such disbursement.

173. On these facts, the Panel considers that any payment made from the FIFA Ebola Grant funds other than to LNRCS was not authorized by FIFA.

174. The Panel finds that the only appropriate use of the FIFA Ebola Grant was according to the approved application, i.e., under the agreement with the LNRCS. Any other use, especially without FIFA's authorisation, is incorrect and constitute a mismanagement of the funds under the FCE.

175. The Panel is also comfortably satisfied that the Appellant was part of the financial decision-making within the LFA and was directly involved in the approval of financial decisions and payments.

ii. Renovation of the ATS

176. The renovation of the ATS is another instance of alleged misappropriation of funds committed by the Appellant.

177. On one hand, FIFA asserts that the FIFA funds requested by the Appellant in 2015 for the "Maintenance of ATS Stadium" amounting to USD 250,000 were not only disbursed to a company selected in violation of the applicable process which required a tender to be conducted, but also were not used according to their intended purpose.

178. The Appellant, on the other hand, claims that the FIFA funds were used in accordance with their intended purpose, that a tender process was undertaken and that there is no evidence personally linking any such alleged misappropriation to him.

179. The Panel will analyse these assertions below.

- **Were the FIFA funds used according to their intended purpose?**

180. At the outset, the Panel notes that the request for FIFA funds was submitted by the Appellant on behalf of the LFA and that FIFA funds totalling USD 750,000 were granted to the LFA in 2015, of which an amount of USD 225,000 was allocated for "Maintenance of ATS Stadium". In this respect, it appears that the LFA entered into a contract with the company Musons on 5 September 2014 for a total amount of USD 804,370 for stadium renovations. The Panel appreciates that this contract was signed by the Appellant.

181. Then, the Panel notes that the evidence on file shows an amount of USD 354,000 recorded as being spent on stadium renovations in 2015 from FIFA funds and reported to FIFA in the PKF audit report for the 2015 financial year. More specifically, it shows various payments made in 2015 by the LFA to Musons totalling USD 354,000 for stadium renovations, namely for the ATS and Kakata stadiums. Out of that total, USD 331,000 related to the renovation of the ATS. Thereby, the Panel acknowledges that the LFA allegedly spent USD 331,000 from the FIFA funds for the renovation of the ATS despite only USD 225,000 being allocated for "Maintenance of ATS Stadium".

182. The Panel was not provided with any plausible explanation as to why an additional amount of USD 106,000 was apparently spent from the FIFA funds (and paid to Musons) in 2015 by the LFA for the renovation of the ATS. The Appellant rather asserts that he was not involved in the handling of the payments or the paperwork reflecting the payments as these responsibilities were those of the LFA Finance Department, bookkeepers, and cashiers. Yet, the Panel appreciates that the Appellant signed the request for the FIFA funds in the amount of USD 750,000 of which USD 225,000 were earmarked for the "Maintenance of the ATS Stadium", as well as the contract with Musons. The Panel therefore does not believe that the Appellant had no form of involvement in the handling of the payments or the paperwork reflecting the payments.

183. Next, the Panel notes that the sum of USD 331,000, according to the documentary evidence, was apparently paid to Musons in eleven instalments through payment vouchers issued by the LFA between February and August 2015. In particular, the Panel remarks that the first recorded payment from the LFA to Musons is dated 23 February 2015 and the last one is dated 21 August 2015.

184. Further, the Panel notes that – although the payments recorded as being made to Musons as of 21 August 2015 totalled USD 331,000 – Musons confirmed, by letter dated 16 October 2015 to Titus Zonah at the LFA, receipt of only USD 190,000 all the while requesting a payment of USD 14,747.55 namely for materials left on site. The Panel

finds suspicious that this letter is dated nearly two months after the final recorded payment to Musons.

185. Against this background, FIFA submits that the supporting documentation provided by the LFA demonstrates that the amount of USD 331,000 was not paid to Musons in its entirety. The Panel thus appreciates that an amount of USD 141,000, which had been recorded as being paid to Musons, has seemingly not been paid to Musons by the LFA. This is not disputed by the Appellant.

186. With this, FIFA claims that the amount of USD 141,000, based on the documentary evidence which was analysed during the forensic audit conducted by Control Risks, has been deviated from its initial destination in an inadequate and unethical manner.

187. In defence, the Appellant explains that the contract with Musons ended up being cancelled, and the remainder of the renovation work for the ATS was therefore carried out by a new company. Herewith, the Panel acknowledges that Musons, in its letter dated 16 October 2015, indicated that it had *"discovered that the project is now being implemented by another contractor"*.

188. Along these lines, the Appellant contends that the unaccounted USD 141,000 corresponds to the costs which needed to be paid to the new company and clarifies that the amount paid to the new company (i.e., USD 162,188) does not align with the unpaid amount to Musons (i.e., USD 141,000) simply because the new company incurred higher expenses. Though, the Appellant did not provide the Panel with any reliable evidence to support his allegation.

189. Besides, the Appellant's explanation does not even account for why the unaccounted amount only involves payments recorded in favour of Musons from February to August 2015, not in favor of the new company for the period during which it took over the renovation works of the ATS. For these reasons, the Panel disregards the Appellant's argument that the amount of USD 141,000 was unaccounted because it had to be paid to the new company.

190. It appears obvious for the Panel that the USD 141,000 was not paid to Musons and the information recorded in the PKF audit report does not match the request for the FIFA funds. Moreover, the Panel was not provided with any credible explanations as to the true recipient of the USD 141,000.

191. The Panel also appreciates, as stated in the Control Risks Report and Final Report, that the payment vouchers in favor of Musons showed indications of having been forged while some issues relating to handwriting, signatures and sequencing suggested that the documents had been prepared at the same time or in a very short timeframe, rather than contemporaneously.

192. The Panel additionally bears in mind that Control Risks considered that the Appellant appeared *"to have controlled all income and expenditure relating to the LFA and signed*

all or substantially all of the cheques, including all cheques of significant size" and that this has not been contradicted by any probative evidence.

193. Given that Musons confirmed on 16 October 2015 receipt of only USD 190,000, the Panel accepts that the amount of USD 141,000 corresponds to the payments recorded as being allegedly made to Musons by the LFA for the renovation of the ATS (i.e., USD 331,000) minus the actual payments received by Musons before its contract was cancelled and the new company took over the renovation works (i.e. USD 190,000).

194. Lastly, the Panel simply does not accept that the responsibility lies entirely on the LFA finance department and finds that the Appellant's involvement in this unauthorised use of FIFA funds was direct by virtue of his position as president of the LFA. The Panel is comfortably satisfied that the Appellant had the ultimate executive authority for the disbursement of such funds as well as in the financial decision-making within the LFA.

195. Indeed, the Appellant's argument is at odds with the evidence that he signed the request for FIFA funds on behalf of the LFA, based on which a total amount of USD 750,000 FIFA funds was granted to the LFA in 2015 and of which the amount of USD 225,000 was allocated for "Maintenance of ATS Stadium". Furthermore, the Panel takes note that the Appellant was involved in the selection and awarding of the contract to Musons for the renovation of the ATS and as such, he signed the contract between the LFA and Musons, for a total amount of USD 804,370.

196. On these facts, the Panel finds that the FIFA funds were not used and disbursed according to the approved proposal, yet to their intended purpose under the LFA's initial request for funds to FIFA, which was an indispensable condition for FIFA's transfer of the relevant funds.

- **Were the FIFA funds disbursed to a company selected in violation of the applicable process which required a tender to be conducted?**

- ***Was a tender process conducted?***

197. As mentioned earlier, FIFA contends that the FIFA funds requested by the Appellant in 2015 amounting to USD 225,000 were disbursed to Musons in violation of the applicable process that required a tender to be conducted. FIFA refers to Article 5.4 of the General Regulations for FIFA Development Programmes (the "GRFDP"), which mandates all member associations to follow a tender process for any expense amounting to USD 50,000 or more. In this respect, FIFA claims that the failure to meet this requirement constitutes by itself an unauthorized use of the FIFA funds, which amounts to a misappropriation of those specific funds.

198. On the other hand, the Appellant stresses that a tender process was conducted for the renovation of the ATS. He explains that the LFA received three quotations from three separate companies (Musons; Veteran Construction Company Limited; BBLTM Group of Companies) and that Musons was ultimately selected as it offered the most

competitive price and had already carried out work for previous construction projects effectively.

199. Turning its attention to the documentary evidence, the Panel acknowledges that:

- the contract between Musons and the LFA was signed on 5 September 2014 for a total amount of USD 804,370.60.

- the documents supplied by the LFA identified a quotation from BBLTM Group of Companies dated 16 January 2015 for USD 861,596 as well as an undated quotation from Veteran Construction Company Limited for USD 1,038,085.60.

- BBLTM Group of Companies and Veteran Construction Company Limited were both named as bidders by PKF in the PKF audit report.

200. With this, the Panel finds that there is no explicit evidence showing that tenders or other quotations for the renovation work at the ATS were sought or obtained prior to entering into the contract with Musons or that alternative companies had been considered prior to deciding to engage Musons.

201. In fact, it is unclear for the Panel why the quotation from BBLTM Group of Companies was obtained on 16 January 2015, over four months after the contract with Musons was signed on 5 September 2014. The Appellant neither elucidated that four-month delay, nor what happened between 5 September 2014 and 16 January 2015 and why a tender process would have been conducted after entering into a contract with Musons (as opposed to before). Rather, the Appellant argued that he was not involved in the process, that various committees of the LFA were responsible for the selection of Musons and stated during his interview of 15 December 2017 that *"when they made a final report they recommended that we choose Muson"*. In addition, it appears that the Appellant also stated during such interview conducted by Control Risks that his *"understanding of this contract at the time was that the Liberian Football Association did not have money to this amount. There were companies… we wanted to fix the stadium and then pay over a period of time and there was… I think this guy and other company proposals and if you sign the contract with us then we can pre-finance the renovation of the ATS. No, when they brought a recommendation that of the three companies, there's one company that we believe is that capable because I think they had the bank to say… so they brought it to me then I sent to the legal department to look at it to make sure we do not have a liability in terms of paying money at the same time the work is not done. So, they said, okay, we can pre-finance this. I can go over this agreement again, but I believe that it included them doing some work and paying…"*.

202. But while the Appellant has submitted that the selection of Musons was a decision made by various committees of the LFA, the evidence remains that it was the Appellant who provided FIFA with the request for funds and signed the contract with Musons.

203. The Panel doubts that the quotation from BBLTM Group of Companies BBL, dated 16 January 2015 and received four months after the signature of the Musons contract, was part of a tender process in itself.

204. As to the undated quotation from Veteran Construction Company Limited for USD 1,038,085.60, the Panel observes that the Appellant did not provide any evidence to clarify whether it was contemporaneous at the time in which the ATS was supposed to be renovated. Given that the quotation from Veteran Construction Company Limited remains undated and in the absence of such explanation, the Panel is left wondering why it was undated, when it was made and whether it was even part of a tender process.

205. Specifically, the Appellant has not provided any record evidencing discussion or negotiation with these companies after the quotes had been submitted. Nor is there any tangible evidence (written or otherwise), such as correspondence supplying the details of the alleged bids by these companies.

206. Likewise, the Panel underlines that, asides from the signed and executed contract, there is neither evidence that a bid from Musons was ever placed, nor a copy of an alleged bid that would have been sent by Musons to the LFA within the framework of an actual and legitimate tender process as required by the GRFDP.

207. With respect to the merit of selecting Musons, the Appellant submits that Musons offered the most competitive price and had already carried out work for previous construction projects effectively. For the Panel, this further demonstrates that no tender process took place ahead of the renovation for the ATS, especially given that the Appellant did not adduce any evidence of the recommendation process or report pertaining to the selection of Musons (e.g., how Musons was evaluated, ranked or rated).

208. Overall, the evidence indicates that neither the LFA or the Appellant made and/or retained proper records of an alleged tender process and related decisions. This is consistent with the statements made by different persons interviewed by Control Risks, namely Musa Shanon, Prince Forfor and Sheba Brown, who confirmed the absence of a tender process and indicated that the contract for renovations of the ATS had directly been awarded to Musons without a tender.

209. The Panel deems that the Appellant, as the person who signed both the request for FIFA funds and the contract with Musons, bore responsibility for ensuring they were entered into in accordance with the relevant requirements and this included undertaking a tender process.

210. Having considered all of the evidence available to it, the Panel finds that no tender process was undertaken prior to entering into the contract with Musons for the renovation of the ATS. The Appellant has otherwise not supplied any dependable or credible evidence to offset this Panel's finding.

- **Can a violation of the tender process requirement under GRFDP amount to violation of misappropriation of funds under the FCE?**

211. FIFA submits that the Appellant awarded a contract for the renovation of the ATS to Musons without conducting a proper tender and such failure constitutes by itself an unauthorized use of the funds, thereby amounting to a finding of misappropriation of funds under the FCE.

212. On this point, FIFA relies upon Article 8.3 of the GRFDP, which says that a case may be referred to a *"FIFA judicial body for evaluation of further possible measures if there is suspicion of fraud or of any other violation of these or any other applicable regulations. The relevant FIFA judicial body may pass a decision pursuant to the FIFA Disciplinary Code and/or the FIFA Code of Ethics on the actions of the member association or confederation and/or the responsible natural persons from the member association or confederation."*

213. The Appellant, however, claims that this matter has no implications under the FCE given that it falls under the scope of GRFDP and there are no sanctions for violations in those regulations.

214. With this, the Panel recalls the *"principle of legality"* according to which sports organizations cannot impose a sanction without a proper legal or regulatory basis and such sanction must also be predictable (see CAS 2017/A/5272; 2014/A/3765; CAS 2011/A/2670; CAS 2008/A/1545).

215. The Panel appreciates that Article 8.3 of the GRFDP provides that a FIFA judicial body may pass a decision pursuant to the FCE on the actions of the member association and/or the responsible natural person from such member association. Yet, the Panel accepts that every sanction requires an express and valid rule providing that someone can be sanctioned for a specific offence. In this respect, the Panel finds comfort in CAS 2013/A/3324 & 3369 and CAS 2017/A/5006, where there is a useful summary of the relevant principles of interpretation established by the CAS case law. Pursuant to the CAS jurisprudence, the different elements of the rules of a federation shall be clear and precise, in the event they are legally binding on athletes (see CAS 2006/A/1164; CAS 2007/A/1377; CAS 2007/A/1437) whereas inconsistencies/ambiguities in the rules must be construed against the legislator as per the principle of *"contra proferentem"* (CAS 2013/A/3324&3369; CAS 94/129; CAS 2009/A/1752; CAS 2009/A/1753; CAS 2012/A/2747; CAS 2007/A/1437; CAS 2011/A/2612).

216. Applying these principles to the case at hand, the Panel holds that there must be a violation of the FCE for the FCE to apply. As such, the Panel must determine whether, as claimed by FIFA, the absence of a tender process under Article 5.4 of the GRFDP amounts to a misappropriation of funds under Article 28 of the FCE.

217. The Panel recalls Article 5.4 of the GRFDP, which reads as follows:

"Within the framework of a FIFA development programme, member associations must be able to provide proof of offers received from a minimum of three different contractors for any expenses amounting to USD 50,000 or more for services or supplies provided by parties such as contractors, manufacturers, suppliers, and consultants."

218. Relevantly, the Panel notes that the Parties do not dispute that the expenses for the services and supplies provided by Musons to LFA were greater than USD 50,000. Therefore, the Panel accepts that such expenses were not exempted from the tender requirement under the GRFDP.

219. The question now is what happens if a member association is not *"able to provide proof of offers received from a minimum of three different contractors for any expenses amounting to USD 50,000 or more"*. In the Panel's view, if the required proof is not provided, the request for funds should not have been given further consideration. It is the Panel's understanding that FIFA, here, released the FIFA funds, before any *"proof of offers received from a minimum of three different contractors for any expenses amounting to USD 50,000"* had been provided (i.e., before the tender process had been completed for such expenses). For the Panel, this implies that expenses amounting to USD 50,000 or more for services provided by a company selected without a tender would not *per se* be fatal to being granted the FIFA funds but could be once the granted FIFA funds are in possession and in use by the member association.

220. The question that follows is whether a member association commits a misappropriation of funds under the FCE if it executes payments from the FIFA funds in full compliance with their intended purpose and budget under the initial request for funds to FIFA but in favor of a company which had been selected without a tender process.

221. As underlined by FIFA, the Panel appreciates that the procedure and requirements established in the GRFDP shall be followed for the FIFA funds to be suitably used.

222. From there, the Panel considers that a failure *"to provide proof of offers received from a minimum of three different contractors for any expenses amounting to USD 50,000 or more"* pursuant to Article 5.4 of the GRFDP means that the FIFA funds were not used suitably. The Panel deems that such failure is *de facto* a misuse of the FIFA funds but highlights that regard should be had to the nature and materiality of the misuse where the level of misuse shall be commensurate with the level of compliance with the other requirements contained in GRFDP and FCE. Indeed, not every misuse under Article 5.4 of the GRFDP will be such as to warrant a finding of serious and substantial misuse under Article 28 of the FCE, namely when it is due to a clerical error or any other simple error or when it has been shown not to be detrimental to purpose of the rules (which will not absolve the violation but in some respect diminish it).

223. The Panel must therefore have regard to the wider context and finds that a failure to meet the tender process requirement *in casu* is, combined with other evidence, yet a

further indication that the funds were misused by the Appellant. Such non-compliance supports the conclusion the Panel made earlier at paragraph 236 (see *supra*).

iii. Conclusion

224. Bearing in mind his central decision-making role in the LFA, the Panel finds that the Appellant decided to use the FIFA Ebola Grant for an unauthorized purpose and therefore misappropriated FIFA funds in violation of Article 28 FCE.

225. Likewise, the Panel finds that the Appellant decided to use the FIFA funds for an unauthorized purpose in the context of the renovation of the ATS all the while disregarding the requirement set out at Article 5.4 of the GRFDP, and therefore misappropriated FIFA funds in violation of Article 28 FCE.

c) Did the Appellant violate Article 20 of the FCE (Offering and accepting gifts or other benefits)?

i. The Srimex loans

226. Article 20 of the 2018 FCE prohibits persons bound by the FCE to offer or accept undue gifts or other benefits to and from persons within or outside FIFA or in conjunction with intermediaries or related parties as defined in the FCE.

227. Article 20 of the 2018 FCE reads as follows:

> *"1. Persons bound by this Code may only offer or accept gifts or other benefits to and from persons within or outside FIFA, or in conjunction with intermediaries or related parties as defined in this Code, where such gifts or benefits*
>
> > *(a) have symbolic or trivial value;*
> > *(b) are not offered or accepted as a way of influencing persons bound by this Code to execute or omit an act that is related to their official activities or falls within their discretion;*
> > *(c) are not offered or accepted in contravention of the duties of persons bound by this Code;*
> > *(d) do not create any undue pecuniary or other advantage; and*
> > *(e) do not create a conflict of interest.*
>
> *Any gifts or other benefits not meeting all of these criteria are prohibited.*
>
> *2. If in doubt, gifts or other benefits shall not be accepted, given, offered, promised, received, requested or solicited. In all cases, persons bound by this Code shall not accept, give, offer, promise, receive, request or solicit from anyone within or outside FIFA, or in conjunction with intermediaries or related parties as defined in this Code, cash in any amount or form. If declining the gift or benefit would offend the giver on the grounds of cultural norms, persons bound by this Code may accept*

the gift or benefit on behalf of their respective organisation and shall report it and hand it over, where applicable, immediately thereafter to the competent body.

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

228. In accordance with Article 20 of the 2018 FCE, a "*gift or other benefit*" must be at stake, involving a pecuniary or any other advantage. As stated in CAS 2011/A/2426, *"the advantage can take any form and need not actually materialize as it is sufficient that someone "offers" or "promises" it* (…) *it can be money or any other benefit, even not economically quantifiable (for instance, a career advancement)".*

229. With this, the Panel notes that Srimex was the largest individual creditor of the LFA between 2013 and 2017 and so was the personal company of the LFA's President, who was also the largest creditor of the federation.

230. The documentary evidence indicates that the LFA made many cash payments to Srimex (amounts of a least USD 595,720) from at least 2013 onwards, in relation to amounts purportedly owed to it by the LFA. The Panel also notes that payments of more than USD 78,725.30 were made by the LFA to the Appellant and Srimex without any valid or verifiable justification as such amounts cannot be covered by or related to the payments made to the LFA.

231. In his defense, the Appellant denies any responsibility in relation to possible repayments and refunds made by the LFA. The Appellant also explained that when grant funding, such as Government subsidies, was awaited or in periods of financial hardship, he introduced cash to enable the LFA to continue to operate. The Appellant has however not put forward any credible and concomitant evidence in support of his own arguments.

232. While the Appellant justified that the LFA needed loans because it did not (or was waiting to) receive money from the Government, the Panel notes that the financial statements from the LFA for the year 2013 show grants incomes, which include the grants received from FIFA as well as Government subsidies that were received by the LFA in 2012. So, the LFA did receive substantial amounts of money from the government in 2012 and 2013.

233. The Appellant further argued that transactions with Srimex were approved by the Executive Committee. Yet, the Panel notes that there are no records of transactions with this company having been approved by anybody, nor any records of the LFA Executive Committee or the Finance Committee approving those transactions.

234. As to the Appellant's argument that the excess amount was in fact a repayment from previous years, the Panel notes that the Controls Risks Report covered a review period which was from 1 January 2011 to the end of 2017 and that Control Risks had been advised that no electronic accounting documentation was available that pre-dated 1 January 2013 as an earlier version of the LFA's QuickBooks accounting system had been deleted.

235. In this regard, the Panel also notes that Control Risks had only been provided with two loan agreements between the LFA and Srimex, identified during their review of hard copy documentation at the LFA offices. According to the Control Risks Report, *"each document is two pages long, identical in format and very basic agreements setting out amounts due from the LFA to Srimex. The loans include a note stating that the LFA "promises to pay" the lender back within 36 months and that no interest will be charged".* The Appellant claims that he has only been the President of the LFA since 2010. Yet, the LFA or the Appellant cannot provide the Panel with documents regarding loans before that time. The burden of proof still lies with the FIFA. But the Appellant has no evidence to prove his assertions. Therefore, this is either to be considered as an unsubstantial denial and therefore irrelevant or otherwise what FIFA has argued and proven is sufficient to meet the standard of comfortable satisfaction as the Appellant did not convince the Panel.

236. The Panel also observes that these payments did not have symbolic or trivial value and did not exclude the possibility for influence or for the execution or omission of acts related to the Appellant's official activities or falling within his discretion as President of the LFA.

237. Besides, the Panel remarks that the Appellant approved payments which were not supported by any authorization, ratification of any competent LFA body or by any justificatory document. Similarly, the Panel considers that these payments did not appear to have any legal basis and therefore created an undue pecuniary advantage for the Appellant.

238. The Panel notes moreover that the Appellant did not report such payments and benefits to any competent body at FIFA. Even more so that FIFA never gave its approval for its funds to be used for the repayment of debts contracted by the LFA with its President's company.

239. In view of the above, and in the absence of any countervailing explanation or evidence from the Appellant, the Panel finds that FIFA has established to its comfortable satisfaction that the Appellant approved payments which did not have a proper basis. The Panel, therefore, categorises these as undue payments within the meaning of Article 20 of the 2018 FCE.

ii. Conclusion

240. The Panel finds that the amount of USD 78,725.30 in relation to the loans made by Srimex to the LFA can be considered a benefit received by the Appellant that did not

meet the cumulative criteria set out in Article 20 par. 1 of the 2018 FCE. As such, these payments were prohibited and therefore, the Appellant violated Article 20 par. 1 of the 2018 FCE.

d) Did the Appellant violate Article 19 of the FCE (Conflict of interest)?

241. With respect to conflict of interest, Article 19 par. 1 of the 2018 FCE provides as follows:

"Persons bound by this Code shall not perform their duties (in particular, preparing or participating in the taking of a decision) in situations in which an existing or potential conflict of interest might affect such performance. A conflict of interest arises if a person has, or appears to have, secondary interests that are suited to detract from his ability to perform his duties with integrity in an independent and purposeful manner. Secondary interests, in turn, include, but are not limited to, gaining any possible advantage for the persons bound by the FCE themselves, or related parties as defined in this code."

242. From this, the Panel must assess whether the Appellant placed himself in a situation of conflict of interest, or in the appearance thereof, namely in the context of the Srimex loans and Stone Haven.

i. The Srimex loans

243. The Panel appreciates that the Appellant was simultaneously acting as the President of the LFA and owner and CEO of Srimex, emphasising on the numerous payments executed between both entities towards which the Appellant had a fiduciary duty. For the Panel, this alone is a strong indication of a conflict of interest.

244. The Panel cannot underestimate the fact that FIFA was never informed, during the period of 2013 to 2017, that a commercial company owned by the LFA President was effectively financing the LFA and that the funds provided to the LFA as part of FIFA FAP were being transferred to such private entity. Even if this conflict of interest could have been mitigated or validated by the Appellant's formal disclosure and the subsequent proactive and reasoned approval of the LFA's related bodies, it still would not have exonerated the Appellant from breaching the FCE. Yet, the evidence in file shows that the Appellant never provided such official disclosure, nor was this matter ever discussed or approved by either the LFA's Finance or Executive Committee.

245. The Panel finds that there is no evidence proving that the Appellant was entitled to (i) act alone (or to instruct the treasurer directly) as he continuously did and (ii) make decisions related to the transactions with Srimex without the official backing of the LFA.

246. While the Panel notes that some officials were aware that certain payments between the LFA and Srimex existed, it is not sufficient to deny that a conflict of interest has indeed

materialised as there was never a formal and collegiate validation by the pertinent bodies of the LFA in that regard.

247. Based on the above, the Appellant had a fiduciary duty to act in the best interest of the LFA and his conduct described above detracted him from the ability to perform his duties as LFA President with integrity in an independent and purposeful manner. The Appellant, therefore, violated Article 19 of the 2018 FCE.

ii. Stone Haven

248. At issue here is, *inter alia*, an amount of at least USD 152,200 paid by the LFA to the Stone Haven in 2012.

249. To begin with, the Panel appreciates that the Appellant has clear family and financial ties to the Stone Haven. The Panel notes that Stone Haven is owned by the Appellant's wife (Denise Bility), who has a right to withdraw cash from the bank account of Stone Haven, and that the Appellant's son is the manager. The Panel also notes that the Appellant has a right to withdraw cash from the bank account of the Stone Haven and that he was involved in the LFA's decision to use Stone Haven for the accommodation of the Liberian National Football team.

250. In defense, the Appellant argued that the Stone Haven was only used due to the impossibility to find other hotels that would be willing to lodge the Liberian National Football team.

251. However, the Panel appreciates that the documentary evidence in file, namely the documentation provided by the LFA Treasurer and the LFA's Finance Department, establish that the LFA received invoices from and made payment to Stone Haven related to accommodation and other costs for a total of USD 22,925 from 25 November 2015 to 10 November 2016. It appears from the LFA accounting system, and from a long list of hotels and guesthouses that were used by the LFA for accommodation services between 2013 and 2017 (for a total amount of USD 101,081), that this was a period when the LFA undisputedly had the financial resources to secure other accommodations.

252. The Panel also notes that USD 15,000 was identified on a ledger maintained by the LFA as having been paid to Stone Haven by Srimex on the LFA's behalf.

253. The Panel acknowledges that FIFA was never informed of such situation. And even though some officials were aware that certain payments between the LFA and Srimex existed, there was still a situation of conflict of interest given that there was never a formal and collegiate validation by the pertinent bodies of the LFA in that regard.

254. In his position as president of the LFA and being family-related to the owners of Stone Haven, the Appellant was at least involved in the LFA's decision to use the guesthouse for the accommodation of the Liberian and other national teams invited by the LFA, in

relation to which payments were made by the LFA. As such, he placed himself in a situation of conflict of interest and violated Article 19 of the 2018 FCE.

iii. Conclusion

255. For all the reasons stated above, the Panel is comfortably satisfied that the Appellant acted in violation of Article 19 of the 2018 FCE in the context of the Srimex loans and Stone Haven.

C. Sanctions

256. Having determined that the Appellant violated Articles 28, 20 and 19 of the 2018 FCE, the Panel must now decide whether the sanctions imposed on him are appropriate.

257. Under Articles 6 and 7 of the 2018 FCE, various sanctions can be imposed on an official, the most serious being a ban on taking part in football-related activity.

258. The Panel next turns to the proportionality of the sanctions imposed on the Appellant, namely whether a CHF 500,000 fine and a ban from taking part in any football-related activity (administrative, sport or any other) at the national and international level for a period of ten years are proportionate to the measure of the violations.

259. On one hand, FIFA argues that misappropriation is one of the most serious offences under the FCE and the Adjudicatory Chamber can impose bans from taking part in any football-related activity from five years up to a lifetime ban taking due account of the principle of proportionality and all circumstances of the case. FIFA takes and urges a strong stance against any potential unethical act, especially of misappropriation, which is damaging to the good governance, integrity and viability of football. Ultimately, FIFA contends that the sanctions imposed on the Appellant are proportionate.

260. On the other hand, the Appellant argues that FIFA failed to abide by the principle of proportionality and requested that any sanction *"be limited to a warning, a reprimand and/or a fine, pursuant to article 9 et seq. of the FCE."* In support of his argument, the Appellant namely relied upon some past CAS jurisprudence (*CAS 2011/A/2426; TAS 2011/A/2433; CAS 2016/A/4474; CAS 2016/A/4501; CAS 2017/A/5003).*

261. As recognized by the CAS in various precedents (*see* inter alia *CAS 2005/A/976 & 986*), the principle of proportionality under Swiss law implies that there must be a reasonable balance between the misconduct of the actor and the applicable sanction. More specifically, 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"* (*CAS 2019/A/6219*).

262. More importantly, the Panel is mindful of the principle of proportionality which dictates that the most extreme sanction must not be imposed before other less onerous sanctions

have been considered and rejected as insufficient (*CAS 2011/A/2670* and *CAS 2019/A/6220*).

263. The Panel also takes note of the discretion afforded to the adjudicating body when assessing the measure of the sanction pursuant to recognisable and readable criteria. In this context, the Panel takes comfort in the guidance set down by the CAS panel in case CAS 2019/A/6219:

- *the nature and circumstances 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;*
- *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 degree of the offender's guilt;*
- *the education of the offender;*
- *the personality of the offender and its evolution since the violation; and*
- *the extent to which the offender accepts responsibility and/or expresses regret.*

264. That said, the Panel indicates that the particular facts of any case must affect the appropriate sanction while CAS precedent may provide useful pointers and helpful guidance when exercising such discretion, always bearing in mind that *"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"* (*see CAS 2011/A/2518*).

265. Here, the Parties themselves relied on and referred to various CAS jurisprudence to draw comparisons with. The Panel recalls the content of these CAS decisions, briefly summarized as follows:

- ***CAS 2011/A/2426:*** Mr. Amos Adamu, former President of the West African Football Union, Chairman of the CAF Ethics Committee and Director General of Sports in Nigeria, was secretly filmed and recorded, while meeting with undercover *Sunday Times* journalists posing as lobbyists contending to support the United States football federation's bid for the 2018 and 2022 FIFA World Cups. He was found to have accepted a bribe of USD 800,000, allegedly towards the funding of artificial pitches in Nigeria, in exchange for agreeing to fix his vote for the future host of the FIFA World Cup. He was found guilty of

infringing Article 3 (General Rules), Article 9 para. 1 (Loyalty and confidentiality) and Article 11 para. 1 (Bribery) of the 2009 FCE. The CAS panel upheld a ban for a period of three years with a fine of CHF 10,000. The Panel ruled that it was *"not a disproportionate sanction and might even be deemed a relatively mild sanction given the seriousness of the offence"*.

- ***TAS 2011/A/2433:*** Mr. Amadou Diakite, a former FIFA executive committee member was secretly filmed and recorded, while meeting with an undercover *Sunday Times* journalist posing as a lobbyist purporting to support the United States football federation's bid for the 2018 and 2022 FIFA World Cups. He was found guilty of failing to refuse an improper offer made by apparent lobbyists in contravention of Articles 3 (General Rules), 9 (Loyalty and confidentiality) and 11 (Bribery) of the 2009 FCE. He was banned for two years with a fine of CHF 7,500.

- ***CAS 2016/A/4474:*** Mr. Michel Platini, former FIFA vice-president, was found to have received an undue gift of CHF 2 million and for violating Article 20 of the 2012 FCE. He was banned for four years as well as a fine of CHF 60,000.

- ***CAS 2016/A/4501:*** Mr. Joseph S. Blatter, former FIFA president, was found to have authorized and directed an undue gift and therefore committing a violation to Article 20 of the 2012 FCE. He was banned for six-year ban on for as well as a CHF 50,000 fine.

- ***CAS 2017/A/5003:*** Mr. Jérôme Valcke was found to have violated Article 19 FCE in relation to his involvement in the resale of FIFA World Cup tickets, Article 10 FCE (2009 edition) and Article 20 FCE (2012 edition) in relation to the offer of an undue benefit to the Caribbean Football Union as well as Article 18 and Article 41 for his failure to cooperate in the investigation. He was also found guilty to have violated Article 13 FCE in relation to his travel expenses as well as Article 19 and Article 16 of the FCE in relation to his involvement in the FIFA- EON Reality Inc transaction. He was banned for a period of ten years as well as a fine of CHF 100,000.

266. As stated in CAS 2017/A/5003 at paragraph 274 *"there is well-recognized CAS jurisprudence to the effect that whenever an association uses its discretion to impose a sanction, CAS will have regard to that association's expertise but, if having done so, the CAS panel considers nonetheless that the sanction is disproportionate, it must, given its de novo powers of review, be free to say so and apply the appropriate sanction (see CAS 2015/A/4338, at para. 51)."*

267. By way of comparison with the above cases cited by the Parties, the Panel underlines that the Appellant was, over the period of the breaches, the President of the LFA, and therefore was the highest representative of a FIFA member association, while also serving as a member of a FIFA standing committee and, more recently, as a member of the supreme body of CAF.

268. In exercise of these several roles, the Appellant was entrusted by FIFA to use and control the FIFA funds and, despite this, he disbursed the FIFA funds in full disregard of the relevant FAP projected budgets, namely the Ebola outbreak and renovating the ATS, and without proper justification or approval from the other responsible bodies of the LFA or from FIFA.

269. The Appellant further placed himself in situations of conflict of interest due to the different related party transactions concluded between the LFA and his own company Srimex and with Stone Haven, owned by his wife and employing his son, and whose bank account was also controlled by the Appellant, none of which were correctly and/or formally approved by the competent bodies of the LFA.

270. Based on the above, the Appellant's degree of guilt is the highest and his offences must be regarded as being severely reprehensible. The Appellant behaved in a manner that violates the provisions regarding conflict of interest (Article 19), misappropriation of funds (Article 28) and offering and accepting gifts or other benefits (Article 20) in the FCE 2018.

271. So, when comparing the conduct of the Appellant to those of Messrs. Adamu, Diakite, Platini, Blatter, and Valcke, the Panel believes the offences of the Appellant are not necessarily analogous.

272. First, the Panel places some limitations on the application of CAS 2011/A/2426 and TAS 2011/A/2433 to the matter at hand. As noted in CAS 2019/A/6344, the sanctions of Mr. Adamu (3 years) and Mr. Diakité (2 years) *"from over a decade ago do not provide a suitable comparison given (i) the panels in those cases were prevented from imposing a higher sanction than that imposed by the FIFA bodies and, accordingly, acknowledged that the sanctions could be considered as 'mild', (ii) the development in jurisprudence since then"*.

273. Moreover, their offences were limited to solicitation of bribes and were relatively narrow in scope and time. Indeed, Messrs. Adamu, Diakite were sanctioned for soliciting bribes (tantamount to an attempt) on one occasion as opposed to the Appellant who is being sanctioned for three violations which took place on various occasions from 2012 to 2017.

274. Then, when comparing the case of the Appellant to the cases of Mr. Michel Platini (TAS 2016/A/4474), Mr. Joseph S. Blatter (CAS 2016/A/4501) and of Mr. Jérôme Valcke (CAS 2017/A/5003), the Panel finds it useful to look at the offences committed by the Appellant, i.e. Article 28, 20 and 19 of the 2018 FCE and identify the most serious one:

- As for the punishable conduct of "offering and accepting gifts and other benefits", the Panel sees that there is a maximum limit foreseen for the available sanctions under the 2018 FCE (i.e. Article 20 para. 3*: "a ban on taking part in any football-related activity for a maximum of two years (…) serious cases and/or in the case of repetition, a ban on taking part in any football-related activity may be pronounced for a maximum of five years.").*

- With respect to the punishable conduct of "conflict of interest", the Panel notes that there is a minimum fine of at least CHF 10,000 as well as a ban on taking part in any football-related activity for a maximum of two years whereas in *"in serious cases and/or in the case of repetition, a ban on taking part in any football-related activity may be pronounced for a maximum of five years."(see Article 19, par. 4 of the 2018 FCE).*

- As to the punishable conduct of "misappropriation", the Panel remarks that no maximum limit is foreseen for the available sanctions under the 2018 FCE (Article 28 par. 2) and therefore, life-time bans, being the most severe sanctions, are admissible. Accordingly, the Panel concludes that misappropriation of the funds is the most serious offence in the Appellant's case as it can result in more serious sanctions.

275. The Panel appreciates that there are some distinct similarities, namely as it relates to the corrupt nature of the activity involved and the senior positions held by those concerned. Yet, these cases do not explicitly relate to the violations committed by the Appellant, i.e. Articles 28, 20 and 19 of the 2018 of the FCE. While Mr. Platini and Mr. Blatter were accused of violating Article 21 of the 2012 FCE, it ultimately had been determined that the evidence available against them was not sufficient to establish such violation, which, in turn, is not the case of Appellant. Since Mr. Platini (4 years) and Mr. Blatter (6 years) were not found guilty of violating Article 28 of the 2018 FCE, the Panel will not use an analogous application of the line of thought followed in these cases to the present matter. Mr. Valcke (10 years) was also not found to have violated Article 21 FCE.

276. Based on the foregoing, the Panel rejects the Appellant's argument that a ten-year sanction for the Appellant is disproportionate in comparison to the four- and six-year ban imposed on Mr. Platini and Mr. Blatter.

277. In light of all the above, the Panel finds that the sanction imposed on the Appellant by means of the Decision is not disproportionate, rather it is reasonable and fair.

278. With respect to fine of CHF 500,000, the Panel notes that Article 28 of the 2018 FCE mentions that *"the amount of misappropriated funds shall be included in the calculation of the fine".* In this respect, the Panel underlines that the Appellant has mismanaged a significant amount of FIFA funds while more than USD 300,000 appears to have been disbursed in an irregular and improper way. The Panel considers that the Appellant benefitted from the misappropriation of the FIFA funds.

279. Further, the Panel notes the Appellant's contention that the *Matuzalem* argument must be taken into account when considering whether to reduce the fine. He asserts that a fine of CHF 500,000 deprives him of the right to work and it conflicts with public order.

280. Yet, the Panel finds that the reference to *Matuzalem* does not seem comparable to the matter at stake as this case was about the payment of a compensation and an

undetermined suspension on any football-related activity lasting until the relevant payment would have been settled.

281. Besides, the Panel notes that the Appellant failed to substantiate why his case was allegedly analogous to *Matuzalem* and how a fine of CHF 500,000 was allegedly depriving him of the right to work.

282. In any event, the Panel considers the evidence in file which illustrates that the Appellant has a successful oil and gas business and is, as described by his counsel at the hearing, "a particularly wealthy man" and that he generates his wealth as a business owner outside the football world. Hence, his suspension and fine do not prevent him from continuing his main professional activity.

283. With this, the Panel deems that the financial sanction imposed on the Appellant cannot be compared to the *Matuzalem* case and does not violate the fundamental right to work.

284. Lastly, the Panel bears in mind that if the Appellant would have refrained from misusing the FIFA funds, no ethic proceedings would have been opened and no sanction would have been imposed. Misappropriation is very damaging to the image, viability and good governance of football and FIFA, especially when the offence is committed by a high-ranking official with years of experience in the world of football. With this, the Panel agrees with FIFA that proportional sanctions must be imposed not only to punish the Appellant, but also to serve both a repressive and preventive purpose.

285. The Panel is of the view that the fine here is commensurate with the level of damage caused by the Appellant's actions, that is the appropriation of funds that resulted from the investigations and ethic proceedings conducted by FIFA.

286. In these circumstances, the Panel concludes that a fine of CHF 500,000 is neither excessive nor manifestly excessive. It is a proportionate sanction in the case of the Appellant.

X. COSTS

(…).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr Musa Hassan Bility against the Fédération Internationale de Football Association (FIFA) on 1 August 2019, with respect to the decision rendered by the Adjudicatory Chamber of the FIFA Ethics Committee on 12 February 2019 is dismissed.

2. The decision rendered by the Adjudicatory Chamber of the FIFA Ethics Committee on 12 February 2019 is confirmed.

3. (…).

4. (…).

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

Seat of arbitration: Lausanne, Switzerland
Date: 2 May 2023

THE COURT OF ARBITRATION FOR SPORT

Martin Schimke
President of the Panel

João Nogueira Da Rocha
Arbitrator

Rui Botica Santos
Arbitrator

Marianne Saroli
Ad hoc Clerk