Arbitration CAS 2019/A/6669 Sayed Ali Reza Aghazada v. Fédération Internationale de Football Association (FIFA), award of 28 April 2022

Panel: Prof. Ulrich Haas (Germany), President; Mr Donald Rukare (Uganda); The Hon. Michael Beloff QC (United Kingdom)

Football
Disciplinary sanctions for failing to report sex crimes and to protect physical and mental integrity of players
Lex mitior and tempus regit actum
Hearing in person and translation during a hearing
Duty of good faith of a party to the arbitration
Testimony of anonymous witnesses
Conditions for the use of protected witnesses
Burden of proof and Beweisnotstand
Standard of proof
CAS power of review

1. **The principle of *lex mitior*, a concept originally deriving from criminal law, applies when a federation, associations or sports-related bodies amends its rules and regulations between the time of the asserted sports rule violation and the time of the decision taken by the relevant sports body in respect thereof. The principle of *tempus regit actum* is then softened by the *lex mitior* principle in a case where the new rules are more favourable to the accused. In such circumstances the less severe "penalties" and "sanctions" will be applied retroactively. The principle of *lex mitior* serves the purpose of sanctioning the person who has committed a violation reflecting the current opinion of the sports body that a milder sanction should apply to such violation than the one applicable at the time of its commission. Said principle applies only to the sanction for and not the substance of the offence. The substance of the offence is to be assessed according to the law in force at the time it was committed.**

2. **There is no right to an in person hearing (as distinct from one by video conference) either under Swiss law, the CAS Code or general principles of law. As regards interpretation during a hearing, the purpose of the translation is not *per se* to translate each and every word that is pronounced by a person, but rather to convey the meaning of what was said by such person.**

3. **If a party to an arbitration feels that its procedural rights have been infringed, it must, in exercise of its duty of good faith, act immediately to make an objection, *a fortiori* if such party is represented by several counsels.**

4. **Admitting anonymous testimony potentially infringes both, the right to be heard and the right to a fair trial, since the personal data and record of a witness are important**

elements of information to have at hand to test a witnesses' credibility. Furthermore, it is a right of each party to participate in the adducing of evidence and to be able to ask the witness questions. However, the admission of anonymous witness statements does not necessarily violate the right to a fair trial. If the applicable procedural code provides for the possibility to prove facts by witness statements, it would jeopardize the court's power to assess the witness statements if a party was prevented, in principle, from ever relying upon such witness statements if anonymous. A party has the right to use anonymous witness statements and to prevent the other party from cross-examining such witness if the safeguarding of interests worthy of protection, notably the personality rights as well as the personal safety of the witness, requires it.

5. **The use of protected witnesses, although available, must be subject to strict conditions. In particular the right to a fair trial must be ensured through other means, namely a cross-examination through "audiovisual protection" and an in-depth verification of the identity and the reputation of the anonymous witness by the court. In addition, the decision shall not solely or to a decisive extent be based on an anonymous witness statement.**

6. **In accordance with Swiss law, each party shall bear the burden of proving the specific facts and allegations on which it relies. In a situation, where difficulties of proof arise (Beweisnotstand), a number of tools are available in order to ease the burden put on a party to prove certain facts. These tools range from a duty of the other party to cooperate in the process of fact finding, to a shifting of the burden of proof or to a reduction of the applicable standard of proof. The latter is the case, if – from an objective standpoint – a party has no access to direct evidence (but only to circumstantial evidence) in order to prove a specific fact.**

7. **The standard of proof is defined as the level of conviction that is necessary for a deciding body to conclude that a certain fact occurred. What law determines the standard of proof is debatable. However, given that the standard of proof is regulated for state court proceedings by Article 157 Swiss Code of Civil Procedure and that the standard of proof is a matter closely related to the evaluation of the evidence, the better view is that the standard of proof should be classified as a question of procedure.**

8. **In disciplinary matters appealed to CAS, a panel will – where appropriate – demonstrate a certain degree of deference vis-à-vis the decision-making bodies, especially in the determination of the appropriate sanction. However, when a CAS panel concludes that the sanction imposed is disproportionate, it must be free to say so and apply the appropriate sanction. This notwithstanding, it is bound by the matter in dispute and the requests filed by the Parties.**

I. PARTIES

1. Mr Sayed Ali Reza Aghazada ("Mr Aghazada" or the "Appellant") was the Secretary General of the Afghanistan Football Federation ("AFF") from 2012 until 2019. He was also a member of the Asian Football Confederation ("AFC") Executive Committee and a member of the Organising Committee for the FIFA U-20 World Cup from 2014 until 2017.

2. The Fédération Internationale de Football Association (the "FIFA" or the "Respondent") is the world governing body of football. It is an association under Swiss law and has its registered office in Zurich, Switzerland.

II. FACTUAL BACKGROUND

3. The dispute in these proceedings revolves around the decision rendered by the Adjudicatory Chamber of the FIFA Ethics Committee ("AC"). The decision of 8 October 2019 ("the Decision") concerns alleged ethical misconduct of the Appellant related to sexual harassment, sexual abuse and rape committed by AFF officials. Among these officials was – inter alia – Mr Keramuddin Karim, the former President of the AFF. The AC imposed a ban on the Appellant prohibiting him from taking part in any kind of football-related activity at a national, regional and international level for a period of 5 years for failing to report the above said crimes and for failing to protect the physical and mental integrity of players. It further imposed a fine on the Appellant in the amount of CHF 10,000.

4. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, the CAS file and the content of the hearing that took place in Lausanne, Switzerland on 17 and 18 June 2021. References to additional facts and allegations found in the Parties' written and oral submissions, pleadings, and evidence will be made, where relevant, in connection with the legal analysis 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 only to the submissions and evidence the Panel deems necessary to explain its reasoning.

5. On 23 November 2018, the representative of the Afghanistan Women's National Football Team ("AWNFT") sent an email to the general email address of the AFF (info@aff.org.af) and – addressed in CC – to Mr Aghazada ([…]@gmail.com). The email reads – in its pertinent parts – as follows:

> *"Dear Mr. President Kramudin Karim,*
>
> *We are writing this email to follow up on the matter of the Jordan Case.*
>
> *You might remember that on 05th-Feb-2018 we informed you about mental abuse, sexual affairs and bad behaviour of two male representatives of Afghanistan Football Federation who were sent by you to our Jordan Football training camp. Our complaint and case were on the representatives Abdul Saboor Walizadeh who was introduced as an official delegate and representative of AFF and head of Women's Football Committee, and Nader Alme who was sent as an assistant coach.*

We clearly remember you promised us that you will punish them and you will take strong actions against them. We were waiting with the hope that you will do something about it, we were very happy when we heard the news right after the training that both of them are removed from the women's department.

We thought they were fired and hoped that the case was handed to a judicial committee of the federation. After our investigations, we found out that Abdul Saboor Walizada got promotion as a head of the judicial and Nader Alme became the coach of U17 Men's National Team.

Now through the current player contract, which you have provided to us and made it clear to players to sign it, which is not negotiable, you have mentioned in paragraph 20- If the player has a complaint from the member or the national team leader, they can file a complaint to the Football Federation's Judicial Committee in writing.

Is this the way you want to protect our rights and our safety, by hiring the abuser?".

6. On 29 November 2018, the sports brand Hummel terminated its sponsorship agreement with the AFF after becoming aware of the allegations of mental, physical and sexual abuse within the AFF.

7. On 30 November 2018, a widespread media coverage reported *"severe mental, physical and equal right-abuse of the female players by male AFF officials"*. The reports also mentioned that the AFF released a statement in which it *"vigorously rejects the false accusations made with regard to the AFF's women's national team"*.

8. On the same date, the FIFA Investigatory Chamber of the FIFA Ethics Committee ("IC") commenced investigations into the allegations of mental and physical abuse of members of the AWNFT.

9. Still on the same date, the IC informed Mr Aghazada of the investigations and requested him to furnish all relevant information in the possession of the AFF in relation to the investigated matter to the IC by 7 December 2018.

10. On 2 December 2018, Mr Aghazada replied to the IC's letter of 30 November 2018 by stating that *"the AFF takes this matter extremely seriously and it does everything to prevent (and investigate) such extremely discturbing* [sic] *incidents and allegations"*.

11. On 5 December 2018, the Appellant in his capacity as Secretary General of the AFF sent the following letter in English and Dari language to Mr Walizada as well as to Mr Aleme, both accused of abuses of AFF female players in the email dated 23 November 2018 referred to in paragraph 5 above:

"You may be aware that in the last days, the media have reported about sexual abuse and other mistreatment occurring within the AFF national teams. It was suggested that you may have been affected and the victim of such actions. Please find attached the relevant media reports and requests.

As am [sic] employer, we want to do everything to support and protect you. If you would like to report anything in relation to these media reports, or if you have any knowledge of such incidents, please inform

us immediately. If you do not feel comfortable to inform us, you may also provide such information to FIFA directly (legal@fifa.org).

We are thankful if you can revert to us as early as possible. Please let us know if you have questions or if you need any help from us. Please be assured that we will treat every information you provide absolutely confidentially.

Sincerely,

Sayed Al Reza AGHAZADA

General Secretary".

12. On 9 December 2018, the then Attorney General of the Islamic Republic of Afghanistan ("Attorney General") provisionally suspended five officials of the AFF, including Mr Karim and Mr Aghazada. The Attorney General further imposed travel bans on all of the suspended officials.

13. On 12 December 2018, Mr Aghazada sent an email to the Secretary General of FIFA, Ms Fatma Samoura, informing her about the internal investigations initiated by the AFF and of the provisional suspension imposed on him by the Attorney General. He further indicated that the suspension should be considered an act of unlawful governmental interference contrary to the FIFA Statutes.

14. On the same date, the IC provisionally suspended Mr Karim for a period of 90 days.

15. On 17 December 2018, Mr Aghazada sent an email to the IC and Ms Samoura explaining that the internal investigations could not be conducted properly due to the suspensions imposed by the Attorney General. Accordingly, Mr Aghazada requested that the internal investigations of the AFF *"be stayed, until the situation with the government is clarified and at least, the General Secretary and the Vice-President are able to return to daily duties".*

16. On 17 January 2019, after the deadline to provide the requested information had been extended by IC's email dated 24 December 2018, the AFF submitted its position on the alleged mental and physical abuse of female football players based on its internal investigations, in which it denied all such allegations.

17. On 8 June 2019, the AC sanctioned Mr Karim with a life ban on taking part in any football-related activity for the abuse of his position and the sexual abuse of various female players. The AC also imposed a fine of CHF 1,000,000 on him.

18. On 4 July 2019, the IC notified Mr Aghazada that formal investigations were being initiated against him for possible breaches of Articles 13, 15, 17, 23 and 25 of the 2018 edition of the FIFA Code of Ethics ("FCE"). The IC further requested Mr Aghazada to provide *"a written statement in relation to your awareness with respect to Mr Karim's conduct, in particular, if you were aware of the same please refer to any actions you may have taken in that respect"* by 10 July 2019. The deadline was subsequently extended until 17 July 2019.

19. On 16 July 2019, Mr Aghazada denied all alleged violations of the 2018 FCE stating, *inter alia*, that he *"has never been involved in such activity* [sexual abuse or assault of women] *directly or indirectly, and confirms that he has not been complicit in any such activity where it is alleged against Mr Karim, or any other person at the AFF"*.

20. On 22 August 2019, the IC submitted its final report to the AC. The report *"finds Mr Aghazada guilty of having breached article 23 par 1 and 17 of the FCE 2018"*.

21. On the same date, the IC notified Mr Aghazada of the closure of the investigation proceedings.

III. PROCEEDINGS BEFORE THE ADJUDICATORY CHAMBER OF THE FIFA ETHICS COMMITTEE

22. On 23 August 2019, the AC informed Mr Aghazada that formal proceedings were being initiated against him before the AC based on the findings of the final report of the IC. The letter also provided that a hearing, if requested by Mr Aghazada, would take place on 24 September 2019. He was further invited to submit a statement of defence by 6 September 2019.

23. On 3 September 2019, the AC granted Mr Aghazada's request for the hearing to take place on 8 October 2019.

24. On 10 September 2019, the AC provided Mr Aghazada with the procedural outline of the hearing. Furthermore, Mr Aghazada was informed that his request to question the witnesses in writing had been granted and he was therefore invited to provide the list of questions for the witnesses as well as any statement of defence by 16 September 2019.

25. On 3 October 2019, Mr Aghazada was notified that the hearing would exceptionally be held by telephone/video link due to his travel ban imposed by the Attorney General. The AC further informed Mr Aghazada that he would have no right to intervene during the hearing. However, he would be allowed to make a final statement of no longer than 30 minutes at the end of the hearing.

26. On 8 October 2018, a hearing was held before the AC at the FIFA headquarters in Zurich, Switzerland.

27. On the same date, the AC issued its Decision.

28. The operative part of the Decision reads – *inter alia* – as follows:

> *"1. Mr Sayed Aghazada is found guilty of an infringement of art. 17 (Duty to report) and art. 23 (Protection of physical and mental integrity) of the FIFA Code of Ethics, in relation to his awareness of and failure to report and prevent the sexual abuse committed by Mr Keramuudin Karim, former President of the Afghanistan Football Federation (AFF), against several female players in the period 2013 – 2018.*

2. Mr Sayed Aghazada is hereby banned from taking part in any kind of football-related activity at national and international level (administrative, sport or any other) for a period of 5 years, as of notification of the present decision, in accordance with article 7 lit. j) of the FIFA Code of Ethics in conjunction with art. 6 par. 2 lit. c) of the FIFA Disciplinary Code.

3. Mr Sayed Aghazada shall pay a fine in the amount of CHF 10,000 […]

4. Mr Sayed Aghazada shall pay costs of these ethics proceedings in the amount of CHF 3,000 […]

5. Mr Sayed Aghazada shall bear his own legal and other costs incurred in connection with the present proceedings".

29. On 10 December 2019, the Decision with grounds was notified to Mr Aghazada.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

30. On 22 December 2019, the Appellant filed his appeal before the Court of Arbitration for Sport (the "CAS") against the Decision and submitted his Statement of Appeal according to Article R48 of the Code of Sports-related Arbitration (the "CAS Code"). The Appellant nominated Dr Donald Rukare as arbitrator.

31. On 10 January 2020, the Respondent nominated The Hon. Michael J. Beloff QC as arbitrator.

32. On 17 January 2020, the Appellant filed his Appeal Brief.

33. On 13 February 2020, the CAS Court Office advised the Parties that the Panel appointed to decide the present case was constituted as follows:

President:	Prof. Dr Ulrich Haas, Professor in Zurich, Switzerland
Arbitrators:	Dr Donald Rukare, Attorney-at-law in Kampala, Uganda
	The Hon. Michael J. Beloff QC, Barrister in London, United Kingdom

34. On 27 February 2020, the CAS Court Office advised the Parties that Ms Stéphanie De Dycker had been appointed as Clerk in these proceedings.

35. On 23 March 2020, the Respondent filed its Answer, pursuant to Article R55 of the Code. In its Answer, the Respondent requested the following:

- The Panel should allow the examination and cross-examination of the victims on an anonymous basis,

- Any examination and cross-examination should be conducted in writing,

- The Panel should protect the anonymity of the victims/witnesses during in-person examination,
- All evidence provided by the victims, witnesses and experts in these proceedings should be considered as evidence in chief,
- The Appellant should provide any questions that he wishes to submit to the anonymous witnesses in writing prior to their cross-examination,
- All anonymised documents submitted to the Panel should not be forwarded to the Appellant or his counsel, and that
- The Respondent should be authorised to provide the originals of the anonymised documents for its *in camera review*.

36. On 15 April 2020, after having consulted the Parties, the CAS Court Office informed them that the Panel had decided to hold a hearing in the matter and consulted the Parties as to possible hearing dates. In addition, the CAS Court Office informed the Parties that the Panel had decided to hear the Appellant as a witness and to grant the Respondent's request to hear its witnesses as protected witnesses, i.e. without revealing their identity. The CAS Court Office also invited the Appellant to forward to the Panel, on a confidential basis, the list of questions he intended to ask the Respondent's witnesses for the Panel to scrutinize and authorise before the hearing.

37. On 22 April 2020, the Appellant confirmed his availability on the proposed hearing dates and requested the Panel to *"[d]isallow the testimony of Player A due to the non-fulfilment of the requirements of art. R44.1 CAS Code on the grounds of irrelevance",* or in the alternative, *"should the Panel deem that the testimony of Player A, despite its unused status based on the lack of reference to the Appellant […], order the Respondent to produce the full transcript of the interview conducted with Player A by the FIFA Investigatory Chamber"*. The Appellant also requested that the protected witnesses have access to a live video footage of the hearing room whilst they are giving testimony. Finally, the Appellant declined the invitation of the Panel to provide a list of questions he intended to ask to the Respondent's witnesses, trusting the Panel to intervene during the cross-examination in case the Appellant's questions would enable identification of the Respondent's witness being questioned.

38. On 22 April 2020, the Respondent requested the Panel to authorise the presence of a psychologist in the room in which the Respondent's witnesses would be questioned during their testimony.

39. On 27 April 2020, the CAS Court Office requested the Appellant to indicate whether he agreed with the psychologist being present in the room with the Respondent's witnesses.

40. On the same day, the CAS Court Office informed the Parties that it was available for a hearing on dates proposed by the Respondent and consulted the Appellant as to his availability on those dates. The CAS Court Office also requested the Respondent to indicate whether it

agreed (i) to provide the full transcript of Player A (in the understanding that the name of Player A should be redacted to not to disclose her identity) and (ii) with the Appellant's request that the Players have access to a live video footage of the hearing room (provided that it is technically possible). Finally, the CAS Court Office informed the Appellant that the Panel insisted that he submit a list of the questions he intended to ask to the Respondent's witnesses, as it was previously requested by the Panel, and that if, however, the Appellant did not submit the requested list of questions, he would be deemed to have waived his right for cross-examination.

41. On 30 April 2020, the Appellant informed the Panel of his availability on the proposed hearing dates. Moreover, the Appellant confirmed his intention to provide the Panel with the list of questions he intended to ask to the Respondent's witnesses for the Panel to authorise, but requested that the time limit for such list of questions to be provided be set only once the Appellant had received the full transcript of Player A's interview with the Respondent. Finally, the Appellant informed the CAS Court Office that he did not oppose the presence of an independent psychologist in the room with the Respondent's witnesses but requested that the proposed psychologist is (i) fully accredited, (ii) is strictly independent from the Respondent, iii) his or her identity is revealed to the Panel and to the Appellant in sufficient time before the hearing, (iv) remains at an acceptable distance from the witness and the translator (and out of the natural line of vision of each), and (v) solely intervenes under the request and supervision of the CAS Counsel present.

42. On 30 April 2020, the CAS Court Office informed the Parties that a hearing would be held in this matter on 7 and 8 September 2020 in Lausanne, Switzerland, and invited the Parties to communicate the names of all hearing attendees.

43. On 30 April 2020, the Respondent informed the CAS Court Office that it agreed to provide a redacted/anonymized copy of the full transcripts of the interview conducted by the Investigatory Chamber of the FIFA Ethics Committee to Player A, but that it objected to the Appellant's request for the Respondent's witnesses to have a live video footage at the hearing room. Should the Panel decide to allow such live video footage, the Respondent requested the Panel to allow the Respondent's witnesses to decide whether or not they would feel comfortable with testifying under those circumstances, or would prefer not to testify, according their level of confidence, and be able to request stop of the live footage during the hearing if so required.

44. On 1 May 2020, the CAS Court Office forwarded to the Parties an Order of Procedure (the "Order of Procedure"), requesting the Parties to return a signed and completed version of it, which the Parties did on 7 May 2020.

45. On 4 May 2020, the CAS Court Office informed the Parties of the following instructions from the Panel that: (i) the Respondent should provide the CAS Court Office with a redacted transcript of Player A's interview before the Investigatory Chamber of the FIFA Ethics Committee for it to be forwarded to the Appellant and the Panel; (ii) the presence of a psychologist in the room together with the protected witnesses would be allowed; (iii) the Appellant's request that the psychologist be independent and that he/she may not have direct

vision of the witnesses or be located at an acceptable distance from the witnesses or the translator was denied; (iv) subject to any security concern, the Respondent should provide the CAS Court Office with a CV and the name of the psychologist who will be attending the hearing; (v) it would be up to the individual witness to decide whether or not she agreed with there being live video footage at the hearing room; (vi) the Appellant was invited to provide the Panel with the questions that he intends to ask at the hearing to the witnesses for the Panel's scrutiny; and (vii) all other procedural requests by the Parties were denied.

46. On 11 May 2020, the Respondent provided the CAS court Office with the redacted transcript of Player A's interview before the Investigatory Chamber of the FIFA Ethics Committee as well as an anonymised CV of the psychologist who would be in the room with the Respondent's witnesses.

47. On the same day, the CAS Court Office invited the Appellant to provide the CAS Court Office with the list of questions he intended to ask to Player A.

48. On 25 May 2020, the Appellant requested the permission to submit new evidence to the Panel.

49. On 26 May 2020, the CAS Court Office asked the Appellant to clarify the content of the new evidence he wished to submit and the reasons for its late submission.

50. On 26 May 2020, the Appellant forwarded to the attention of the Panel only the list of questions he intended to ask to the Respondent's witnesses including Player A, for the Panel's confidential scrutiny.

51. On 27 May 2020, the Appellant clarified the content of the new evidence he requested permission to file and the exceptional circumstances said to justify the late submission of it.

52. On 28 May 2020, the CAS Court Office invited the Respondent to comment on the Appellant's request to file new evidence.

53. On 2 June 2020, the Respondent objected to the Appellant's request to file new evidence arguing both that the Appellant had failed to demonstrate the exceptional circumstances that led him to request the submission of new evidence and that such new evidence is irrelevant to the present matter.

54. On 3rd August 2020, the CAS Court Office informed the Parties that due to current COVID-19 related travel restrictions it was no longer possible to hold a full in person hearing in Lausanne on the scheduled hearing dates, and requested the Parties to specify whether they preferred to hold a partial virtual hearing on the scheduled hearing dates or to postpone the hearing until it would be possible to hold the full in person hearing.

55. On 5 August 2020, the Respondent informed the CAS Court Office that it preferred to hold a partial virtual hearing on the scheduled dates provided that the Respondent's witnesses might still testify in a protected manner.

56. On the same day, the Appellant informed the CAS Court Office that it preferred to postpone the hearing until a full in person hearing was possible.

57. On 7 August 2020, the CAS Court Office informed the Parties that, due to current travel restrictions, the scheduled hearing is cancelled and would be rescheduled in January 2021. The CAS Court Office also informed the Parties that the Panel had decided to deny the Appellant's request to file new evidence since (i) it was already available to the Appellant and therefore could have been filed before the exchange of written submissions was closed, (ii) there were no exceptional circumstances for allowing such new evidence on file, and (iii) the new evidence was not material to the case at hand. Finally, the CAS Court Office also informed the Parties that the Panel had reviewed the list of questions the Appellant intended to ask to the Respondent's witnesses and had decided that these questions would not be forwarded to the Respondent before the hearing.

58. On 15 December 2020, the CAS Court Office consulted the Parties on new possible hearing dates.

59. On 21 December 2020, the Appellant confirmed his availability on the suggested hearing dates to the CAS Court Office.

60. On 22 December 2020, the Respondent requested an extended time limit in order to confirm its availability as well as that of the Respondent's witnesses on the suggested hearing dates.

61. On the same day, the CAS Court Office informed the Parties that the Respondent's request for an extension of the time limit to state its availability on the suggested hearing dates was granted.

62. On 23 December 2020, the CAS Court Office requested the Parties to reserve alternative hearing dates for the case the circumstances make it impossible to hold an in person hearing in March 2021.

63. On 15 January 2021, the Respondent informed the CAS Court Office that so far it had been able to secure the presence of all its witnesses for the hearing dates in June 2021 only.

64. On 18 January 2021, the CAS Court Office informed the Parties that considering that an in-person hearing appeared impossible in March 2021, the Panel had decided that an in-person hearing would be held in the present matter on 17 and 18 June 2021 in Lausanne, Switzerland, and invited the Parties to provide the CAS Court Office with the name of all hearing participants.

65. On 24 February 2021, the Appellant provided the CAS Court Office with the names of his hearing participants.

66. On 9 March 2021, the CAS Court Office invited the Respondent to provide the list of its hearing attendees, which the Respondent did on 11 March 2021.

67. On 14 April 2021, the Appellant submitted a further request to file new evidence.

68. On 16 April 2021, the CAS Court Office invited the Respondent to provide its comments on the Appellant's further request to file new evidence.

69. On 21 April 2021, the Respondent informed the CAS Court Office that it objected to the admissibility of documents Nº 6, 7, 8 (pages 1 to 4), 11, 12 and 13 of the new evidence, which contain new arguments from the Appellant complementing its Appeal Brief, but that it did not formally object to the admissibility of the documents Nº 1, 2, 3, 4, 5, 8 (pages 5 to 8) and 10 as the new evidence to the present proceedings, insofar as it was made aware of its content by the Appellant.

70. On the same day, the CAS Court Office informed the Parties that further directions would be communicated by the Panel in due course.

71. On 4 May 2021, the CAS Court Office informed the Parties that the Panel had decided to admit to the present proceedings only documents N° 1, 2, 3, 4, 5, 8 (pages 5 to 8) and 10 of the new evidence.

72. On 3 June 2021, the Appellant requested the postponement of the hearing scheduled to take place on 17 and 18 June 2021.

73. On the same day, the CAS Court Office invited the Respondent to comment on the Appellant's request to postpone the scheduled hearing.

74. On the same day, the Respondent objected to the postponement of the hearing scheduled on 17 and 18 June 2021 and informed the CAS Court Office that it would prefer the hearing to be held virtually subject to the possibility of the Respondent's witnesses being able to testify in a protected manner.

75. On 8 June 2021, the CAS Court Office informed the Parties that the dates for the hearing scheduled to take place on 17 and 18 June 2021 were maintained and that the reasons of this decision would be communicated in the final award. The CAS Court Office further invited the Respondent to provide a list of the protected witnesses for the attention of the Panel only.

76. On 17 and 18 June 2021, a hearing was held in this matter. The President of the Panel, Mr Antonio de Quesada, Head of Arbitration at CAS, and Ms Stéphanie De Dycker, Clerk at CAS, attended the hearing in person whereas the other Members of the Panel and the following persons attended the hearing by video-conference:

For the Appellant:	Mr Sayed Ali Reza Aghazada, General Secretary of the Afghanistan Football Federation, Mr Dev Kumar Parmar, Mr Pablo Mettroz Holley and Mr Manuel Illanes Boguszewski, legal counsel.
For the Respondent:	Mr Miguel Liétard Fernández-Palacios, FIFA Director of Litigation; Mr Roberto Nájera Reyes, senior legal counsel; Witness A, Witness C and Witness D, protected witnesses; the

Interpreter; the psychologist and two FIFA support members of staff.

77. At the Hearing, the parties confirmed that they did not have any objection as to the composition of the Panel.

78. The Panel heard evidence from three witnesses (i.e. Player C, Player D and Player A), who were called by the Respondent and heard by the Panel in a way so as to protect their identity. This was done via a translator/interpreter. The Parties and the Panel then had the opportunity to examine and cross-examine the witnesses. The Panel also heard the testimony of the Appellant who was heard in a manner akin to that of a witness. Finally, the Panel also decided to hear Ms Andrea Sherpa-Zimmermann, CAS Counsel, as a witness *ex officio*. The witnesses including the Appellant were informed by the President of the Panel of their duty to tell the truth, subject to the sanctions of perjury under Swiss law. They confirmed that this was understood.

79. During Day 1 of the Hearing, the Appellant sent an email listing several alleged translation issues with the witnesses' examination. The email was provided to the Respondent. At the closing of the hearing, the Appellant confirmed that he did not have any objection with regard to the procedure and the respecting of his right to be heard, except as regarded the following issues:

- (i) the Appellant contended that the interpretation made by the Interpreter of the witnesses' examination was not satisfactory; and

- (ii) the Appellant contended that for a few minutes the interview of Player C occurred while none of the Appellant's counsel were connected to the hearing video-conference.

80. It was indicated at the hearing that the above objections raised by the Appellant would be addressed either separately after the hearing or in the award

81. FIFA for its part confirmed that it did not have any objection with regard to the procedure adopted and that its right to be heard had been fully respected.

82. On 18 June 2021, after the closing of the Hearing, the Appellant filed a permission to file new evidence, consisting of two letters sent to Mr. Abdul Saboor Walizada and Mr. Mohammed Nader Aleme by the Appellant on 5 December 2018, which allegedly were not filed earlier as a result of an administrative oversight.

83. On 19 June 2021, the CAS Court Office invited FIFA to comment on the Appellant's request to file new evidence as well as to provide the Panel with a CV of the Interpreter.

84. On 23 June 2021, the Appellant sent an unsolicited email to the CAS Court Office clarifying the translation issues raised by him during the Hearing.

85. On the same day, FIFA objected to the filing of the new evidence arguing that the Appellant failed to demonstrate the existence of exceptional circumstances justifying their late filing and, alternatively, that they were of no assistance to the Appellant's case. FIFA further objected to the translation issues raised by the Appellant arguing that they were both immaterial and groundless.

86. On 2 July 2021, FIFA sent a full version of the Interpreter's CV for the attention of the Panel only, as well as a redacted/anonymized version of the CV for the Interpreter to the attention of the Appellant.

87. On 20 July 2021, the CAS Court Office informed the Parties that the Panel had decided not to admit on file the documents filed by the Appellant on 18 June 2021 after the Hearing and to reject the Appellant's objection of the translation of the witnesses' testimony at the Hearing. The CAS Court Office specified that the reasons for these decisions would be communicated in the final award.

V. POSITIONS OF THE PARTIES

88. This section of the award does not contain an exhaustive list of the Parties' contentions, its aim being to provide a summary of the substance of the Parties' main arguments. For the avoidance of doubt, the Panel confirms that in considering and deciding upon the Parties' claims in this Award, it has accounted for and carefully considered all of the submissions made and evidence adduced by the Parties during the hearing, including allegations and arguments not mentioned in this section of the Award or in the discussion of the claims below.

A. The Appellant's Submissions

89. On 22 December 2019, in his Statement of Appeal, and on 17 January 2020, in his Appeal Brief, the Appellant requested as follows:

> *"a. Set aside the decision of the FIFA Ethics Committee.*
>
> *b. Lift any sanction against Mr Aghazada arising out of this ethics proceeding.*
>
> *c. Order the Respondent to reimburse all the amounts already paid by Mr Aghazada to FIFA as part of this ethic proceeding.*
>
> *d. Order the Respondent to contribute towards the Appellant's legal costs at the amount to be decided by the CAS.*
>
> *e. For FIFA to publicise the positive findings in relation to this matter in order to begin redressing the reputational harm that Mr Aghazada has suffered and patiently endured over the past 14 (fourteen) months.*

In the alternative that the Panel does wish to sanction Mr Aghazada, the Panel is invited to come to the following conclusion:

a. To apply the lowest possible sanction taking into account the submission on lex mitior; and

b. To take into account Mr Aghazada's suspension as time counted on any suspensory sanction applied".

90. The Appellant's submissions in support of his Appeal against the Decision may be summarised as follows:

i. Procedural flaws

91. The Appellant submits that the proceedings before the AC were not conducted in compliance with the principles of a fair trial and due process:

(a) The relevant evidence was not disclosed in its entirety to the Appellant before the date of the hearing of 8 October 2019 had been confirmed. This constitutes a violation of the Appellant's right to be heard.

(b) When the initial hearing date was set (24 September 2019), the AC only invited the Appellant to inform the AC whether or not he preferred a hearing. At this stage of the proceedings, the Appellant had no opportunity to submit any comments, evidence and/or statement of defence in relation to the allegations made against him. In addition, the AC did neither provide the Appellant with any procedural timetable nor with the names of the witnesses who would testify during the hearing. This information was only provided on 10 September 2019, i.e. only 28 days before the hearing of 8 October 2019.

(c) By letter dated 3 October 2019, the AC rejected the Appellant's request to participate or intervene in the hearing via telephone/video link. The right of the Appellant to make a 30-minute final statement at the end of the hearing deprived him of his right to present his evidence and legal arguments in due manner and therefore restricted his right to be heard.

(d) Furthermore, after the end of the hearing held at the Home of FIFA in Zurich, the panel requested all parties, i.e. the representatives of the IC and the counsel for the Appellant, to leave the hearing room. However, the representatives of the IC remained in the hearing room for a significant time.

(e) The Appellant was never in the position to make a compelling statement of defence due to a lack of information. The report edited by FIFA made it impossible to determine a clear or approximate date of the alleged incidents.

(f) The final report does not establish cogent evidence regarding any wrongdoing of the Appellant, because it *"expands greatly on the allegations, actions and testimonies against Keramuddin Karim […] whilst giving limited attention to the allegations against Mr Aghazada. There is no doubt*

that the Investigatory Chamber ("IC") would not have intentionally confused the actions of two different persons".

(g) The witness statements should all be declared inadmissible.

- The Appellant was only provided with the full transcripts of the Players C and D after a complaint was filed with the AC. The names of the witnesses were, however, never disclosed to the Appellant. The infringement of his right to defence cannot be justified on the basis of the protection of the anonymity of the victims.

- *"Under the prima facie reasonable excuse of the protection of the victims, the AC admitted the interviews of Players C and D as valid evidence, even though they were not given as a witness report and the witnesses did not appear at the hearing, not even via videoconference or conference call. Furthermore, the Appellant was only given the chance to present questions in writing before the hearing without being able to ensure who would answer those questions".*

- Based on Article 149 of the Swiss Criminal Procedure Code ("SCPC"), a less restrictive measure than reception of the written statements only of the Players C and D would have been to allow the witnesses to testify *"behind a curtain"*. In addition, Article 143 of the SCPC provides that witnesses must be present at the hearing either in person or via videoconference.

- The fact that the Appellant had to submit a list of questions with regard to the testimony of the Players C and D prior to the hearing constitutes a violation of the fair trial principle to the detriment of the Appellant.

(h) The travel ban imposed against the Appellant by the Attorney General cannot be used as evidence against him.

ii. On the violation of the Duty to Report

92. The Appellant submits that he was not aware of any of the atrocities committed by Mr Karim:

(a) The report of the IC as well as the Decision states that Player C and D did not report the incident to any staff member of the AFF.

(b) Player C stated in para.7 of her testimony only that *"[t]he only person I have talked about this matter is Khalida […]".*

(c) The AC wrongfully assumed that the witnesses pointed to the Appellant when they referred in their testimony to "the secretary". Instead, the term "secretary" referred to the personal secretary of Mr. Karim, i.e. Mr Mohammad Hanif Sedique (better known as "Rustam"). Mr Rustam was Mr Karim "right hand". He was the only "secretary" to know about the actions of Mr Karim.

(d) The information gathered by the IC does not indicate that any female player reported the incidents to the Appellant. Thus, the Appellant cannot be sanctioned for failing to report the mental, physical and sexual abuse of female players to FIFA.

(e) With regard to the email of 23 November 2019, the Appellant submits that

- The email was only directly addressed to Mr Karim.
- The content refers to a conversation between representatives of the AWNFT and Mr Karim of 5 February 2018 about the conduct of Mr Walizada and Mr Aleme.
- The email of 23 November 2019 was sent to the Appellant during a particular busy month of travel so that the Appellant became aware of the content only after the FIFA had contacted the AFF in relation with allegations made against Mr Karim.

(f) The overall circumstances in Afghanistan are important for a correct assessment of the case at hand. The freedom of women is more restricted than in western society. Therefore, women will not report any offences when the welfare of their families is at stake. *"If the victims did not attempt to present charges in front of the Afghan police, on the basis of Mr Karim's political power, it simply cannot be expected that they would dare to do so in front of the very own organisation by Karim. This point further emphasises the unlikelihood of persons at the AFF (other than those directly implicated within the heinous acts themselves) knowing of what is, has or would take place".*

iii. On the violation of Protection of physical and mental integrity

93. The Appellant further denies any failure to protect, respect and safeguard players from misconduct by Mr Karim. This finding is backed by the criminal investigations of the Attorney General. The latter has dropped all accusations against him.

(a) Since the Appellant had no knowledge of the atrocities committed by Mr Karim, he was not able to protect the witnesses.

(b) It comes with his former position as a General Secretary that many people are *"affected by his actions"*. However, the Appellant cannot be sanctioned merely on the fact that *"the victims of Mr Karim's actions were AFF football players"* as this *"would be unduly stretching the wording of the clause* [Article 24(1) of the 2012 FCE]*, and complying with the emotive fallacy of 'guilt by association', as opposed to the principles established in law and governed accordingly in order to deliver fair, just and transparent result"*.

iv. As to the appropriate sanction

94. The Appellant further submits that the AC did not consider certain factors when determining the sanction imposed on him. In particular, mitigating circumstances were not duly taken into account.

(a) The Appellant actively supported and cooperated with the FIFA and the Asian Football Association ("AFC") throughout their entire investigations. The AC should have considered this unconditional assistance and cooperation as a mitigating factor.

(b) The Appellant commenced internal investigations into the accusations when he became aware of them in order to protect the integrity of the AFF.

(c) His lack of motive and his exemplary character must further be considered as a mitigating factor.

B. The Respondent's Submissions

95. In its Answer dated 23 March 2020, the Respondent filed the following prayers for relief:

"(a) rejecting the relief sought by the Appellant;

(b) confirming the Appealed Decision;

(c) ordering the Appellant to bear the full costs of these proceedings; and

(d) ordering the Appellant to make a contribution to FIFA's legal costs".

96. The Respondent's submissions – in essence – can be summarised as follows:

i. Procedural flaws

97. The Respondent denies that any procedural flaws occurred in the proceedings before the AC.

(a) On 23 August 2019, the AC provided the Appellant with the final report of the IC and further invited the Appellant to submit, *inter alia*, a statement of defence, evidence and substantiated motions for the admission of evidence.

(b) On 10 September 2019, the AC informed the Appellant of the procedural timetable for the hearing.

(c) The fact that the participation and intervention of the Appellant was limited to a 30-minute statement at the end of the hearing was due to the travel ban imposed by the Attorney General and was therefore not within the sphere of responsibility of the AC.

(d) The Appellant did not substantiate in what way his procedural rights had been infringed by the fact that representatives of the IC had remained in the hearing room after the end of the hearing.

(e) Documentary evidence based on anonymous witness statements is admissible under Swiss law as illustrated by the following:

- Anonymous witness statements as admissible evidence have been accepted in various CAS proceedings, e.g. CAS 2009/A/1920 or CAS 2018/A/5734.

- The AC invited the Appellant to provide a list of questions to the anonymous witnesses in writing. In addition, the Appellant waived his right to cross-examination when he did not provide the AC with said list.

- The protection of the players is necessary due to the danger and risk for their families and their own well-being that is at stake. Many of the victims had to leave their home country and request humanitarian visas. For this protective reason the identity of the interviewed witnesses cannot be disclosed.

- Anonymous witnesses and the admissibility of their statements as evidence in judicial proceedings are in compliance with the applicable regulations of the FCE (cf. Article 44 of the FCE) and Swiss law, i.e. Articles 149 et seq. of the SCPC, Article 156 of the Swiss Code of Civil Procedure ("CPC") and Article 18(2) of the Swiss Law on Administrative Procedure ("SLAP").

(f) Notwithstanding any procedural flaws – *quod non* – any procedural breaches at the AC-level are cured in the proceedings before the CAS in the light of the *de novo* power of the Panel pursuant to Article R57 of the CAS Code.

ii. On the violation of the Duty to Report

98. The Respondent submits that the Appellant was aware of the atrocious acts committed by Mr Karim before the commencement of the investigations by the IC. He failed to comply with his obligation to report the incident to the Respondent.

(a) In his function as the General Secretary of the AFF, it was the Appellant's responsibility to deal with all correspondence of the AFF with stakeholders, even during his business trips. Therefore, the Appellant must have been aware of the email of 5 February 2018 and 23 November 2018. At least the latter was addressed to his private email account as well as to the AFF's general email address. The Appellant therefore failed to take immediate actions by reporting the incident to the Respondent's Ethics Committee.

(b) Due to the size of the federation of the AFF and its premises, it is hard to believe that, according to the witness testimonies, almost everybody knew about the secret room in Mr Karim's office, except for the Appellant. The secret room is where is it said that the abuse and sexual violation of the players took place. This is even more improbable considering that the Appellant was the General Secretary of the AFF.

(c) Irrespective of the Appellant's awareness of the secret room, members of the AWNFT informed him personally about the conduct of AFF officials.

- The argument of the Appellant that the witnesses confused him with Mr Mohammad Hanif Sedique ("Rustam") is groundless.

- Player C expressly stated that she *"saw his secretary, Mr Ali Aghazada, he is the General Secretary"*. She further gave testimony that she *"saw Ali Aghazada was there. I was crying I wanted to tell him what happened, he took his business card threw it at my face"*. Consequently, Player C positively identified Ali Aghazada.

- Player D also testified that she had informed the Appellant of the mental, physical and sexual abuse within the AFF prior to the investigations conducted by the Respondent. In her witness statement, she testified that *"[s]he [the then captain of the AWNFT] made a complaint, but Ali Aghazada prevented from forwarding her complaint. He is the General Secretary of the Football Federation and he had not forwarded her complaint. He hampered it"*. Hence, Player D identified the Appellant by name and position.

(d) In addition, the Appellant must have been aware of any wrongdoing within the AFF based on the fact that several female players either left or were excluded from the team. The physical appearance of female player was also the only criterion for the recruitment of players. It seems to be implausible that a person in the position at the top of the AFF (General Secretary) would be unaware of any wrongdoing.

(e) Irrespective of the above, it was the Appellant's duty as a General Secretary to know of criminal acts committed at the AFF.

iii. On the violation of Protection of physical and mental integrity

99. The Respondent submits that the Appellant, in his position as the General Secretary of the AFF, had a duty to protect, respect and safeguard the integrity and personal dignity of the victims. The Appellant failed to do so and exposed the players to the atrocities of AFF officials, including Mr Karim.

(a) The Appellant failed to protect the female players after they personally reported the incidents to him (cf. Players C and D). The Appellant again failed to take action after representatives of the AWNFT complaint about criminal offences committed by AFF officials in February 2018 and on 23 November 2018. The Appellant preferred to turn a blind eye on these wrongdoings.

(b) The Appellant even promoted Mr Walizada as head of the AFF judicial body. The Appellant, thus, offered protection to the alleged perpetrators instead of to the victims.

(c) After widespread media coverage of the mental, physical and sexual abuse within the AFF premises, the Appellant publicly. rejected these accusations.

(d) The Appellant framed the allegations as an attempt of the members of the AWNFT to secure their wish to take off their hijabs.

(e) After the initiation of investigations by the Respondent, the Appellant acted in a contradictory manner by refusing any wrongdoing of AFF officials, on the one hand, and by promising objective and independent investigations into allegations, on the other hand.

(f) That the Appellant was more interested in protecting the perpetrators than the victims is further evidenced by the letter dated 5 December 2018 sent by the Appellant to Mr Aleme and Mr Walizada. The latter states – inter alia – as follows: *"You may be aware that in the last days, the media have reported about the sexual abuse and other mistreatment occurring within the AFF national teams. It was suggested that you may have been affected and the victims of such actions. […] As an employer we want to do everything to protect you".*

iv. As to the appropriate sanction

100. Article 17 of the 2018 FCE foresees a maximum sanction of two years and Article 23 of the 2018 FCE a maximum sanction of five years. Considering the multiple breaches of the FCE committed by the Appellant, the AC was entitled to impose a sanction from two years up to six years and eight months according to Article 11 of the 2018 FCE.

101. The sanctions imposed against the Appellant is reasonable and proportionate, taking into account the duty / necessity upon him to report the abuses and his lack of protection of the female players and employees of the AFF.

102. Mitigating circumstances do not apply in favour of the Appellant. He has not provided the requisite cooperation by proactively helping the investigations of the IC. Instead, he consistently denied all accusations in public. In addition, he even requested the stay of investigation after the Attorney General had suspended him.

VI. JURISDICTION

103. Article R47 para. 1 of the CAS Code provides as follows:

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

104. Article 82(1) of the FCE (2019 edition) provides as follows:

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

105. In addition, Article 58(1) of the FIFA Statutes (2019 edition) provides 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".*

106. The Decision constitutes a decision taken by the AC, i.e. a final decision passed by a legal body of FIFA.

107. Neither party has disputed the jurisdiction of CAS and both have expressly confirmed it when signing the Order of Procedure.

108. The Panel, therefore confirms that CAS has jurisdiction to decide the present Appeal.

VII. ADMISSIBILITY

109. Article R49 of the CAS Code provides as follows:

> *"In the absence of a time limit in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for the 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. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the parties".*

110. In addition, Article 58(1) of the FIFA Statutes refers to a time limit of 21 days to file an appeal.

111. The Decision was notified to the Appellant on 10 December 2019. His Statement of Appeal was filed on 22 December 2019, i.e. within the prescribed time limit.

112. The Panel therefore confirms that the Appeal is admissible.

VIII. APPLICABLE LAW

A. General Aspects

113. Article R58 of the CAS Code provides as follows:

> *"The Panel shall decide the dispute according to the applicable regulations and, subsidiarity, to the rules of law chosen by the parties or, in 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".*

114. Article 57(2) of the FIFA Statutes provides as follows:

"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".

115. Neither Party objects to the application of the rules and regulations of FIFA. Further, it follows from the Articles set out in paragraphs 113 and 114 above that the regulations of FIFA particularly the FCE, apply to the merits in this Appeal.

116. For all substantive matters the Panel adheres to the principle of *tempus regit actum* and thus will apply the versions of the FCE in force at the relevant time. In relation to procedural aspects of this Appeal the Panel finds that these are governed by the 2019 edition of the FCE, i.e. the provisions in force at the time of the proceedings in question. Furthermore, the Panel will apply Swiss law subsidiarily.

B. The version of the FCE applicable to issues of substance

117. Due to the fact that the alleged incidents took place in the period between 2013 and 2018, the Parties are in dispute whether, in the light of the *lex mitior* principle, the Appeal must be governed by the 2012 FCE or the 2018 FCE edition with respect to its substantive aspects.

118. The Appellant submits that the 2012 edition of the FCE, i.e. Article 18 (Duty of disclosure, cooperation and reporting) and Article 24 (Protection of physical and mental integrity), shall apply, because neither provision contains a minimum sanction which is more favourable to the Appellant. In addition, the wording of Article 24(1) of the 2012 FCE edition requires a closer contact between the offender and offended than is evidenced by the facts of this case.

119. The Respondent, submits on the contrary, that the scope of liability must be considered in order to determine the applicable edition of the FCE. A specific maximum sanction for a breach of the "Duty to report" (Article 17 of the 2018 FCE) and the "Protection of physical and mental integrity" (Article 23 of the 2018 FCE) is only provided for in the 2018 FCE edition. Furthermore, by reason of Article 11 of the 2018 FCE, it is more favourable for a person in the Appellant's position who has committed more than one offence, than the version in force at the time of such commission.

120. Article 3 of the FCE (2019 edition) in so far as concerns the applicability of the rules in terms of time provides as follows:

"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".

121. The relevant Articles of the of the FCE (2012 edition) provide as follows:

"Article 11 Concurrent breaches

1. Where more than one breach has been committed, the sanction shall be based on the most serious breach, and increased as appropriate depending on the specific circumstances.

2. When determining the amount of a fine, the Ethics Committee is not obliged to adhere to the general upper limit of the fine.

[…]

Article 18 Duty of disclosure, cooperation and reporting

1. Persons bound by this code shall immediately report any potential breach of this Code to the secretariat of the investigatory chamber of the Ethics Committee.

2. At the request of the Ethics Committee, persons bound by this Code are obliged to contribute to clarifying the facts of the case or clarifying possible breaches and, in particular, to declare details of their income and provide the evidence requested for inspection.

[…]

Article 24 Protection of physical and mental integrity

1. Persons bound by this Code shall respect the integrity of others involved. They shall ensure that the personal rights of every individual whom they contact and who is affected by their actions is protected, respected and safeguarded.

2. Harassment is forbidden. Harassment is defined as systematic, hostile and repeated acts for a considerable duration, intended to isolate or ostracise a person and affect the dignity of the person.

3. Sexual harassment is forbidden. Sexual harassment is defined as unwelcome sexual advances that are not solicited or invited. The assessment is based on whether a reasonable person would regard the conduct as undesirable or offensive. Threats, the promise of advantages and coercion are particularly prohibited" (emphasis added).

122. The relevant Articles of the FCE (2018 edition) provide as follows:

"Article 11 Concurrent breaches

1. 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.

[…]

Article 17 Duty to report

1. Persons bound by this Code who become aware of any infringement of this Code shall inform, in writing, the secretariat and/or chairperson of the investigatory chamber of the Ethics Committee directly.

2. Failure to report such infringements 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.

[…]

Article 23 Protection of physical and mental integrity

1. Persons bound by this Code shall protect, respect and safeguard the integrity and personal dignity of others.

2. Persons bound by this Code shall not use offensive gestures and language in order to insult someone in any way or to incite others to hatred or violence.

3. Harassment is forbidden. Harassment is defined as systematic, hostile and repeated acts intended to isolate or ostracise or harm the dignity of persons.

4. Sexual harassment is forbidden.

5. Threats, the promise of advantages and coercion are particularly prohibited.

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

123. The principle of *lex mitior*, a concept originally deriving from criminal law, is well-established in CAS jurisprudence (cf. CAS 94/128, CAS 2009/A/1918, CAS 2017/O/4980, CAS 2018/A/5989). It applies when a federation, associations or sports-related bodies amends its rules and regulations between the time of the asserted sports rule violation and the time of the decision taken by the relevant sports body in respect thereof. The principle of *tempus regit actum* is then softened by the *lex mitior* principle in a case where the new rules are more favourable to the accused. In such circumstances the less severe "penalties" and "sanctions" will be applied retroactively. The principle of *lex mitior* serves the purpose of sanctioning the person who has committed a violation reflecting the current opinion of the sports body that a milder sanction should apply to such violation than the one applicable at the time of its commission.

124. In CAS 2009/A/1918, para. 18 et seq., the Panel held as follows:

"The Panel identifies the applicable rules by reference to the principle 'tempus regit actum': in order to determine whether an act constitutes an anti-doping rule infringement, the Panel applies the law in force at the time the act was committed. In other words, new regulations do not apply retroactively to facts that

occurred prior to their entry into force, but only for the future. As stated in a CAS precedent (CAS 2000/A/274, Digest of CAS Awards II (1998-2000), p. 389 at 405).

In fact 'under Swiss law the prohibition against the retroactive application of Swiss law is well established. In general, it is necessary to apply those laws, regulations or rules that were in force at the time that the facts at issue occurred…'.

The principle of non-retroactivity is however mitigated by the application of the 'lex mitior' principle. In this respect the Panel fully agrees with the statements contained in the advisory opinion CAS 94/128 (Digest of CAS Awards (1986-1998), p. 477 at 491), which read (in the English translation of the pertinent portions) as follows:

'The principle whereby a criminal law applies as soon as it comes into force if it is more favourable to the accused (lex mitior) is a fundamental principle of any democratic regime. It is established, for example, by Swiss law (art. 2 para. 2 of the Penal Code) and by Italian law (art. 2 of the Penal Code). This principle applies to anti-doping regulations in view of the penal or at the very least disciplinary nature of the penalties that they allow to be imposed. By virtue of this principle, the body responsible for setting the punishment must enable the athlete convicted of doping to benefit from the new provisions, assumed to be less severe, even when the events in question occurred before they came into force. This must be true, in the Panel's opinion, not only when the penalty has not yet been pronounced or appealed, but also when a penalty has become res iudicata, provided that it has not yet been fully executed.

The Panel considers that […] the new provisions must also apply to events which have occurred before they came into force if they lead to a more favourable result for the athlete. Except in cases where the penalty pronounced is entirely executed, the penalty imposed is, depending on the case, either expunged or replaced by the penalty provided by the new provisions'".

125. In the light of the above, the Panel finds that the principle of *lex mitior* applies to the case at hand. The "sanctions" which may be imposed under the 2012 and 2018 edition in respect to the violations of the FCE allegedly committed by the Appellant differ inasmuch as only the 2018 edition of the FCE provides for a maximum ban on taking part in any football-related activity in case of a violation of the Duty to report under Article 17 of the 2018 FCE (two years) and in case of a violation of the Protection of physical and mental integrity under Article 23 of the 2018 FCE (five years). An Article which provides a cap for a sanction is automatically more favourable than one which does not. In addition, Article 11 of the 2018 FCE also limits for the first time the length of a sanction in case of multiple violations of the FCE, which is likewise equally in favour of the Appellant.

126. The Panel rejects the Appellant's submissions regarding the application of Article 24(1) of the 2012 edition of the FCE. The substance of the offence is to be assessed according to the law in force at the time it was committed (POPP/BERKEMEIER, BSK-StGB/JStG, Art. 2 no. 11). The Appellant misconstrues the principle of *lex mitior* which applies only to the sanction for and not the substance of the offence.

127. In view of the matters set out in paragraphs 123-126 above, the Panel finds that the 2018 edition of the FCE is more favourable to the Appellant than the 2012 Edition and, is therefore, applicable to the merits in this matter.

IX. THE HEARING

128. The Panel turns now to an evaluation of the testimony adduced and heard on 17 and 18 June 2021 partly by videoconference and in person (the "Hearing").

129. At the Hearing, the Panel heard evidence from Player C, Player D and Player A, which were called by the Respondent. The Parties and the Panel then had the opportunity to examine and cross-examine the witnesses. With regard to examination of the Respondent's protected witnesses on Day 1 of the Hearing, the Panel instructed - and the Appellant agreed - that:

- the witnesses were all in a secret location in Switzerland accompanied by (i) a CAS counsel entrusted by the Panel to ensure that their testimony would be given directly and without any undue interference from third parties, (ii) the Interpreter, and (ii) a psychologist in case of need;

- a FIFA representative, Ms Marta Ruiz-Ayúcar, was also present at that secret location;

- only the witnesses would be entitled to answer questions and only FIFA's counsel present in a « virtual » CAS hearing room would be entitled to object to the questions posed by the Appellant;

- the witnesses would testify using a voice scrambler to protect their identity;

- the Panel had reviewed the list of questions to the Respondent's Witnesses in order to avoid that some of the questions had the effect of identifying the witnesses. Therefore, to the extent possible, the questions would have to be modified or, otherwise, disallowed altogether;

- the questions posed to the witnesses should be related to the facts and should not be calculated, even if unintentionally, to identify the witnesses.

- the witnesses were informed by the President of the Panel of their duty to tell the truth, subject to the sanctions of perjury under Swiss law.

130. The testimony of the witnesses can be summarized - in essence - as follows:

- Player C: Player C played for the Afghan women national football team at the time of the relevant facts. In the year 2017, she was sexually harassed, hit in the face and elsewhere on her body and raped by the President of the AFF. The abuses took place on the premises of the AFF, i.e. in a secret room that could only be accessed through the office of the President of the AFF by fingerprint. Thereafter, the President of the AFF gave Player C 300 or 400 US dollars and advised her not to tell anybody about

what had happened or about the secret room. Player C refused to take the money and was kicked out of the secret room through a side door that connected the secret room with the private parking space of the President of the AFF. She had blood, bruises and black spots on her face, neck and other parts of her body. She walked through to the main gate of the AFF compound and bumped into the Secretary General of the AFF, the Appellant. Player C turned to him for help and tried to explain what had happened to her, but instead of helping her, he was rough, and showed her no concern at all. He *"pulled his* [business] *card out of his pocket"* and told her: *"you can make money out of that and you can go wherever you want but I don't want to see you ever again in the federation"*. According to Player C, the Appellant clearly knew what had happened to her, as he could see the state in which she was upon exiting the secret room where she had been sexually abused and beaten by the President of the AFF, Mr Karim. In addition, the Appellant's office and Mr Karim's office were very close in the old offices, where the abuse took place; finally, Mr Karim and the Appellant have a "close relationship". According to Player C, *"everybody at the AFF including the Appellant"* knew about the widespread abuses committed on the female players of the AFF. Player C never returned to the AFF nor did she contact the Appellant. The Appellant for his part never tried to contact Player C. Player C recognized and identified the Appellant also from a photo that was shown to her.

- Player D: At the time of the relevant facts, Player D was a player of the Afghan women national football team. She was sexually assaulted twice by the President of the AFF; Mr Karim. Each time, the abuses took place in the old offices of the President of the AFF. Each time, she left the office of the President of the AFF in very bad conditions, i.e. shocked and crying, and many people could see her at that moment. Player D knew that similar and worse abuses had happened to other players of her team. In addition, according to Player D, it was impossible for the Appellant not to know about such abuses as his office in the old building was next to the President's office. Moreover, the Appellant and Mr Karim had a close relationship. Together with other players, Player D intended to make an official complaint in writing about these abuses. In order to do so they had to go through the Appellant. The Appellant however blocked the complaint, as was reported by the person in charge for filing the complaint. These events occurred between 2014 and 2016.

- Player A: At the time of the relevant facts, i.e. while the Appellant was Secretary General of the AFF, Player A was a member of the Afghan women national football team. Player A reported that she was sexually harassed by the President of the AFF. Such abuse took place in the leisure room which is located on the upper floor of the new building of the AFF, above the new office of the President of the AFF. According to Player A, all women at the AFF knew about sexual abuses by AFF officials; it was impossible for the Appellant not to know about them. Player A also stated that […]. Player A stated that she did not feel comfortable to report this fact earlier since she was under great stress until the President of the AFF was sentenced; today she has more strength to enable her to testify about the Appellant.

131. The Panel also heard the testimony of the Appellant, whom both the Parties and the Panel had the opportunity to examine and cross-examine. The testimony of the Appellant can be summarized - essentially - as follows:

- He was Secretary General of the AFF from 2012 until 2019. He started working with the AFF in 2010; from 2010 to 2012 he was in charge of beach soccer and youth football. He was elected to the position of Secretary General by the Executive Committee of the AFF upon proposal of the same Committee. At the time of his appointment as Secretary General, he was 22 years old. As Secretary General, he was in charge of international relations of the AFF as well as all financial matters and day to day business and administrative issues of the AFF. His team was composed of two employees for international relations, two employees for finances and one employee for IT. He was constantly liaising with the President of the AFF. For many issues he needed to ask for authorisation from the President of the AFF prior to taking action. From 2010 to 2015, he was working in the old offices of the AFF together with the other AFF employees. At that time, the AFF employed approximatively 15 persons. Later on, the AFF increased to approximatively 100 employees. As from 2015, he moved to the new building of the AFF which is located in the same compound. He claims that the relationship with the President of the AFF, Mr Karim, was friendly and strictly professional: […]. He was not aware of the abuses that were committed by the President of the AFF: he was not always with the President of the AFF and respected his private life. He stated that he became aware of the alleged abuses against members of the National Women Football Team on 30 November 2018. While being on business trip, he read an email that had been sent on 23 November 2018 to his private email account from the Afghan Women National football team. At the same time, he also received a letter from the AFF sponsor, Hummel, cancelling the sponsorship contract with the AFF due to severe allegations of sexual harassments by AFF employees. Upon arrival in Kabul, he immediately started an internal investigation into these allegations. He also held a press conference shortly after the incidents became public through media articles. At the press conference the Appellant dismissed the allegations of sexual abuses and explained that the women's team unleashed the media scandal after the AFF had decided to dismiss members from the AFF National Women Football Team who refused to wear the hijab in accordance with Islamic laws. He confirmed that he signed the letters from the AFF to Mr Abdul Saboor Walizada and Mr Mohammad Nader Aleme dated 5 December 2018, which were drafted according to his direction. Shortly thereafter, he was himself provisionally suspended.

132. Following objections raised by the Appellant during the hearing (see supra paragraph 93), the Panel decided to hear the testimony of Ms Andrea Sherpa-Zimmermann. Ms Andrea Sherpa-Zimmermann is the CAS Counsel who was present with the witnesses at the secret location. Ms Andrea Sherpa-Zimmermann was heard by the Panel *ex officio*. Her testimony can be summarized - essentially - as follows:

- She reported that she was present throughout the testimony of the protected witnesses. She said that she was unable to comment on the quality of the translation provided by the translator, since she does not speak the relevant language. However,

having assisted to the examination and cross-examination of the three witnesses in presence of the Interpreter, she confirmed that it was her firm impression that the Interpreter did not unduly interfere with the testimony of the protected witnesses. She explained that the translator waited until the end of each question posed before translating the question to the witness. He also waited and listened to the witnesses' answer before translating the answer into English. The translator did not interrupt the witnesses. Furthermore, it was her firm impression that everything the witnesses said was translated into the microphone. There were no side discussions between the Interpreter and the witnesses. She further stated that she did not have the impression that there were language issues between the witnesses and the Interpreter. Everything ran very smoothly and professionally. She also explained that she had assisted to the examination of the same witnesses in the context of another CAS proceeding in which the same Interpreter was used. She did not feel that the Interpreter acted any differently in the present proceedings as compared with the previous proceedings.

X. PROCEDURAL ISSUES

133. The Panel shall deal in the present section with the several procedural issues that were raised by the Parties in the course of the written and oral procedure in the present case.

A. Appellant's request dated 25 May 2020

134. First, the Panel recalls that on 25 May 2020, the Appellant filed a request for permission to submit new evidence to the Panel. On 26 May 2020, the CAS Court Office invited the Appellant to clarify what the new evidence was and why such new evidence could not be produced before. On 27 May 2020, the Appellant stated that the new evidence relates to the steps engaged by the Appellant as Secretary General in order to investigate allegations of match fixing involving the AFF. The Appellant's counsel also stated that he only recently became aware of the existence of the investigation work done by the Appellant in a different context, which explains why the evidence relating thereto was not filed earlier. The Appellant's counsel also submitted that the evidence is relevant *inter alia* as it illustrates what the Appellant would, in likelihood, if free to do so, have done in compliance with his Duty to report. Finally, the Appellant also submitted that according to CAS case law, evidence is there to be admitted, with a filter to exclude only evidence that is submitted late in an abusive or *mala fide* manner. On 2 June 2020, FIFA objected to the submission of the new evidence as requested by the Appellant, arguing that there were no exceptional circumstances justifying the late filing of the new evidence, and that in any case the new evidence is not relevant for the case at hand as it concerns investigations conducted for other matters unrelated to the present case.

135. The Panel must decide this issue by reference to Article R56 of the CAS Code, which provides that *"[u]nless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to […] produce new exhibits […]"*. In accordance with that Article, the Panel decided on 7 August 2020 not to allow the new evidence on file because these documents were already existent and in the Appellant's possession before the exchange of written submissions was closed. Consequently, they could have been filed by the Appellant

together with his other submissions. The Panel cannot identify any exceptional circumstances to allow them onto the file. Furthermore, based on the Appellant's letter dated 27 May 2020, it remains unclear how these new documents could assist the Panel to decide the matter in dispute. The Panel thus finds that these new documents are not material to the case at hand and rejects the Appellant's request based also on this reason. It is not necessary for there to be abuse or bad faith before such evidence can be excluded. Neither the Article nor CAS jurisprudence so provides.

B. Appellant's request dated 14 April 2021

136. On 14 April 2021, the Appellant filed another request to file new evidence (documents N° 1 to 13), related to the formal criminal investigation that has been conducted against the Appellant by the Attorney General and the closure of the case against the Appellant in Afghanistan for absence of any evidence against him. On 21 April 2021, the Respondent objected to the admissibility of documents Nº 6, 7, 8 (pages 1 to 4), 11, 12 and 13 of the new evidence, which contain new arguments from the Appellant complementing his Appeal Brief, but did not formally object to the admissibility of the documents Nº 1, 2, 3, 4, 5, 8 (pages 5 to 8) and 10 of the new evidence to the present proceedings, insofar as FIFA had already been made aware of their content by the Appellant.

137. Again, the Panel must decide this issue too by reference to Article R56 of the CAS Code, quoted above. Because of the Parties' agreement, the Panel decides to admit to the file documents N° 1, 2, 3, 4, 5 and 8 (pages 5 to 8) and 10 of the evidence. However, the Panel decides not to allow on file documents N° 6, 7, 8 (pages 1 to 4), 11, 12 and 13 of the new evidence. Based on the Appellant's letter dated 14 April 2021, these documents were available to the Appellant either before the exchange of the written submissions was closed or at least several months before they were submitted by the Appellant to the Panel. In addition, based on the Appellant's letter dated 14 April 2021, the Panel identifies no exceptional circumstance to justify a different conclusion.

C. Appellant's request for a postponement of the hearing

138. On 3 June 2021, the Appellant requested the postponement of the hearing scheduled to take place on 17 and 18 June 2021, since, as a result of visa and travel restrictions in the context of the COVID pandemic, neither the Appellant nor his legal team would likely be able to travel to Lausanne in Switzerland in time for the scheduled *in persona* hearing. FIFA objected to the postponement of the hearing so scheduled and informed the CAS Court Office that it would prefer the hearing to be held virtually subject to the possibility of the Respondent's witnesses to testify in a protected manner. On 8 June 2021, the Panel decided to maintain the hearing scheduled to take place on 17 and 18 June 2021 since (i) the Appellant had ample opportunity to organize himself in order to attend the scheduled hearing and (ii) rescheduling the Hearing at such a late stage would trigger considerable costs, logistics and emotional stress for the protected witnesses who are planned to testify during the Hearing. The Panel therefore decided that on the scheduled Hearing dates, the Parties should participate to the Hearing via videoconference, that the protected witnesses shall be in a secured location together with a

CAS Counsel (Ms Andrea Sherpa-Zimmermann) who will be supervising the identity of the protected witnesses and that the President of the Panel, the CAS Counsel supervising the present proceedings (Mr Antonio De Quesada, Head of Arbitration) and the Clerk (Ms Stéphanie De Dycker) would be in Lausanne at the CAS. The Panel emphasizes that there is no right to an in person hearing (as distinct from one by video conference) either under Swiss law, the CAS Code or general principles of law.

D. Appellant's objections related to the Interpreter

139. On Day 1 of the Hearing, the Appellant raised several issues relating to the Interpreter and his/her translation services during the examination and cross-examination of the protected witnesses. Upon request of the Panel, the Appellant specified its submission by email dated 18 June 2021 and 23 June 2021, providing several examples of the alleged translation issues. The alleged translation issues can be classified in three different types, and the Panel shall examine each of them seriatim.

1. No Pressure exercised

140. The Appellant complained that that the witnesses allegedly were pressured by the Interpreter to answer yes and no, were cut short and could not freely express themselves. The Appellant further alleged that some questions were not being translated at all and that the Interpreter provided answers as he/she pleased. The Panel notes that, contrary to the Appellant's contention, the witnesses did not complain about the translation or any interruption or intervention while they were answering the questions from the Parties or from the Panel. Furthermore, it is not the first time that the witnesses sought assistance from the Interpreter who had already assisted them satisfactorily in the framework of another CAS proceeding. It is therefore difficult for the Panel to believe that the witnesses could not express themselves freely or were otherwise pressured by that same Interpreter.

141. In addition, the Panel notes that contrary to the Appellant's contentions, Ms Andrea Sherpa-Zimmermann, who benefits from a long experience as CAS Counsel, confirmed to the Panel that the translation was running smoothly and that she did not have the impression that something was not being translated or that the interpretation was done unprofessionally. The Appellant did not succeed in dislodging her perception, as it was incumbent on him, in light of the principle omnia rite praesumuntur esse. The Panel therefore decided to dismiss these alleged formal complaints about the translation during Day 1 of the Hearing.

2. No material difference between Farsi and Dari

142. The Appellant also submitted that the interpreter and some of the protected witnesses spoke different languages (Farsi and Dari). The Appellant is of the view that those languages are materially different and that, therefore, the interpreter was not fit for purpose. FIFA confirmed, in its letter dated 23 June 2021 that Dari and Farsi are in fact the same language but only different dialects comparable to British and US English. The Appellant in turn insisted on the fact that even if Dari and Farsi are two dialects of the same language, *"they are*

very different when spoken". The Panel again notes that Ms Andrea Sherpa-Zimmermann confirmed in her witness statement that there did not appear to be any language problem between the protected witnesses and the Interpreter and that the translation proceeded very smoothly and professionally. Furthermore, the Panel notes that the Interpreter is an experienced person who has gained long and high-level experiences in interpretation services in a variety of different contexts., as evidenced by the Interpreter's CV produced by FIFA and not challenged by the Appellant. The Panel is of the view that for an experienced Interpreter (as is the case here) differences between two dialects of the same language appear far from insurmountable. The Panel therefore concludes that the Interpreter was indeed fit for purpose.

3. No mistranslations

143. The Appellant also submitted substantive complaints in relation to the translations. In his email dated 23 June 2021, the Appellant provided a series of examples of alleged mistranslations. FIFA contended to the contrary that the Interpreter conveyed the meaning of what has been said by the witness effectively. The Panel notes that the purpose of the translation is not *per se* to translate each and every word that is pronounced by the witness, but rather to convey the meaning of what was said by such witness. In addition, as already noted, the Interpreter has extensive qualifications and experience, and as a result was fit for purpose. Moreover, having reviewed the examples provided by the Appellant, the Panel finds that the Interpreter effectively conveyed the meaning of what was said by the witnesses as required. The examples listed by the Appellant – in the view of the Panel – provide no grounds for any suspicion about the accuracy of the translation by the Interpreter. Finally, the Panel notes that the Appellant had every possibility to test the Interpreter and the protected witnesses on the issue of mistranslation but chose not to do so. Therefore, the Panel finds that the Appellant's objections as to the translations during the Hearing are without merit.

E. Appellant's request dated 18 June 2021

144. On 18 June 2021, after conclusion of the Hearing, the Appellant requested to be permitted to file new evidence, consisting of two letters sent to Mr. Abdul Saboor Walizada and Mr. Mohammed Nader Aleme by the Appellant on 5 December 2018, which allegedly were not filed earlier as a result of a mere administrative oversight. On 23 June 2021, FIFA objected to the filing of the new evidence arguing that the Appellant failed to demonstrate the existence of exceptional circumstances justifying their late filing. Alternatively, that they are of no assistance to the Appellant's case. The Panel must revert again to the rule in of Article R56 of the CAS Code. The Panel first notes that the letters at stake are not actually new since they are dated 5 December 2018. In addition, the Appellant did not argue - let alone demonstrate - exceptional circumstances justifying their late filing. The Panel moreover is not convinced that the late filing of the new evidence was due to a mere administrative oversight as was argued by the Appellant, since there is no reference whatsoever to the new evidence in the Appeal Brief or its list of exhibits. Instead, it appears to the Panel that these documents were filed late as a direct consequence of the questions posed by the Panel at the Hearing and the evidence adduced thereat. Hence, the Panel finds that there are no exceptional circumstances to justify the admission of the letters to the file. Without prejudice to that point –, the Panel

wishes to emphasise that in its view, the letters in no way assist the Appellant's case, since they contain an inherent contradiction since more or less at the same time one informs the recipients of the opening of an investigation for sexual abuses, and the other offers them protection and support and qualifying them as "victims". Moreover, it follows also from the reference numbers that - obviously - the investigation letters were written first and that subsequently, the Appellant sent the letters offering support and protection to the very persons against whom he had opened an investigation against. The Panel can only conclude in these circumstances that the "investigation" - if ever occurred - was not undertaken with appropriate seriousness, indeed appeared to have its outcome prejudged because before even obtaining any information at all from the two persons, the Appellant described them as "victims".

F. Appellant's objection in relation to the examination of Player C

145. The Appellant contends that during the examination of Player C, a question was put to that witness in the absence of the Appellant's legal team and that, as a result, the Appellant's right to be heard in a safe and balanced manner had been compromised. The question addressed to Player C was to identify the person she had met when leaving the secret room from the photos presented to her. The Panel first notes that it is unsure whether or not any of the members of the Appellant's legal team (who were logged on to the video platform at all times) were indeed absent from the virtual Hearing room when the question was put to Player C. But even were it the case that none of the three members of the Appellant's legal team were there present, the Panel notes that the President of the Panel repeated the question to Player C when the Appellant and his legal team were certainly in the virtual Hearing room. The Panel further observes that the Appellant did not raise any complaint promptly but only after the hearing. Thus, if a party to an arbitration feels that its procedural rights have been infringed, it must, in exercise of its duty of good faith, act immediately to make an objection, *a fortiori* if such party is represented by several counsels. In acting against the principle of *venire contra factum proprium* the Appellant is barred from raising this complaint. The Panel further notes that, as will be explained in detail below, Player C also expressly confirmed that the person whom she met right after being abused and kicked out of the secret room was indeed the Appellant (and not a person called Rustam as the Appellant alleges). The Panel therefore finds that the Appellant's objection as to his right to be heard is groundless and must, therefore, be rejected.

G. Appellant's objections in relation to the FIFA Ethics proceedings

146. Finally, the Panel turns to the alleged procedural flaws during the FIFA Ethics proceedings. It recollects that in particular, the Appellant contends that (i) the relevant evidence was not disclosed in its entirety to the Appellant before the date of the hearing (8 October 2019) had been confirmed; (ii) the AC only provided the Appellant with the procedural timetable 28 days before the hearing of 8 October 2019; (iii) the Appellant was not able to intervene at the hearing as he wanted; (iv) the representatives of the IC stayed in the hearing room after the end of the hearing and that they were alone with the members of the AV without him being present; and (v) that the witness statements are inadmissible. FIFA submitted that the

Appellant's arguments are irrelevant to the outcome of the case, false and, in addition, misleading.

147. The Panel notes that based on the evidence on file, in particular the correspondence of the AC dated 23 August 2019, the Appellant was indeed (i) provided with the Final Report and its enclosures, (ii) invited to state whether he wanted a hearing or not and (iii) invited to provide his position containing a statement of defence and/or any evidence. In addition, by letter of 10 September 2019, the Appellant was provided with a procedural order containing the rules and the time-table of the hearing on 8 October 2019. Moreover, the Panel notes that there is no evidence whatsoever that the IC stayed in the hearing room with the members of the AC after the Appellant had left. Finally, in light of the witnesses' status as victims of serious crimes and taking into account the situation in Afghanistan in general and at the AFF more specifically, the Panel considers that it was more than justified for the AC to decide that the witnesses be heard on an anonymous basis. It is to be noted that the AC was fully aware of the identity of the witnesses and that the Appellant had the opportunity to cross-examine the witnesses in writing. In the Panel's view, there is, therefore, no evidence that procedural flaws occurred during the FIFA Ethics proceedings.

148. Notwithstanding all above, even if the Panel were to consider that the FIFA Ethics Committee had violated the Appellant's due process rights – *quod non* –, any such breaches would be cured in the scope of the present arbitration proceedings, in light of the Article R57 of the CAS Code, which provides that *"[CAS panels] ha[ve] full power to review the facts and the law"*. Such has been the consistent position of CAS Panels in application of Article R57 since at least CAS 98/208, in REEB M. (ed.), Recueil des sentences du TAS, Vol. II, p. 239.

H. Testimony by Protected Witnesses

149. Art. 184 (1) of the Swiss Private International law Act ("PILA") provides that the Panel *"… itself shall conduct the taking of evidence"*. The Panel considers that in keeping with this provision it is competent to decide whether or not a given evidence adduced by one of the parties is admissible or not. Inasmuch as the PILA (or the CAS Code) contains a *lacuna* regarding the rules on evidence, the Panel has the powers to fill it. This follows from Art. 182 (2) of the PILA, according to which the Panel is entitled to fill a (procedural) *lacuna* either *"directly or by reference to a statute or to rules of arbitration"*.

150. However, this power of the arbitral tribunal to admit and consider evidence is not unlimited (cf. CAS 2009/A/1879 no. 102). The issue of whether a tribunal can rely on the testimony of an anonymous witness is linked to the right to a fair trial guaranteed under Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe (hereinafter: the "ECHR"), notably the right for a person to examine or have examined witnesses testifying against him or her (Article 6 (3) ECHR) which as provided under Article 6 (1) ECHR applies not only to criminal procedures but also to civil procedures. The Panel is of the view that even though it is not bound directly by the provisions of the ECHR (cf. Art 1 ECHR), it should nevertheless take account of their content within the framework of procedural public policy. In addition, it is noteworthy that also Article 29 (2) of

the Swiss Constitution guarantees the same rights, in order to enable a person to check and, if need be, challenge facts alleged against him by a witness.

151. Admitting anonymous testimony potentially infringes both, the right to be heard and the right to a fair trial, since the personal data and record of a witness are important elements of information to have at hand to test a witnesses' credibility. Furthermore, it is a right of each party to participate in the adducing of evidence and to be able to ask the witness questions (KuKo-ZPO/BAUMGARTNER, 3rd ed. 2021, Art. 155 no. 8).

152. However, not all encroachments on the right to be heard and to the right to a fair trial amount to a violation of those principles or of procedural public policy. In a decision dated 2 November 2006 (ATF 133 I 33), the Swiss Federal Tribunal ("SFT") decided (in the context of criminal proceedings) that the admission of anonymous witness statements does not necessarily violate the right to a fair trial provided under Article 6 ECHR. According to the SFT, if the applicable procedural code provides for the possibility to prove facts by witness statements, it would jeopardize the court's power to assess the witness statements if a party was prevented, in principle, from ever relying upon such witness statements if anonymous. The SFT stressed that the ECHR case law recognises the right of a party to use anonymous witness statements and to prevent the other party from cross-examining such witness if *"la sauvergarde d'intérêts dignes de protection"*, notably the personal safety of the witness, requires it.

153. The Panel considers that this nuanced approach applies also to civil, including disciplinary, proceedings. The Panel is comforted in its view by the content of Art. 156 of the Swiss Code of Civil Procedure (hereinafter referred to as "CCP"), which provides that a court is entitled to take all appropriate measures (cf KuKo-ZPO/BAUMGARTNER, 3rd ed. 2021, Art. 156 no. 3 seq.) if the evidentiary proceedings endanger the protected interests of one of the parties or of the witness.

154. There is no doubt that the personality rights as well as the personal safety of a witness form part of his/her interests worthy of protection. In the case at hand the Panel has no doubt that the danger for the witnesses and their relatives is not merely theoretical but actual. Furthermore, the Panel has equally no doubt that the measures ordered by it are adequate and proportionate in relation to all interests concerned.

155. The SFT held that the use of protected witnesses, although available, must be subject to strict conditions. In particular the right to a fair trial must be ensured through other means, namely a cross-examination through "audiovisual protection" and an in-depth verification of the identity and the reputation of the anonymous witness by the court. Pursuant to its own and the Strasbourg jurisprudence, the decision shall not "solely or to a decisive extent" be based on an anonymous witness statement.

156. The Panel has observed all of these precautions and, therefore, finds that the evidence of these protected witnesses is admissible in these proceedings. This finding is in line with previous CAS cases (eg. CAS 2009/A/1920). Furthermore, the Panel notes that also the Panel in CAS 2019/A/6388 accorded the status of protected witnesses to the players in question in the proceedings against the former President of the AFF Mr Karim.

XI. MERITS

157. The relevant issues in the Appeal before this Panel can be listed as follows:

(a) What is (i) the applicable burden and (ii) the applicable standard of proof?

(b) Was the Appellant bound by the FCE?

(c) Did the Appellant violate his duty to report the physical, mental and sexual abuse committed by AFF officials to the Respondent?

(d) Did the Appellant breach his obligation to protect, respect and safeguard the integrity and personal dignity of others?

(e) In case questions (b) - (d) are answered in the affirmative, what is the appropriate sanction to be imposed on the Appellant and when will any period of ineligibility commence?

A. Who bears the Burden of Proof?

158. In a case, where a Tribunal has not reached the requisite degree of personal conviction that an alleged fact occurred the principle of burden of proof defines which party has to bear the consequences of such a state of non-conviction (SFT BGE 132 III 626).

159. Except where the arbitral agreement determines otherwise, the arbitral tribunal shall allocate the burden of proof in accordance with the rules of law governing the merits of the dispute, i.e. the *lex causae* (BERGER/KELLERHALS, International and Domestic Arbitration in Switzerland, 2015, No. 1316).

160. As set out *supra*, the *lex causae* in the matter at hand are primarily the various regulations of FIFA, most notably the FCE, and subsidiarily Swiss law.

161. Pursuant to Article 49 of the FCE, *"the burden of proof regarding breaches of provisions of the Code rests on the Ethics Committee"*.

162. Consequently, the Panel finds that the burden of proof to make good the charges against the Appellant lies with FIFA.

163. That said, in accordance with Swiss law, each party shall bear the burden of proving the specific facts and allegations on which it relies. In a situation, where difficulties of proof arise (*Beweisnotstand*) as was acknowledged by the SFT, *"Swiss law knows a number of tools in order to ease the – sometimes difficult – burden put on a party to prove certain facts. These tools range from a duty of the other party to cooperate in the process of fact finding, to a shifting of the burden of proof or to a reduction of the applicable standard of proof. The latter is the case, if – from an objective standpoint – a party has no access to direct evidence (but only to circumstantial evidence) in order to prove a specific fact"* (SFT 132 III 715, E. 3.1; BK-ZPO/BRÖNNIMANN, 2012, Art. 157 no. 41; BSK-ZPO/GUYAN, 2nd ed. 2013, Art.

157 no. 11; CAS 2013/A/3256, para. 281). Hence, while the burden of proof remains on FIFA, the Appellant has in the circumstances of this case a duty to cooperate in the process of fact finding by the Panel, by bringing forward facts and evidence in support of his line of defence.

B. What is the applicable Standard of Proof?

164. The standard of proof is defined as the level of conviction that is necessary for the Panel to conclude that a certain fact occurred (BGer 5C_37/2004, 3.2.3). What law determines the standard of proof is debatable. However, given that the standard of proof is regulated for state court proceedings by Article 157 Swiss Code of Civil Procedure and that the standard of proof is a matter closely related to the evaluation of the evidence, the better view is that the standard of proof should be classified as a question of procedure (KuKo-ZPO/BAUMGARTNER, 3rd ed. 2021, Art. 157 No. 6).

165. Article 182 of the PILA provides as follows:

> *"(1) The parties may determine the arbitral procedure, either themselves or by reference to arbitration rules; they may also make the procedure subject to a procedural law of their choice.*
>
> *(2) Where the parties have not determined the procedure, the arbitral tribunal shall determine it to the extent necessary, either directly or by reference to a law or to arbitration rules …".*

166. While the CAS Code itself does not specify a particular standard of proof, Article 48 of the FCE – to which the Parties have submitted – provides that *"[t]he members of the Ethics Committee shall judge and decide on the basis of their comfortable satisfaction".*

167. Consequently, the Panel finds that the standard of proof in the present matter is comfortable satisfaction, i.e. lower than the standard of *"beyond a reasonable doubt"* but higher than the standard of *"balance of probabilities"*, while bearing in mind the seriousness of the allegations made (CAS 2017/A/5086, at para. 136; CAS 2011/A/2426, at para. 88; CAS 2011/A/2625, at para. 153; CAS 2016/A/4501, at para. 122).

C. Was the Appellant bound by the FCE?

168. According to Article 2 of the FCE, the FCE shall apply *inter alia* to "officials". The FCE does not contain a definition of the term "official" but refers to the definitions section in the FIFA Statutes.

169. According to No. 13 of the definitions section of the FIFA Statutes, "official" means *"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)".*

170. As Secretary General of a FIFA member association (i.e. the AFF) and as a member of AFC and of FIFA committees, the Appellant clearly qualifies as an "official" within the meaning of the FCE during the relevant period, *i.e.* from 2013 to 2018. Indeed, he has not disputed this point.

D. Did the Appellant breach Article 17 of the FCE?

171. Article 17 (1) of the FCE provides as follows:

> *"Persons bound by this Code who become aware of any infringements of this Code shall inform, in writing, the secretariat and/or chairperson of the investigatory chamber of the Ethics Committee directly".*

172. It is undisputed between the Parties that the former President of the AFF, Mr Karim, sexually abused female players from the Afghan national team. Indeed, as already noted, another CAS panel has found Mr Karim guilty of having sexually abused female players on several occasions. The award has not been challenged. Furthermore, it is undisputed that the representatives of the AWNFT sent an email on 23 November 2019 complaining about sexual harassment of female players by Mr Walizada and Mr Aleme.

1. The Position of the Parties as to when the Appellant became aware of these abuses ("the awareness issue")

173. The Appellant submits that he had no knowledge of the atrocities committed on AFF female players by AFF officials, in particular Mr Karim at the time of their commission. He claims that he was made aware of such infringements for the first time by the email sent by the AWNFT on 23 November 2019. The Appellant notes that he was copied in into this email and was not the primary addressee. He further asserts that he was on a business trip on 23 November 2019 and only became aware of the content of the email a few days later. The Appellant submits that immediately thereafter he started an internal investigation into the matter, but was prevented from pursuing the investigation further once he was provisionally suspended. In view of all of the above, the Appellant submits that he cannot be charged for failing to report the mental, physical and sexual abuse of female players to FIFA.

174. The Respondent for its part contends that the Appellant was aware of the widespread abuses committed on AFF female players at or about the time of their commission. Indeed, Player C confirmed that the Appellant saw her after she had been abused by Mr Karim. She had run right into him after she was kicked out of the secret room. Player C testified that the Appellant immediately understood what had happened, i.e. that she had been assaulted by Mr Karim. The Appellant, however, did not show any concern as to her state or what had just happened to her. The Respondent also refers to the testimony of Player D who testified that she had informed the Appellant of the mental, physical and sexual abuse within the AFF prior to the investigations conducted by the Respondent and that the Appellant had prevented the complaint of the AWNFT from being officially filed. The Respondent submits that the Appellant must have known about the systematic abuses of female players since (i) abuses on AFF female players were widespread and known by everybody at the AFF including the

Appellant, (ii) Players C and D confirmed that the Appellant's and Mr Karim's offices were very close to each other in the old offices. Thus, the Appellant must have known of the abuses in the President's office; (iii) Players C, D and A all confirmed that Mr Karim and the Appellant had a close relationship; and finally (iv) several female players either left or were excluded from the team for no sporting reasons.

2. The Findings of the Panel on the awareness issue

175. Whether or not the Appellant knew about the infringements within the meaning of Article 17 of the FCE is a fact that cannot be established by direct evidence (to which only he is privy), but only by indirect or circumstantial evidence. The Panel has carefully reviewed the circumstantial evidence on file and on the basis makes the following findings:

a) Close Working relationship between the (former) President and the Appellant

176. The working relationship between a President of a federation and the federation's secretary general is ordinarily very close. As the evidence on file indicates, this was also the case here. The Appellant worked closely together with the President of the AFF when running the federation's affairs. The Appellant – according to his own words – was required to obtain authorization from the President before taking action in many areas of his work and for that purpose was habitually going in and out of the President's offices. The Panel is therefore convinced that from a professional perspective, the Appellant was working hand in glove with Mr Karim. This is also illustrated by another CAS Panel's conclusions in a case involving Mr Karim and the Appellant working closely together to get the coach of the Afghan men national football team to field a player who was accused of match-fixing (CAS 2019/A/6516).

b) Close private relationship between the (former) President and the Appellant

177. In addition, the Appellant and Mr Karim also had a very close personal relationship. The Appellant himself qualified such relationship as "friendly". Player C and D in their testimony qualified this relationship as "close". Player A went even further and stated that the Appellant and Mr Karim […]. The Panel further notes that the Appellant has been working at the AFF since a very young age (i.e. he was 20 years old when he started working at the AFF). He was appointed as Secretary General of the AFF at the age of 22. Such an extraordinary elevation for a person that age can only have been made possible by the benevolent patronage of Mr. Karim. Thus, the Panel is convinced that from a personal perspective, the Appellant and Mr Karim had a very intimate private relationship, […], and that the Appellant was part of Mr Karim's inner personal entourage creating a bond of trust between them. The Panel is of the clear view that this personal bond – to a certain extent – still exists today. The Panel could not but observe that even at the hearing the Appellant did not distance himself from Mr Karim and the atrocities committed by him. Furthermore, the Appellant showed little empathy for the victims of Mr. Karim's crimes.

c) The leading management position held by the Appellant within the AFF

178. The Appellant held a leading management position within the AFF and thus had access to all information within it especially since it was not a complex organization with thousands of employees, but a small unit where everyone knew everyone and of which he had been part throughout his professional life from a very young age. Moreover, the Appellant exercised an employer's role vis-à-vis the employees, and was their direct superior. It is hard to imagine that given his position in such a small and hierarchical unit, he could have remained ignorant of any significant information pertinent to the organization and of happenings within it. In such a setting it would be particularly difficult for the President's crimes to have been committed by the President without others, and certainly the Appellant, knowing of them. Equally it seems implausible that the President could have built and furnished a "secret room" without knowledge of the Secretary General.

d) The setting of the crime scene

179. The sexual assaults of the former President where all committed within the AFF compound, mostly in the said secret room. The compound is clearly laid out and is not very large. It has undergone various structural changes over the years. Initially, the offices of the President and the Secretary General were located in an "old" wing below the stands. The offices of the President and the Appellant were right next to each other. Later, the new building was constructed. Here the offices of the President and the Secretary General were on the same floor. The close proximity of the offices makes it especially hard to believe that the crimes could have been committed by the President virtually on the Secretary General's doorstep without the latter becoming aware of them.

e) Systemic and widespread abuses of female players

180. The Panel further notes that the abuses committed on female football players were not isolated and individual incidents. Rather, as emerges from the testimony of the protected witnesses, which the Panel accepts, they occurred over a long period of time and were of a systemic nature. The Panel cannot accept that the Appellant as the Secretary General of the AFF was not aware at all of this culture of abuse of female players taking place of such a period and in such proximity to him.

f) The testimony of the Players

181. At the hearing Player C expressly stated that right after being abused by Mr Karim she *"saw his secretary, Mr Ali Aghazada, he is the General Secretary"*. She further gave testimony that she *"saw Ali Aghazada was there. I was crying I wanted to tell him what happened, he took his business card threw it at my face"*. Player C, thus, positively identified the Appellant since it must have been obvious to any onlooker, including the Appellant, that she had been the victim of an assault, since she had bruises all over her body and blood on her face. However, instead of helping her, the Appellant was only concerned to cover up the incident by telling the witness "to make money"

out of the incident and to never again show up at the AFF. It clearly follows from this that the Appellant was aware of abuses and part of system of covering them up.

182. Similarly, Player D testified that she had informed the Appellant of the mental, physical and sexual abuse of female players within the AFF. Player D testified that *"[s]he [the then captain of the AWNFT] made a complaint, but Ali Aghazada prevented from forwarding her complaint. He is the General Secretary of the Football Federation he had not forwarded her complaint. He hampered it"*. Hence, Player D identified the Appellant by name and position and indicated that the Appellant abused his position within the federation to cover up the crimes.

183. While in evaluating the testimony of the protected witnesses because of the modalities of the hearing the Panel was deprived of the usual advantages of sight and sound, it was convinced of the accuracy of the broad thrust of their allegations, consistent as they were overall. It rejected the Appellants suggestion that their accusations were false and ill motivated. Indeed, it was the Panel's firm view, having heard and seen him albeit not in person, that it was the Appellant whose evidence was self-serving and whose denial of the charges was untruthful.

g) The Appellant's behavior after 23 November 2018

184. The Appellant was copied in an email on 23 November 2018 that referred to sexual abuses committed by Mr Walizada and Mr Aleme against Afghan female players. The email was sent from the AWNFT representative to the AFF's general email account [info@aff.org.af] and to the Appellant's private email address. The Panel notes that initially the Appellant did not react to this email. Only once the information was in the public domain (29 and 30 November 2018), did the Appellant take any action. He organized a press conference in early December 2018. At the press conference – without having investigated the matter at all – the Appellant rejected the allegations that any abuses had been committed and staged a counter-attack against the female AFF players' by stating that they only went public with these false accusations after being ordered to wear the hijab, which they refused to do. It necessarily appears from the above that the Appellant was not interested in finding out the truth of what had happened, but rather to cover-up the crimes. Such behavior, however, is not untypical for someone who knows exactly what has happened.

185. Once the Appellant was contacted by FIFA to provide information on 2 December 2018, he wrote two letters to Mr Walizada and Mr Aleme on 5 December 2018. These letters read in their pertinent parts as follows:

> *"*[…] *You may be aware that in the last days, the media have reported about sexual abuse and other mistreatment occurring within the AFF national teams. It was suggested that you may have been affected and the victim of such actions. Please find attached the relevant media reports and requests.*
>
> *As am [sic] employer, we want to do everything to support and protect you. If you would like to report anything in relation to these media reports, or if you have any knowledge of such incidents, please inform us immediately. […]".*

186. By qualifying the accused as "victims" and undertaking to support and protected them, the Appellant effectively prejudged the outcome of the investigation before it had even been initiated.

187. In the Panel's view, it is hard to believe that the Appellant resorted to such tactics without consulting Mr. Karim. Furthermore, such behavior can only be explained as the product of a wish on the Appellant's part to conceal the culture of abuse of female players within the AFF, a wish which cannot be attributed to his inexperience or youth (the Panel notes that this was not the first crisis the Appellant faced as the Secretary General of the AFF. He had already had to manage an inquiry related to match fixing involving the AFF men's national football team player Mr Zohib Islam Amiri).

b) Final assessment of the evidence

188. Even if some of the above points looked at individually may be insufficient to conclude with comfortable satisfaction that the Appellant knew of the sexual abuses committed against female players, collectively they constitute coherent pieces of a puzzle which come together to form a clear picture, namely that the Appellant knew what terrible circumstances were taking place within the AFF and who was responsible for them. He not only turned a blind eye; he sought instead to cover them up, not least because of his relationship with the President, to whom he owed his career within the AFF. Despite knowing about the atrocities suffered by the AFF female football players, the Appellant did not inform FIFA about these abuses nor did he take any action as Secretary General to start an impartial investigation against Mr Karim and / or other AFF officials involved in these abuses.

189. The Panel accordingly finds that the Appellant breached his duty to report as provided under Article 17 (1) of the FCE.

E. Did the Appellant breach Article 23 of the FCE?

190. Article 23 (1) of the FCE provides as follows:

> *"Persons bound by this Code shall protect, respect and safeguard the integrity and personal dignity of others".*

1. The Positions of the Parties as to whether the Appellant breached Article 23 of the FCE

191. The Appellant denies any failure to protect, respect and safeguard the female players from misconduct. He claims that he had no knowledge of the atrocities committed by Mr Karim and other AFF officials. He further refers to the criminal investigation of the Attorney General, which concluded that there are no charges to be brought against the Appellant. According to the Appellant this further corroborates his position that he did not commit any wrongdoings.

192. The Respondent for its part contends that the Appellant as the General Secretary of the AFF failed to protect, respect and safeguard the integrity and personal dignity of the victims and exposed the players to the atrocities of AFF officials, including Mr Karim. In particular, the Appellant failed to protect Player C. He had understood and realized what had happened to her. She was crying and begging for help after having been sexually abused and threatened by Mr Karim. The Appellant, however, did not care. Similarly, Player D testified that the Appellant hampered a complaint that another Player wanted to file in relation to Mr Karim's assaults. The Respondent submits that the Appellant again failed to take adequate action after representatives of the AWNFT complained about the abuses committed by AFF officials on 23 November 2018. Instead of starting an impartial investigation, the Appellant promoted Mr Walizada as head of the AFF judicial body thereby protecting one of the alleged perpetrators instead of the victims.

2. The Findings of the Panel

193. As previously stated the Panel finds the Appellant knew about the crimes committed, he knew who the victims and who the perpetrators were. Despite this knowledge, the Appellant failed to *"protect, respect and safeguard the integrity and personal dignity of others"*. The Panel finds the conduct of the Appellant particularly grave in relation to Player C. The latter testified that she ran into the Appellant right after having been abused by Mr Karim. She identified the Appellant expressly. She testified that she turned to him for help. She stated that she *"saw Ali Aghazada was there. I was crying I wanted to tell him what happened, he took his business card threw it at my face"*. Instead of helping Player C, protecting her and investigating the matter the Appellant *"pulled his [business] card out of his pocket"* and said to her: *"you can make money out of that and you can go wherever you want but I don't want to see you ever again in the federation"*. The Panel has, as already explained, no reason to doubt Player's C testimony. The Appellant's conduct was shocking and unacceptable. The Appellant had a duty to assist and help Player C. Instead of complying with this obligation, the Appellant roughly brushed her aside and even further humiliated her by telling her that she could make money out of the incident. This was an expression of profound disregard for the needs of persons entrusted to his care, is deeply discriminatory and hurtful. Similarly, Player D stated that a complaint was presented to the Appellant by another player, with respect to Mr Karim's conduct and that the Appellant prevented the complaint being filed. As a result, instead of protecting the alleged victims, the Appellant chose to protect the alleged perpetrator, thereby allowing Mr Karim to continue his abuses in secrecy. Such despicable attitude of the Appellant constitutes a blunt violation of the standards of protection embodied in Article 23 (1) of the FCE.

194. The Panel accordingly finds that the Appellant breached his obligation to protect, respect and safeguard the integrity of the AFF female football players thereby violating Article 23 (1) of the FCE.

F. What are the Consequences of the Appellant's Violation of Articles 17 (1) and 23 (1) of the FCE?

195. The Panel notes that in disciplinary matters appealed to CAS a Panel will – where appropriate – demonstrate a certain degree of deference vis-à-vis the decision-making bodies of such association, especially in the determination of the appropriate sanction (CAS 2009/A/1870, para. 125, with references to TAS 2004/A/547, §§ 66, 124; CAS 2004/A/690, § 86; CAS 2005/A/830, § 10.26; CAS 2005/C/976 & 986, § 143; CAS 2006/A/1175, § 90; CAS 2007/A/1217, § 12.4). However, when a CAS panel concludes that the sanction imposed is disproportionate it must be free to say so and apply the appropriate sanction (CAS 2015/A/4338, para. 51; CAS 2017/A/5003, para. 274).

196. Article 17 (2) of the FCE provides that *"[f]ailure to report such infringements 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"*.

197. Article 23 (6) of the FCE provides that *"[v]iolation of this article shall be sanctioned with an appropriate fine of at least CHF 10,000 as well as a ban on taking part in any football-related activity for a maximum of two years. In serious cases and/or in the case of repetition, a ban on taking part in any football-related activity may be pronounced for a maximum of five years"*.

198. Moreover, Article 11 of the FCE provides as follows:

> *"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"*.

199. In the present matter, the AC decided to impose upon the Appellant a monetary fine in the amount of CHF 10,000 as well as a ban from taking part in any football-related activity for a period of five years. Assessed in light of the facts of this case, the Panel finds this sanction clearly to be too lenient. This is a very serious case within the meaning of Article 23 (6) FCE and based on Article 11 of the FCE a harsher sanction could properly have been imposed. The Panel, however is bound by the matter in dispute and the requests filed by the Parties. Notably in this context the Respondent has not sought an increase in the sanction imposed by the AC.

200. The Panel accordingly finds that the present appeal must be dismissed and that the Decision shall be confirmed in its entirety.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on by Sayed Ali Reza Aghazada against the *Fédération internationale de Football Association* with respect to the decision rendered by the Adjudicatory Chamber of the FIFA Ethics Committee on 8 October 2019 is dismissed.

2. The decision rendered by the Adjudicatory Chamber of the FIFA Ethics Committee on 8 October 2019 is confirmed.

3. (…).

4. (…).

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