



**Arbitration CAS 2018/A/5769 Worawi Makudi v. Fédération Internationale de Football Association (FIFA), award of 11 February 2019**

Panel: Mr Fabio Iudica (Italy), President; Mr Boris Vittoz (Switzerland); Prof. Petros Mavroidis (Greece)

*Football*

*Disciplinary sanction for forgery and falsification, and failure to collaborate*

*Forgery or falsification by negligence*

*Application of Article 6 ECHR to failure to collaborate*

1. Although Article 5(2) of the FIFA Code of Ethics (FCE) determines that breaches of the FCE shall be subject to sanctions whether they have been committed deliberately or negligently, and reading Article 17 FCE in conjunction with Article 5(2) FCE gives the impression that it was apparently the intention of the draftsmen of the FCE to determine that an act of forgery or falsification can also be committed negligently, the minimum standard required in order for a certain action or failure to act to constitute a violation of Article 17 FCE is the so-called “indirect intent” or “*dolus eventualis*”, which is still a form of “intent”. Therefore, the offence of forgery or falsification under the FCE cannot be committed negligently.
2. Article 6(1) of the European Convention on Human Rights (ECHR) which includes the privilege against self-incrimination is not applicable to a sanction for failure to collaborate if the person is not sanctioned for having failed to provide a decision to an investigatory body, but merely for having failed to timely provide such document.

**I. PARTIES**

1. Mr Worawi Makudi (the “Appellant” or “Mr Makudi”) is a Thai citizen who was, *inter alia*, the President of the Football Association of Thailand (the “FAT”) from 2007 to 2015 and a member of the FIFA Executive Committee from 1997 to 2015.
2. The *Fédération Internationale de Football Association* (the “Respondent” or “FIFA”) is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the governing body of international football at a worldwide level. It exercises regulatory, supervisory and disciplinary functions over continental federations, national associations, clubs, officials and football players worldwide.
3. Mr Makudi and FIFA are hereinafter jointly referred to as the “Parties”.

## II. FACTUAL BACKGROUND

### A. Background Facts

4. Below is a summary of the main relevant facts, as established on the basis of the Parties' written submissions and the evidence examined in the course of the present appeal arbitration proceedings and during the hearing. This background is set out for the sole purpose of providing a synopsis of the matter in dispute.
5. Pursuant to a decision of the FIFA Associations Committee, the FAT was required to adopt revised statutes before proceeding to elections. The deadline set to complete this process was 30 September 2013.
6. On 31 March 2013, the FAT held a Congress where revised FAT Statutes were circulated. The FAT Congress decided to postpone the adoption of revised FAT Statutes to the next FAT Congress to be held on 15 June 2013.
7. On 15 June 2013, the next FAT Congress was supposed to be held, but it finally did not take place due to a court order on the basis of a claim filed by the Thai football club Pattaya FC.
8. On 9 August 2013, the FAT held an Extraordinary Congress to adopt the revised FAT Statutes. The revised FAT Statutes were adopted by the FAT Congress, with the exception of Article 21 and the wording of Article 10.
9. On 23 August 2013, the FAT held another Extraordinary Congress to address the latest issues concerning the revised FAT Statutes. The FAT Congress adopted a revised Article 21, as well as the wording of Article 10. The Minutes of the FAT Extraordinary Congress further determine as follows:

*“Propose to the congress through the president that the congress has an unanimously resolution to the FAT executive committee to adjust/ amend words in detail, for instance original English copy translation to Thai and becomes the FAT Statutes which is compulsory and align with the FIFA Standard Statues and approved by the FIFA Congress on 14 February 2013, not contradictory to any Thai Law or relevant regulations. This adjustment/ amendment of the new FAT Statues (if there is any) shall not be return to the FAT congress for resolution.*

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*The congress unanimously rectified and approved all proposes” [sic].*

10. On 27 August 2013, the FAT Secretary General sent the revised FAT Statutes to the Sports Authority of Thailand (the “SAT”) for registration.
11. On 5 September 2013, the FAT filed the revised FAT Statutes to the Pathumwan District Office, which is the office in charge of the area in which the headquarters of the FAT are located.

12. On 9 September 2013 (received on 12 September 2017), the Department of Provincial Administration (the “DOPA”) sent a letter to the FAT, enclosing a letter sent by the DOPA to the SAT on 19 July 2013, stating that *“the Association is kindly requested to carefully study the laws relevant to the issues that the [DOPA] has advised”*. The letter dated 19 July 2013 determines, *inter alia*, the following:

*“3.3 The new draft of the Statutes of the Association article 21 stipulates regarding the quorum of the ordinary congress that, “The ordinary congress consists of 72 representatives”. This is in conflict with article 12 which states, “The members of the Association have the following rights: A) participate in the ordinary or extraordinary congress of the Association; B) prepare a draft of proposals in the minutes of the congress; and C) have the right to propose the names of those for election to the Association Committee”. Therefore, when all the members of the association have the right to attend the congress, and have the right to offer proposals in the meeting, including the right to propose names for election to the association committee in the congress, all members must be counted in the general meeting as the quorum, and they must have the right to a resolution. This is in agreement with the Civil and Commercial Code Article 86 which states, “The directors of the association is to carry on the activities of the association under the law and the regulations statutes of the association, and under supervision of the congress”.*
13. On 18 September 2013, the Pathumwan District Office had performed an initial check of the documents submitted and deemed that the documents were complete and in accordance with Thai law. The district judge allowed the request for registration and passed the application for the registration of the revised FAT Statutes to the Registrar of Associations in Bangkok.
14. On 19 September 2013, the Head of Legal Standards and Provisions Group of the DOPA was assigned to check the documents and give comments to the Registrar of Associations.
15. According to Mr Makudi, a thorough check of the revised FAT Statutes led to the discovery of two mistakes and incomplete statements that were in conflict with Thai laws, namely against the Thai Civil and Commercial Code (the “TCCC”). The first mistake concerned the number of members in the quorum. The second mistake concerned the rights of the FAT members, as it was indicated that FAT and all members were the owners of all rights. The FAT allegedly received the documents back and was informed by the Legal Standards and Provisions Group of the DOPA to reconsider the revised FAT Statutes on those two issues, both in writing and at a meeting that took place in September 2013.
16. According to Mr Makudi, two amendments were made to Article 24(1) and 78 FAT Statutes on the advice and instruction of the DOPA and FAT legal teams.
17. On 27 September 2013, the FAT submitted the revised FAT Statutes (including the two additional amendments made) with the Registrar of Associations.
18. On 14 October 2013, the revised FAT Statutes were registered by the Registrar of Associations.

19. On 17 October 2013, a FAT Extraordinary Congress took place for the Presidential and Executive Committee Members' elections.
20. On an unknown date shortly after the elections, Pattaya FC commenced proceedings before the Central Administration Court to request that the elections were nullified and to prohibit the result of the elections to proceed to official registration. Pattaya FC also requested that new elections were to be held and claimed compensation of Thai Baht ("THB") 30,000 per day from the date of filing until the date of the new elections.
21. In parallel, Pattaya FC also filed a criminal complaint against Mr Makudi and Dr Ong-Arij Kosinkar for alleged forgery and falsification of documents in relation to the amendments made to the FAT Statutes.
22. On 18 October 2014, the FAT held its annual Ordinary Congress during which the minutes of the FAT Congresses held on 9 and 23 August 2013 as well as the elective Congress held on 17 October 2013 were approved.
23. On 6 January 2015, the Deputy Director General of the DOPA replied to a letter sent by Pattaya FC, determining that the DOPA had recommended the relevant alterations to the FAT Statutes and stating, *inter alia*, as follows:

"[...]"

*3. The registrar of Bangkok Metropolis Association, has checked the draft of regulation of administration of Football Association (the whole amendment), the registrar had opinion that there are items in the draft of regulations that may be in conflict with provision of Thai law. The registrar noticed that if the association confirms the items in the draft of the regulations (the whole amendment), it may be not registered under the Civil and Commercial Code, Section 84, appurtenant to Section 82 and there is recommendation for the applicant to consider further, total 2 items as follows:*

*(1) Clause 23. The quorum of the general meeting did not have provision, RE: number of members, how many members, to constitute a quorum which may be in conflict to the Civil and Commercial Code, Section 79, appurtenant to Section 96.*

*(2) Clause 77. Right and benefit*

*- "1. The association and members are deemed as owner of all rights in any competition existing under the authority of the association, without condition. The right includes right between other persons or organizations. All rights in finance, pictures and sound, as well as record in radio, right to broadcast, right to project or reproduce moving pictures, multimedia rights, right of marketing and supporting of sales and right in intangible materials to be emblem and right occurred under copyright law". Draft of regulations in this item is in conflict to the Civil and Commercial Code, Section 78, defining that incorporation of association to carry out anything which has continuous nature mutually and it does not find for profit or income to divide, to each other, appurtenant to Section 83 defining that the association registered as a juristic person, from the Statutes, of the two Sections of the law; it can be diagnosed that the association has status of a juristic person having*

*right and duty as the law and objectives of the association defined in all respects. Operation of the association shall be in the form of the committee under the control of the general meeting of the association members under the Civil and Commercial Code, Section 86; it is not under the control of the shareholders or partner like other types of juristic persons. In part of the right of association members, the Civil and Commercial Code, specified in Section 86, Section 94 and Section 103 only. Therefore, it can be seen that the association members cannot be entitled to other than that specified by law. The association members are entitled to property right in several forms together with the association equal to sharing income between the members and association; therefore, it is in conflict to the Civil and Commercial Code, Section 78.*

*4. When it appears that the amended Statutes of the administration of Football Association of Thailand, Clause 23 having content which is in conflict with the Civil and Commercial Code 79 appurtenant to Section 96 and Clause 77 having content which is in conflict with the Civil and Commercial Code, Section 78, the Registrar of Bangkok Metropolis Association can recommend and has power to order the association to amend it to comply with the Statutes of law. The fact that the association had resolution on 23 August 2013, to amend the Statutes without requesting for approving from the Congress meeting of the association. Therefore when the association amends the contents of the Statutes, Clause 23 and 77, according to the recommendation of the Registrar, the Registrar of Bangkok Metropolis Association permits for registration and issues the certificate on 14 October 2013 correctly under the law and regulations”.*

24. On 19 February 2015, the Central Administration Court decided in favour of the FAT by stating that the elections were legal and valid. Although Pattaya FC appealed this decision to the Supreme Administration Court, it ultimately withdrew its appeal on 14 September 2016. The decision of the Central Administration Court therefore became final and binding.
25. On 22 July 2015, the Southern Bangkok Criminal Court sentenced Mr Makudi and Dr Kosinkar to be imprisoned for 16 months and a fine of THB 4,000, with suspended sentences for two years due to their previous good characters.
26. On 10 November 2015, Mr Makudi and Mr Kosinkar filed an appeal against the Southern Bangkok Criminal Court judgment with the Bangkok Appeal Court. Pattaya FC also filed an appeal.
27. On 11 May 2016, Pattaya FC withdrew its appeal with the Bangkok Appeal Court.
28. On 12 May 2016, the lawyer of Pattaya FC explained the reasons of his withdrawal to Mr Makudi’s lawyer.
29. On 16 February 2017, the Bangkok Appeal Court issued its decision in the appeals filed by Mr Makudi and Mr Kosinkar. The operative part of this decision determines as follows:

*“Reverse decision is therefore handed down. Hence, the charges against both Accused parties is dismissed”.*

30. On 26 May 2017, the Southern Bangkok Criminal Court issued a “*Certificate of Case finalization*” given that no appeal was filed with the Supreme Court. The decision of the Bangkok Appeal Court therefore became final and binding.

**B. Proceedings before the Investigatory Chamber of the FIFA Ethics Committee**

31. On 23 July 2015, i.e. the day after Mr Makudi was sentenced by the Southern Bangkok Criminal Court, the Investigatory Chamber of the FIFA Ethics Committee (the “Investigatory Chamber”) informed Mr Makudi that investigative proceedings were opened against him based on media reports that he had “*recently been found guilty in a Bangkok criminal court of forgery and sentenced to 16 months in jail as well as a fine of 4,000 baht in relation to your conduct preceding your 2013 re-election to the position of the President of the Football Association of Thailand [...]*”. Preliminary investigations were opened in respect of possible violations of Articles 13 (General rules of conduct) and 17 (Forgery and falsification) of the FIFA Code of Ethics (the “FCE”).
32. On 7 October 2015, the Adjudicatory Chamber of the FIFA Ethics Committee (the “Adjudicatory Chamber”) passed a decision whereby Mr Makudi was provisionally “*banned from taking part in any kind of football-related activity at national and international level*” for a period of 90 days.
33. On 14 October 2015, Mr Makudi filed an appeal against the provisional 90-day suspension imposed on him.
34. On 9 November 2015, the Chairman of the FIFA Appeal Committee denied Mr Makudi’s request for a stay of the imposition of the 90-day suspension.
35. On 27 November 2015, upon receipt of the grounds of the decision of the Adjudicatory Chamber issued on 7 October 2015, Mr Makudi applied for the FIFA Appeal Committee to rule that such decision be annulled.
36. On 8 December 2015, the FIFA Appeal Committee rejected Mr Makudi’s appeal.
37. On 23 December 2015, Mr Makudi appealed the FIFA Appeal Committee decision dated 8 December 2015 to the Court of Arbitration for Sport (the “CAS”) on the basis of denial of justice.
38. On 8 January 2016, the President of the CAS Appeals Arbitration Division ruled that the CAS had manifestly no jurisdiction to deal with Mr Makudi’s appeal.
39. Also, on 8 January 2016, the Adjudicatory Chamber of the FIFA Ethics Committee extended Mr Makudi’s provisional suspension by a further period of 45 days.
40. On 15 July 2016, the Investigatory Chamber completed the investigation proceedings and submitted its final report to the Adjudicatory Chamber.

### **C. Proceedings before the Adjudicatory Chamber of the FIFA Ethics Committee**

41. On 25 July 2016, the President of Pattaya FC, informed the chairmen of both Chambers of the FIFA Ethics Committee that Pattaya FC had withdrawn its appeal before the Bangkok Appeal Court.
42. On 15 August 2016, Mr Makudi submitted his position on the contents of the final report of the Investigatory Chamber.
43. On 10 October 2016, the Adjudicatory Chamber issued its decision (the “First Instance Decision”), with the following operative part:
- “1. *The official, Mr Worawi Makudi, is found guilty of infringements of art. 17 (Forgery and falsification) and art. 41 (Obligation of the parties to collaborate) of the FIFA Code of Ethics.*
  2. *The official, Mr Worawi Makudi, is hereby banned from taking part in any kind of football-related activity at national and international level (administrative, sports or any other) for a period of five (5) years as of notification of the present decision, in accordance with art. 6 lit. b) of the FIFA Code of Ethics in conjunction with art. 22 of the FIFA Disciplinary Code.*
  3. *The official, Mr Worawi Makudi, shall pay a fine in the amount of CHF 10,000 within 30 days of notification of the present decision. [...]*
  4. *The official, Mr Worawi Makudi, shall pay costs of these proceedings in the amount of CHF 20'000 within 30 days of notification of the present decision [...]*”.
44. On 7 August 2017, the grounds of the First Instance Decision were communicated to Mr Makudi, clarifying, *inter alia*, the Mr Makudi was found guilty of three violations of Article 41 FCE.

### **D. Proceedings before the FIFA Appeal Committee**

45. On 17 August 2017, Mr Makudi filed an appeal with the FIFA Appeal Committee against the First Instance Decision.
46. On 23 January 2018, a hearing was held in Zurich, Switzerland.
47. Also on 23 January 2018, the FIFA Appeal Committee issued its decision (the “Appealed Decision”), with the following operative part:
- “1. *The appeal filed by Mr Worawi Makudi against the [First Instance Decision] is partially upheld.*
  2. *The [First Instance Decision] is partially confirmed.*
  3. *Mr Worawi Makudi is found guilty of infringements of art. 17 (Forgery and falsification) and art. 41 (Obligation of the parties to collaborate) of the FIFA Code of Ethics.*

4. *Mr Worawi Makudi is banned from taking part in any football-related activity (administrative, sports or any other) at national and international level for a period of three years and six months, in accordance with art. 6 par. 1 let. H of the FIFA Code of Ethics in conjunction with art. 22 of the FIFA Disciplinary Code. The period of 135 days of the provisional sanction imposed on Mr Worawi Makudi shall be deducted from this duration.*
5. *Mr Worawi Makudi shall pay a fine in the amount of CHF 10,000 within 30 days of notification of the present decision. [...]*
6. *Mr Worawi Makudi shall pay costs of the proceedings of the FIFA Ethics Committee in the amount of CHF 20,000 within 30 days of notification of the present decision [...].*
7. *The costs of the present proceedings are established in the amount of CHF 3,000 and shall be borne by Mr Worawi Makudi. This amount is set off against the appeal fee of CHF 3,000 already paid by Mr Worawi Makudi.*

[...].”

48. On 16 May 2018, the grounds of the Appealed Decision were notified to Mr Makudi, clarifying, *inter alia*, that although the FIFA Appeal Committee had “retained less instances of violations committed by the appellant in relation to his cooperation with the investigation, it has confirmed in full the most important breach identified by the Ethics Committee, i.e. the violation of art. 17 of the FCE”, that it deemed “a ban on taking part in any football-related activity for three (3) years to be appropriate for the violation of art. 17 of the FCE committed by the appellant” and that it decided to “increase the ban on taking part in any football-related activity imposed on the appellant for the violation of art. 41 FCE by six (6) months”.

### III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

49. On 4 June 2018, Mr Makudi lodged a Statement of Appeal with the Court of Arbitration for Sport (the “CAS”) in accordance with Article R48 of the 2017 edition of the CAS Code of Sports-related Arbitration (the “CAS Code”). In this submission, Mr Makudi nominated Mr Boris Vittoz, Attorney-at-Law in Lausanne, Switzerland, as arbitrator.
50. On 12 June 2018, FIFA nominated Mr Petros C. Mavroidis, Professor of Law in Neuchâtel, Switzerland as its arbitrator in the present proceedings.
51. On 29 June 2018, Mr Makudi lodged his Appeal Brief in accordance with Article R51 CAS Code.
52. On 4 July 2018, in accordance with Article R54 CAS Code, and on behalf of the President of the CAS Appeal Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to decide the present matter was constituted as follows:
  - Mr Fabio Iudica, Attorney-at-Law in Milan, Italy, as President;
  - Mr Boris Vittoz, Attorney-at-Law in Lausanne, Switzerland; and



- Mr Petros C. Mavroidis, Professor of Law in Neuchâtel, Switzerland, as arbitrators
53. On 2 August 2018, FIFA filed its Answer, pursuant to Article R55 CAS Code.
54. On 8 and 10 August 2018 respectively, upon being invited to express their views in this respect, FIFA indicated that it did not consider a hearing necessary, whereas Mr Makudi requested a hearing to be held.
55. On 9 August 2018, the CAS Court Office informed the Parties that Mr Dennis Koolaard, Attorney-at-Law in Arnhem, the Netherlands, had been appointed as *Ad hoc* Clerk.
56. On 13 August 2018, the CAS Court Office informed the Parties that the Panel had decided to hold a hearing.
57. On 31 August and 5 September 2018 respectively, FIFA and Mr Makudi returned duly signed copies of the Order of Procedure to the CAS Court Office.
58. On 11 October 2018, a hearing was held in Lausanne, Switzerland. At the outset of the hearing, both Parties confirmed that they had no objection to the constitution and composition of the Panel.
59. In addition to the Panel, Mr William Sternheimer, CAS Deputy Secretary General, Mr Daniele Boccucci, Counsel to the CAS, and the *Ad hoc* Clerk, the following persons attended the hearing:

For the Appellant:

- 1) Mr Worawi Makudi, the Appellant;
- 2) Ms Sumitra Makudi, the Appellant's wife;
- 3) Mr Jorge Ibarrola, Counsel;
- 4) Mr Sebastian Permain, Counsel;
- 5) Mr Adrianno Belloni Roman, Legal Intern

For the Respondent:

- 1) Mr Ruedi Brönnimann, Counsel;
- 2) Mr Octavian Bivolaru, Counsel;
- 3) Ms Laura Martin-Gamero Schmidt, Counsel

60. The Panel heard evidence from the following persons in order of appearance:
- 1) Mr Somchai Leotprasitthiphan, Head of the DOPA Legal Standards and Provisions Group, witness called by the Appellant (by video-conference);
  - 2) Mr Dondej Phatthanasat, Deputy Director General of the DOPA, witness called by the Appellant (by video-conference);
  - 3) Mr Surapon Suwannanonda, Legal Director, acting for the General Director of DOPA, witness called by the Appellant (by video-conference);

- 4) Dr Ong-Arj Kosinkar, FAT General Secretary in August 2013, witness called by the Appellant (by video-conference);
  - 5) Mr Vira Khammee, former Chairman of the FAT Legal Committee, witness called by the Appellant (by video-conference);
  - 6) Mr Worawi Makudi, the Appellant (in person).
61. The Appellant initially also called as witnesses Lt. Gen. Supredi Pravitra, former FAT Executive Committee Member, Mr Pongpan Terrisi, Attorney-at-Law in Thailand for Mr Makudi during Southern Bangkok Criminal Court proceedings, Po. Lt. Col. Sophon Yamchomchuean, representative of Al-Huda Foundation FC, Mr Ekaporn Somsri, representative of Bangkok FC, and Mr Somkid Yarleumyard, representative of Mahanakhon University FC. During the hearing the Appellant however indicated to waive such witnesses.
62. All witnesses were invited by the President of the Panel to tell the truth subject to the sanctions of perjury. Both Parties and the Panel had the opportunity to examine and cross-examine the witnesses. The Parties also had full opportunity to present their case and submit their arguments in opening statements and closing arguments, as well as to answer the questions posed by the Panel.
63. Before the hearing was concluded, both Parties expressly stated that they did not have any objection with the procedure adopted by the Panel and that their right to be heard and to be treated equally had been respected.
64. The Panel confirms that it carefully heard and took into account in its decision all of the submissions, evidence and arguments presented by the Parties, even if they have not been specifically summarised or referred to in the present arbitral award.

#### IV. REQUESTS FOR RELIEF

65. In his Appeal Brief, Mr Makudi lodged the following requests for relief:

- I. The appeal filed by Mr Worawi Makudi against the decision issued by the FIFA Appeal Committee on 16 May 2018 is upheld.*
- II. The decision issued by the FIFA Appeal Committee on 16 May 2018 is annulled.*
- III. No sanction is imposed on Mr Worawi Makudi.*
- IV. The Fédération Internationale de Football Association shall be ordered to pay to Mr Worawi Makudi a contribution towards his legal and other costs incurred within the framework of these proceedings, in an amount to be determined at the discretion of the Panel.*

**Alternatively:**

- V. The sanction imposed by the FIFA Appeal Committee on 16 May 2018 is significantly reduced to a reprimand or a symbolic fine”.*

66. In its Answer, FIFA lodged the following requests for relief:

- “1. To reject the Appellant’s appeal in its entirety.*
- 2. To confirm the decision hereby appealed against.*
- 3. To order the Appellant to bear all costs incurred with the present procedure and to cover all expenses of the Respondent related to the present procedure”.*

## V. SUBMISSIONS OF THE PARTIES

67. Mr Makudi provided the following summary of his written submissions:

### **Article 17 FCE (Forgery and falsification)**

- Relying on Black’s Law Dictionary, English law and Swiss law, it is submitted that there are two constitutive elements for an act of forgery: i) there must be a written document that has been falsified or altered; and ii) the author of the falsification must have used such written document with the intention to cause damage to another person or to gain a benefit for himself. Neither of these two prerequisites are complied with in the matter at hand.
- The changes made to the FAT Statutes fall within the scope of the mandate of the FAT Congress to make changes to comply with Thai law without resubmission to the FAT Congress. Therefore, the document registered with the Thai Registrar of Associations is a genuine document and not a forgery.
- Contrary to the considerations of the FIFA Appeal Committee, there is clear evidence that the amendments were actually proposed orally and in writing by the Legal Standards and Provisions Group of the DOPA. Mr Makudi originally attempted to register the FAT Statutes as they were adopted to the letter by the FAT Congress. It therefore follows that Mr Makudi has not amended the FAT Statutes on his own initiative. This was done upon the request of the DOPA and with the agreement of the whole FAT Executive Committee (the “FAT ExCo”). Also, no amendment was for Mr Makudi’s or the FAT ExCo’s sole gain or benefit. The manner in which the amendments were adopted and submitted to the DOPA, after having been informed of the changes that needed to be made, must also be understood in the context of the FAT presidential elections and the pressure exerted by FIFA to have the elections concluded by 30 September 2013. Besides Pattaya FC, nobody complained about the amended FAT Statutes when they were ratified by the FAT Congress which took place on 18 October 2014. By its very nature, the ratification of the content of a document excludes a case of forgery.
- The above conclusion is further confirmed by the final outcome of the complaint filed by Pattaya FC. The Bangkok Appeal Court acquitted Mr Makudi. Furthermore,

following the explanations given by the Deputy Director General of the DOPA, Pattaya FC withdrew its appeal before the Bangkok Appeal Court. The Bangkok Appeal Court outlined that the FAT Statutes were modified upon the mandate given by the FAT Congress, which did not require, contrary to what the Appealed Decision states, that the FAT ExCo, respectively Mr Makudi, had to submit the litigious amendment again to the FAT members for approval. The Bangkok Appeal Court also concluded that the amendments were done upon request of the DOPA and not upon the FAT ExCo's or Mr Makudi's own initiative. Therefore, such amendment cannot be qualified as forgery or falsification. Contrary to what FIFA argues, if the Bangkok Appeal Court comes to the conclusion that there has been no forgery or falsification under Thai laws, its judgment certainly deserves to be respected and abided by.

- The FAT members have not suffered any damage or prejudice resulting from the amendments made to the FAT Statutes. Rather, if the FAT Statutes had not been amended, they would have violated Thai law, which would ultimately have subjected them to nullification and this would have prejudiced the FAT members. The FAT members explicitly authorised Mr Makudi to make such changes to comply with Thai laws. The introduction of the quorum in the FAT Statutes has not disturbed any rights of the FAT members with respect to the lawful adoption of decisions. As to the right to broadcast matches, it does not make practical and logical sense that such rights be held by both the FAT and its members, as co-owners. Decisively, neither Mr Makudi, nor any other individual, had any personal interest in the amendments made to the FAT Statutes.

#### **Article 41 FCE (Failure to collaborate)**

- It is noted with satisfaction that the FIFA Appeal Committee partially overturned some findings in the First Instance Decision. However, Mr Makudi denies any notion of non-collaboration and did not act in bad faith during the proceedings before the FIFA Ethics Committee.
- With regard to the translation of the Southern Bangkok Criminal Court decision, the delay in sending a copy of the decision to the FIFA Ethics Committee was not due to any desire on Mr Makudi's part to evade or escape investigation. Mr Makudi was only supplied with a full copy of the decision on 3 September 2015. Mr Makudi had previously already permitted the Investigatory Chamber to inspect the case file directly with the Southern Bangkok Criminal Court.
- Mr Makudi cannot be accused of not acting in good faith within the meaning of Article 41 FCE, because i) the sanction provided at Article 41 FCE is contrary to Article 6(1) of the European Convention of Human Rights (the "ECHR"); and ii) Mr Makudi had duly collaborated with the FIFA Ethics Committee.
- According to CAS jurisprudence, Article 6(1) ECHR must be taken into consideration, and therefore the FIFA Appeal Committee should have given more weight and

interest to this issue. Throughout the application of Article 6(1) ECHR, the scope of such provision has been developed – through a body of case law and decisions – to include the privilege against self-incrimination, most notably in a judgment in relation to the production of self-incriminating documents. Contrary to this jurisprudence, Article 41(2) FCE demands that parties must cooperate with the Investigatory and Adjudicatory Chambers, failing which they will be automatically sanctioned on this basis only. This duty of cooperation also includes the obligation to provide documents which may incriminate the party in question.

- The 6-month ban imposed on Mr Makudi on this basis violates the fundamental procedural principle prohibiting the self-incrimination of the prosecuted party, as a consequence of which any sanction imposed as a result of the foregoing shall be null and void.
- In any event, Mr Makudi may not reasonably be reproached of not having duly cooperated. Mr Makudi was requested to provide a significant amount of documents, most of which were drafted in Thai, within unacceptably short periods of time. In spite of these short time limits, Mr Makudi always collaborated in good faith and as expeditiously as possible, eventually providing all the requested documents.

#### **Proportionality of the sanction**

- In light of the above, it is patently clear that Mr Makudi has not committed any violation of the FCE which would deserve any sanction. For the sake of prudence however, Mr Makudi submits that, should CAS consider that any infringement has been committed, he does not deserve the sanction which has been imposed on him in the Appealed Decision. Any penalty going beyond a simple reprimand or a symbolic fine would appear totally disproportionate.
- The principle of proportionality provides that the sanction must be proportionate to the offense committed. In this case, the sanctions imposed on Mr Makudi were biased and unreasonably severe considering Mr Makudi's alleged offense, particularly in comparison to FIFA sanctions against other FIFA officials.
- It must be emphasised that i) the appeal of Pattaya FC against the judgment of the South Bangkok Criminal Court decision was withdrawn; ii) the Supreme Administrative Court dismissed the claim about the purported invalidity of the FAT Statutes as amended and registered; and iii) the Bangkok Appeal Court acquitted Mr Makudi of the accusations of forgery of documents and confirmed that the FAT Statutes were only slightly amended upon request of the SAT and the DOPA, and that these modifications did absolutely not damage the FAT members' interests.
- Additionally, it should be taken into account that Mr Makudi's historical background in football is impeccable: he served FIFA for 19 years (1997 – 2015) and the AFC for 23 years (1993 – 2015) in various important positions e.g. ExCo member of both FIFA and AFC, Chairman of Women Committee and the FIFA Women's World Cup,

Chairman of FIFA Futsal Committee, Chairman of AFC Referee Committee, etc. He served FAT for 29 years (1987 – 2015) in various positions ranging from FAT ExCo member to FAT President.

68. FIFA provided the following summary of its written submissions:

- The factual background developed by Mr Makudi during the period between 18 – 27 September 2013 is not supported by any contemporary written evidence. Instead, these alleged events, which all conveniently follow the argumentation submitted by Mr Makudi, are only mentioned in the statements of Mr Suwannanon given years later and in a letter from the DOPA dated 6 January 2015. Also, Mr Suwannanon testified as a representative of one co-defendant in the case (the DOPA). He therefore has a direct interest in providing answers that would corroborate the explanations of the other co-defendant in the respective state proceedings, i.e. Mr Makudi. The factual background given by Mr Makudi should therefore not be considered as proven facts.
- As to the decision of the Bangkok Appeal Court, FIFA states that the proceedings before the FIFA Ethics Committee and the FIFA Appeal Committee should be regarded as having an internal, administrative nature. FIFA’s judicial bodies are completely independent and should not be influenced by the outcome of state proceedings being conducted in a specific country (criminal or otherwise). Neither the First Instance Decision, nor the Appealed Decision mention at any point that FIFA judicial bodies would be bound by the criminal proceedings in Thailand. One major difference is the “standard of proof”, which is governed by the principle “beyond any reasonable doubt” under ordinary criminal law, and by the inferior standard of “personal conviction” in FIFA proceedings, or its equivalent of “comfortable satisfaction”. It follows that a person found not guilty under the criminal standard may well be convicted under the considerably lower ethical standard applied by FIFA’s judicial bodies.

**Article 17 FCE (Forgery and falsification)**

- The content of Article 17 FCE is very clear, as it covers three distinct, while related, types of conduct: i) the act of forging a document; ii) that of falsifying an authentic document; and iii) that of using a document that has already been forged or falsified (possibly by another person). The content of Article 17 FCE does not mention the intent of the causing/existence of a prejudice or damages as constitutive elements of the infraction. To the contrary, Article 5(2) FCE states that “*unless otherwise specified, breaches of this Code shall be subject to the sanctions set forth in this Code, [...] whether they have been committed deliberately or negligently [...]*”.
- In the Appealed Decision, it has been established that the FAT Statutes registered on 14 October 2013 give the appearance to stem entirely from a corresponding decision of the FAT Congresses of 9 and 23 August 2013 in spite of the fact that two of its provisions – Article 24(1) and 78 FAT Statutes – were in fact altered by Mr Makudi after such FAT Congresses. Therefore, it was concluded that the FAT Statutes

constitute a forged document, with Mr Makudi being the author of the forgery, as he signed the modified version of the FAT Statutes.

- In addition, Mr Makudi was also found to have used the forged document, by submitting it, on behalf of the FAT, for registration and using it as the basis for the 2013 FAT presidential elections that were held on 17 October 2013. Mr Makudi was re-elected as FAT President based on the very same altered FAT Statutes.
- By means of the first alteration (Article 24(1) FAT Statutes), the original provision, which did not foresee a number of members present at a general meeting required to reach a quorum, was replaced by a second provision, which introduced such quorum, both in terms of a relative (at least 50% of the members) as well as an absolute figure (no fewer than 50 members).
- By means of the second alteration (Article 78 FAT Statutes), whereas the original provision determined that “[t]he association and members are considered holders of all rights concerning the establishment of any competition that is held under the jurisdiction of the association”, this provision was amended by deleting the reference to “and members”, resulting in the fact that the members were no longer holders of the relevant rights.
- FIFA contests that such alterations were made on the basis of recommendations made by the SAT or the DOPA. Neither of the two letters sent contain specific recommendations on the amending of the provisions in question. There is no evidence whatsoever in the case file of any written communication of such recommendations made.
- Mr Makudi – or the FAT ExCo – was/were not entitled to make the alterations based on the decision of the FAT Congress of 23 August 2013. The FAT Congress did not mandate the FAT ExCo to make any changes to the FAT Statutes irrespective of their importance, in order to align them with Thai law. The relevant decision clearly states that the FAT ExCo was only allowed, without the FAT Congress’ additional approval *“to amend minor details of association bylaws [...] to ensure that the statements or wording would not be in conflict with the provisions of Thai law”*. The alterations of the relevant provisions of the FAT Statutes are far from being minor details or minor changes. Introducing a quorum for congress decisions and deleting the FAT members as rights holders are important and far-reaching changes which have a direct impact on the legal position of the members.
- Given the significance of these alterations, Mr Makudi was not entitled to make these alterations solely on the basis of the FAT Congress decision of 23 August 2013 but should have presented such alterations to the FAT Congress and obtain their express authorisation before continuing with the process of finalising and registering the FAT Statutes.
- Even if the relevant alterations were considered to be of minor importance, the FAT Congress decision of 23 August 2013 authorised the FAT ExCo, and not its

administration or President, to make the relevant alterations. Although claiming that the alterations were in fact made by the FAT ExCo or with the agreement of the FAT ExCo, Mr Makudi was unable to produce any contemporary evidence that would attest that the FAT Congress was even informed of the alterations made to the relevant provisions.

- The relevant alterations were also not necessary to bring the FAT Statutes in accordance with Thai law. The letters issued by the SAT and the DOPA are very detailed in recommending alterations, but Article 24(1) and 78 FAT Statutes are not addressed. Article 96 of the Thai Civil and Commercial Code regarding quorum does not mention a specific number of members necessary. Neither Mr Makudi nor Mr Suwannanon have explained in a satisfactory manner the reason for the number of 50 members being chosen. In particular, such obligation was not imposed on the FAT by the DOPA, as can be inferred from Mr Suwannanon's oral testimony. Even if there had been a legal obligation for the FAT to include such provision in its Statutes, Mr Makudi would still not have been entitled to do so himself, i.e. without seeking the approval of the FAT Congress.
- Mr Makudi has not provided any conclusive evidence in support of his claim that the alteration of the relevant provisions of the FAT Statutes were ratified by way of the approval of the minutes of the 2014 FAT Congress. No evidence has been provided that the two relevant provisions were presented or discussed at the 2014 FAT Congress. It has also not been proven that the FAT members were informed of them. Even if the two alterations would have been approved at the 2014 FAT Congress, such approval would not have a retroactive effect.
- By reducing the quorum for FAT Congress decisions by half, which is a significant material change, this directly affected the rights of FAT members as it considerably facilitated FAT Congress decisions. By reducing the quorum to a minimum presence of 50 members instead of half of the overall number, and because Mr Makudi was elected President on the basis of the altered FAT Statutes, the amendment of the rule affected the rights of FAT members (besides from evidently being in the interest of Mr Makudi).
- For the second alteration, the impact is even more evident as it resulted in a direct loss of rights for the FAT members. The fact that the alteration was allegedly made to the benefit of FAT members is utterly irrelevant, as this does not fall under the scope of the mandate given from the FAT Congress to the FAT ExCo. It would be for the FAT Congress to assess, and decide on, the sense and practicability of a particular statutory provision.

#### **Article 41 FCE (Failure to collaborate)**

- The Appealed Decision determined that Mr Makudi had violated his duty to collaborate by failing to provide the Investigatory Chamber with a copy of the



Southern Bangkok Criminal Court in time, and was therefore in breach of Article 41 FCE.

- Mr Makudi finally provided a copy of the relevant decision, in Thai, on 29 September 2015, i.e. almost a month after having received it from the relevant court. In other words, Mr Makudi was not only extremely dilatory in providing a copy of the relevant decision, but, more importantly, only complied upon being informed by the Investigatory Chamber that the relevant decision had been communicated. Had the Investigatory Chamber not been provided with a copy by Pattaya FC and had not sent its request of 28 September 2015, there is no certainty that Mr Makudi would have complied with the request. Given Mr Makudi's prominent position in football, the Investigatory Chamber had every motive to conduct a thorough, yet speedy, investigation and reach a conclusion regarding Mr Makudi's guilt in relation to the relevant charges as soon as possible. This also implied the collection of all and any available documents and information, in particular from the party, in a very rapid manner, which would expect both the short deadlines given to Mr Makudi, and the vital importance of his cooperation with the requests from the Investigatory Chamber. Mr Makudi also freely informed the Investigatory Chamber that he would "*immediately forward the required documents to you as soon as we have received them from the Court*". Mr Makudi was also given a specific warning to comply with the request to provide the relevant decision.
- As to the *ratio legis* of Article 41 FCE, it should be underlined that judicial bodies of a private association do not possess the (same) investigative instruments of a criminal state/public authority, such as house search, telephone and internet monitoring/tapping, etc. For this reason, the collaboration of the persons involved in ethics proceedings becomes of vital importance, and must be properly regulated.
- FIFA Ethics proceedings are clearly proceedings under civil law, excluding, in principle, a direct and comprehensive application of principles of criminal law. It should be pointed out that even the most severe sanction provided for by the FCE – a life-time ban from all football-related activity – is not comparable to a sanction imposed by criminal law enforcement authorities. While such proceedings are not criminal ones, certain principles common to criminal proceedings are – by way of analogy – also applicable to FIFA Ethics proceedings. A series of such fundamental principles are already provided for in the FCE. However, neither the jurisprudence nor the legislation cited by Mr Makudi demonstrate that the privilege against self-incrimination should be among those fundamental principles.
- In any event, the specific conduct for which Mr Makudi was found guilty had no relation to the privilege against self-incrimination. The duty to collaborate was not breached because Mr Makudi refused to provide the relevant decision, but because he failed to provide it in due course. Mr Makudi provided the decision and the translation without raising any argument or complaint in relation to the privilege against self-incrimination.

### **Proportionality of the sanction**

- Reference is made to the reasoning in the Appealed Decision and it is added that the decisions rendered by the Adjudicatory Chamber in the cases of Mr Michel Platini, Mr Joseph Blatter, Mr Angel Maria Villar and Mr Mong-joon Chung present both factual and legal aspects and particularities that differ significantly from the present matter. In particular, the cases of the other former FIFA officials concerned violations of completely distinct provisions of the FCE. Any comparison is therefore irrelevant and inadequate.
- Regarding the sanction imposed for violating Article 41 FCE, jurisprudence is presented which has imposed provisional measures in the form of a ban from taking part in any football-related activity in relation to a failure of cooperation with a FIFA Ethics Committee investigation.
- With regard to the alleged unblemished record of Mr Makudi, FIFA adds that the FIFA Disciplinary Committee had banned him, on 22 February 2016, for three months and had fined him with CHF 3,000 for failing to comply with the provisional ban imposed on him on 7 October 2015.
- Furthermore, Mr Makudi's prominent positions in the FAT and FIFA were not taken into account as a mitigating, but rather as aggravating circumstances.

## **VI. JURISDICTION**

69. The jurisdiction of CAS, which is not disputed, derives from Article R47 CAS Code (2017 edition), Article 58(1) FIFA Statutes (2016 edition), and the Appealed Decision itself.
70. Article 58(1) FIFA Statutes determines 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 notification of the decision in question”.*
71. The Appealed Decision determines the following:
- “According to art. 58 par. 1 of the FIFA Statutes, this decision may be appealed to the Court of Arbitration for Sport (CAS). The statement of appeal must be sent directly to the CAS within 21 days of notification of this decision. [...]”.*
72. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the Parties.
73. It follows that CAS has jurisdiction to adjudicate on and decide the present dispute.

## VII. ADMISSIBILITY

74. The appeal was filed within the time limit of 21 days set by Article 58(1) FIFA Statutes. The appeal complied with all other requirements of Article R48 CAS Code, including the payment of the CAS Court Office fee.
75. It follows that the appeal is admissible.

## VIII. APPLICABLE LAW

76. Mr Makudi submits that the rules applicable to the present matter are the FIFA regulations, more specifically the FIFA Code of Ethics and the FIFA Disciplinary Code, and Swiss law on a subsidiary basis.
77. FIFA submits that the applicable law shall be the FIFA regulations and subsequently Swiss law, as well as sports doctrine and jurisprudence.
78. Article R58 CAS Code provides the following:
- “The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*
79. Article 57(2) FIFA Statutes determines 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”.*
80. It is common ground that the dispute before CAS is primarily governed by FIFA regulations, more specifically the FIFA Code of Ethics and the FIFA Disciplinary Code and, subsidiarily, Swiss law, should the need arise to fill a possible gap in the various regulations of FIFA.
81. In accordance with the principle of *tempus regit actum*, an offence is to be judged on the basis of the substantive rules in force at the moment the alleged offence was committed. However, the procedural aspects of the proceedings are governed by the regulations in force at the time the appeal was lodged. The prohibition against retroactivity is a fundamental principle of Swiss law and forms part of international public policy (*ordre public*) (WAGNER PFEIFER B., Haftungsrisiken durch rückwirkende Anwendung umweltrechtlicher Normen?, in: Risiko und Recht, 2004, p. 552). An exception in this respect may however be if more recent regulations than the one in force at the time of the violation are more favourable to the accused (*lex mitior*).
82. Accordingly, since Mr Makudi’s alleged offence was committed on 14 October 2013 (i.e. the day the amended FAT Statutes were registered by the Thai Registrar of Associations), the FIFA Code of Ethics (2012 edition) and the FIFA Disciplinary Code (2011 edition) are

primarily applicable to the merits of the dispute, whereas the procedural and organisational aspects are governed by the FIFA Statutes (2016 edition), the FIFA Code of Ethics (2012 edition) and the FIFA Disciplinary Code (2017 edition).

## **IX. MERITS**

### **A. The Main Issues**

83. The main issues to be resolved by the Panel are:

- i. Did Mr Makudi violate Article 17 FCE?
- ii. Did Mr Makudi violate Article 41 FCE?
- iii. Are the sanctions imposed on Mr Makudi by the FIFA Appeal Committee disproportionate?

84. Before commencing with the analysis regarding the different accusations made, the Panel notes that Mr Makudi did not make any specific submissions in respect of the burden and standard of proof, while FIFA submits that the standard of proof is “personal conviction” or its equivalent of “comfortable satisfaction”.

85. Given that the present proceedings are governed by the FCE, the Panel finds that the rules on the burden and standard of proof enshrined in Article 51 and 52 FCE are applicable. Accordingly, the Panel shall decide this case on the basis of its personal conviction and the burden of proving Mr Makudi’s alleged breaches of the FCE lies with FIFA.

#### ***i. Did Mr Makudi violate Article 17 FCE?***

86. The Adjudicatory Chamber of the FIFA Ethics Committee and the FIFA Appeal Committee found Mr Makudi guilty of violating Article 17 FCE.

87. Article 17 FCE determines as follows:

*“Forgery and falsification*

*Persons bound by this Code are forbidden from forging a document, falsifying an authentic document or using a forged or falsified document”.*

88. With regard to the violation concerned, the Panel observes that the main dispute between the Parties relates to the legal nature of the alterations to the revised FAT Statutes.

89. In fact, FIFA maintains that, since the amendments to Article 24(1) and 78 FAT Statutes were implemented after the FAT Congress decisions of 9 and 23 August 2013, and were not justified on the basis of the subsequent recommendations made by the SAT or the DOPA (and were therefore allegedly not authorised by the FAT Congress), the revised FAT Statutes

are the result of a forgery and Mr Makudi is responsible for having signed and used a forged document.

90. On the other side, Mr Makudi asserts that such alterations were prompted by the DOPA, with the agreement of the FAT ExCo, in order for the FAT Statutes to comply with Thai law, and, moreover, the FAT members explicitly authorised the FAT ExCo to adopt the relevant amendments and therefore, these amendments fall within the scope of the mandate of the FAT Congress and did not require any additional approval by the FAT Congress. As a consequence, the document registered with the Registrar of Associations is genuine and does not constitute a forgery.
91. In consideration of the conflicting positions above, the majority of the Panel finds that, as will be set out in more detail below, the contested alterations were discussed and adopted within the context of a series of in-person meetings between the DOPA Legal Standards and Provisions Group and a legal team of the FAT; that they were submitted by the FAT for registration and were in fact registered by the Registrar of Associations on 14 October 2013.
92. As a consequence, the majority of the Panel notes that, with regard to their source, the relevant alterations of the FAT Statutes resulted from a sort of deliberation procedure with a public institution (the DOPA), although it may be disputed whether the adoption process was conducted in strict compliance with the applicable FAT regulations.
93. In particular, the Panel acknowledges that according to FIFA's position, the implementation of the relevant alterations to the FAT Statutes could be flawed in that the revisions to Articles 24(1) and 78 FAT Statutes may have exceeded the delegation of powers attributed by the FAT extraordinary Congress or, otherwise, have been implemented in violation of other procedural rules.
94. Therefore, upon closer scrutiny, the Panel believes that although FIFA's argument concerns the alleged violation of Article 17 FCE by Mr Makudi for committing an act of forgery and/or falsification, what FIFA claims in these proceedings is that Mr Makudi or the FAT ExCo were not authorised/did not have the necessary powers to implement the relevant alterations to the FAT Statutes or that the alterations adopted in fact exceeded the delegated powers. In fact, FIFA also objects that Mr Makudi failed to provide evidence that the relevant alterations of the FAT Statutes were implemented upon request of the DOPA (in accordance with some recommendations during an alleged meeting between DOPA and FAT representatives) and with the agreement of the FAT ExCo.
95. In view of the witness statements provided by Mr Makudi, as it will be discussed in depth below, the majority of the Panel is not persuaded that, from a formal point of view, the document resulting from the implementation of the relevant amendments constitutes any forgery or falsification under the provision of Article 17 FCE.
96. In fact, according to the opinion of the majority of the Panel, it results from the relevant oral testimonies that the revised FAT Statutes signed by Mr Makudi that were ultimately registered, actually reflect the apparent will of the FAT ExCo resulting from the deliberation process

mentioned above, with the consequence that one cannot properly affirm that the document was forged or falsified.

97. Notwithstanding the above, even admitting that, in theory, the adoption of the relevant alterations could have constituted a violation of Article 17 FCE, the majority of the Panel is not satisfied that all the constitutive elements of such violation would be met in the present case.
98. In this regard, the Panel notes that it is disputed between the Parties whether the intent to cause damage or gain benefit is a constitutive element of forgery/falsification under Article 17 FCE.
99. The Panel observes that Article 17 FCE itself does not indicate whether intent is a constitutive element of forgery or falsification. The Panel however notes that, reading Article 17 FCE in conjunction with Article 5(2) FCE, it was apparently the intention of the draftsmen of the FCE to determine that an act of forgery or falsification can also be committed negligently.
100. Article 5(2) FCE determines as follows:

*“Unless otherwise specified, breaches of this Code shall be subject to the sanctions set forth in this Code, whether acts of commission or omission, whether they have been committed deliberately or negligently, whether or not the breach constitutes an act or an attempted act, and whether the parties acted as participant, accomplice or instigator”.*
101. Upon being invited by the Panel to indicate how Article 17 FCE could be reconciled with Article 5(2) FCE, FIFA indicated that it only responded to Mr Makudi’s allegation that intent to cause damage or gain a benefit was required. FIFA submits that Article 17 FCE cannot be interpreted as having intent to cause damage or gain a benefit as a constitutive element. Counsel for FIFA however admitted that *“to say that you can have negligent forgery I think there is a long way”* and that *“I would go somewhere in the middle probably and say that of course the person who commits forgery is aware of her actions and needs to be aware of the actions that he or she is conducting, but the intent to cause damage or gain a benefit is not a necessary element or a constitutive element”*. FIFA then proceeded by enumerating a number of provisions in the FCE specifically referring to damage (Article 27 FCE) or benefit (Article 20 FCE and Article 19 FCE implicitly). FIFA also agreed that there must be an intent to falsify. When one of the members of the Panel mentioned the concept of *dolus eventualis*, FIFA agreed that such concept would be applicable.
102. The majority of the Panel agrees with this reasoning of FIFA and finds that the offence of forgery or falsification under the FCE cannot be committed negligently.
103. The Panel has some doubts about whether there must have been an intent to cause damages or gain a benefit. Given that criminal law, English and Swiss criminal law in particular, determine that forgery is only committed if there is an intent to prejudice someone or to cause financial loss or damage or obtain an unlawful advantage, the Panel considers it questionable whether a sport governing body like FIFA can use the same terminology (i.e. forgery and

falsification) in its regulations, while at the same time detaching such terms from the constitutive requirements commonly associated therewith.

104. Be that as it may, there can be little doubt that an intentional or deliberate act of forgery or falsification constitutes a violation of Article 17 FCE. The Panel is however mainly interested in determining what the lower end of the spectrum is, i.e. to determine what the minimum standard required is in order for a certain action or failure to act to constitute a violation of Article 17 FCE.
105. In this respect, the majority of the Panel acknowledges that so-called “indirect intent” or “*dolus eventualis*” is at the lower end of the spectrum, but is still a form of “intent”. The Panel observes that this issue has been extensively addressed in CAS jurisprudence, particularly in the context of anti-doping rule violations. One CAS panel stated the following in this respect:

*“95. The Panel finds that this definition of “intent” incorporates so-called “indirect intent” or “dolus eventualis” and feels comforted in this respect by the reasoning of another CAS panel:*

*“This Panel holds that the term “intent” should be interpreted in a broad sense. Intent is established – of course – if the athlete knowingly ingests a prohibited substance. However, it suffices to qualify the athlete’s behaviour as intentional, if the latter acts with indirect intent only, i.e. if the athlete’s behaviour is primarily focused on one result, but in case a collateral result materializes, the latter would equally be accepted by the athlete. If – figuratively speaking – an athlete runs into a “minefield” ignoring all stop signs along his way, he may well have the primary intention of getting through the “minefield” unharmed. However, an athlete acting in such (reckless) manner somehow accepts that a certain result (i.e. adverse analytical finding) may materialize and therefore acts with (indirect) intent” (CAS 2012/A/2822, para. 8.14 of the abstract published on the CAS website).*

*96. Following the definition of “intent” given in Article 19.3 FIFA ADR it follows that in order for the anti-doping rule violation to be committed intentionally, the Player i) must have known that there was a significant risk that his conduct might constitute or result in an anti-doping rule violation; and ii) manifestly disregarded that risk”*

(CAS 2017/A/5022, para. 95-96 of the abstract published on the CAS website).

106. The majority of the Panel agrees with this analysis and will therefore examine whether the behaviour of Mr Makudi by forming part of the group that altered the FAT Statutes, signed them and registered them with the Registrar of Associations, acted so recklessly that he acted at least with “indirect intent”.

a) *The evidence on file*

107. The Panel finds that an important aspect of the proceedings is whether the alterations to the FAT Statutes were initiated by the DOPA, by the FAT ExCo or by Mr Makudi himself. The Panel observes that there is no contemporary documentary evidence on file proving that the DOPA recommended or ordered (the witnesses heard had different interpretations of the

nature of the DOPA's comments) the FAT ExCo to alter Article 24(1) and 78 FAT Statutes at the relevant moment in time. Rather, all the evidence presented in this respect by Mr Makudi derives from witness statements or letters sent *post factum*.

108. In the following paragraphs the Panel summarizes the testimonies of the witnesses called by Mr Makudi.
109. Mr Somchai Leotprasitthiphan, Head of the DOPA Legal Standards and Provisions Group, testified, *inter alia*, that he met with a legal team of the FAT to discuss the registration of the amended FAT Statutes. He added that Mr Makudi attended the first meeting, but not anymore when the suggested amendments were discussed. He stated that he remembered at least four recommendations being made: one related to the rights and benefits of members, one related to a clause to submit disputes to arbitration, one regarding the definition of the word "member" and one related to quorum. As to quorum, Mr Leotprasitthiphan stated that he recommended a specific number (50 or 100) to be mentioned rather than determining that half of the FAT members had to be present, because FAT is a large association and for large associations half is too much in practical terms. Mr Leotprasitthiphan stated that he did not recommend a specific number to be adopted in the FAT Statutes, but that he only gave an example and that the FAT decided this by itself and that if no specific number would be mentioned, the general principle that at least half of the members had to be present would apply. He also indicated that it was a normal process to meet with associations in person, rather than corresponding in writing. Finally, Mr Leotprasitthiphan indicated that he did not remember whether he had been involved in making the written recommendations to the FAT by letter dated 19 July 2013.
110. Mr Dondej Phatthanarat, Deputy Director General of the DOPA from 2014-2015, testified that Mr Leotprasitthiphan fell under his supervision during his period as Deputy Director General. Mr Phatthanarat confirmed that he was aware of changes to the FAT Statutes recommended in respect of quorum and ownership of rights and that he agreed with such recommendations, but that he was not personally involved. He also confirmed the content of his letter dated 6 January 2015 to Pattaya FC explaining the factual circumstances regarding the recommendations made and confirming that he believed the FAT Statutes were correctly registered. Mr Phatthanarat stated that he reviewed the process when he assumed the position of Deputy Director General of the DOPA and that the letter dated 6 January 2015 was the result of this review. He also confirmed that it was a normal practice for the DOPA to make recommendations in writing as well as orally.
111. Mr Surapon Suwannaononda, Legal Director of the DOPA, confirmed the content of his statement dated 13 March 2015, but indicated that he did not remember having given a witness statement dated 28 June 2018. Counsel for Mr Makudi later clarified that they had prepared Mr Suwannaononda's witness statement dated 28 June 2018, but that it contained certain honest errors. He confirmed that his statement of 13 March 2015 was based on Mr Leotprasitthiphan's account and had no direct knowledge of the facts himself. He confirmed to have been aware of the two recommendations made by Mr Leotprasitthiphan and that he agreed therewith, but that he had not attended any of the meetings between the DOPA and the FAT and was not directly involved. He stated that the persons in charge were Mr Somchai



Leotprasitthiphan and Mr Alinkot, Director of the Division. Mr Suwannanonda confirmed that he approved the amended FAT Statutes after the recommended alterations were implemented by the FAT. He indicated that the consequence of the FAT not following the DOPA's recommendations would be that the FAT Statutes would not be registered. He also confirmed that it was a normal practice for the DOPA to make recommendations in writing as well as orally. He stated that the in-person meetings were not recorded in writing at the time. Mr Suwannanonda confirmed that a provision in the FAT Statutes indicating that 50% of the members had to be present in order to have quorum would be compliant with Thai law by the wording, but added that a quorum would have to be able to be carried out in practice as well.

112. Dr Ong-Arj Kosinkar, former FAT Secretary General, confirmed that he attended all meetings that took place between the DOPA and FAT. He indicated that Mr Leotprasitthiphan specifically mentioned 50 people in respect of quorum. Upon being asked whether he accepted to incorporate the recommendations made, Dr Kosinkar answered that he would take the matter back to the FAT ExCo for further action. He stated that he understood that the recommendations had to be followed in order to ensure registration. He also confirmed that a FAT ExCo meeting took place and that it was not necessary to go back to the FAT Congress, because the FAT Congress had adopted a resolution that amendments were to be made by the FAT ExCo without having to go back to the FAT Congress. Dr Kosinkar confirmed that he was not a lawyer. As to the nature of the recommendations made by the DOPA, Dr Kosinkar stated that he considered them to be "a bit obligatory", that they would have to follow them and that he considered the recommendations to concern important amendments. He confirmed that, following the recommendations of the DOPA and deliberations of the FAT ExCo, the FAT Statutes were sent for registration and that the members were informed thereof. Dr Kosinkar confirmed that no member of FAT complained about the amended FAT Statutes, except for Pattaya FC. He also confirmed that Pattaya FC's complaint at the elective FAT Congress proves that the members were aware of the amendments made. Upon being asked why the rights of members had to be changed in the new FAT Statutes, while this was apparently not an issue when the FAT Statutes (2008) edition were registered, Dr Kosinkar indicated that they wanted to bring the FAT Statutes in line with the FIFA Statutes and make the election process more democratic. He also stated that the changes were necessary because Thai law had changed in the meantime.
  
113. Mr Vira Khammee, former Chairman of the FAT Legal Committee, testified that he proposed to the FAT Congress to let the FAT ExCo pass resolutions. For instance, translations and to authorise the FAT ExCo to amend the FAT Statutes if these would be contrary to Thai law. He also indicated that, according to the FAT Congress' delegation, significant amendments could be made to the FAT Statutes. Mr Khammee confirmed that he attended the meetings that took place between the DOPA and the FAT. He indicated that whatever the DOPA advised was without prejudice to the rights of the members and that they therefore accepted the recommendations. He confirmed that the FAT Statutes were altered as recommended by Mr Leotprasitthiphan. Mr Khammee indicated that he did not attend the FAT ExCo meeting where the DOPA's recommendations were implemented in the FAT Statutes because he was not a FAT ExCo member, but that it was his understanding that the recommendations were accepted. Mr Khammee also indicated that the previous version of the FAT Statutes contained

similar provisions on quorum and rights of members and that this previous version was registered with the DOPA. Mr Khammee testified that nobody complained about the altered FAT Statutes that were ultimately registered.

114. Mr Makudi testified that the entire process of amending the FAT Statutes was supervised by FIFA representatives. He indicated that after completely changing the FAT Statutes there were some doubts as to whether the amended FAT Statutes would comply with Thai law and that this was why Mr Khammee recommended the FAT Congress to delegate authority to the FAT ExCo. He indicated that when the DOPA called for a meeting, he introduced everybody, but that he did not personally attend the meetings. According to Mr Makudi, Dr Kosinkar told him about the changes that had to be made and that he told him to fully comply with the instructions. He indicated that he trusted the DOPA on the recommendations made and that he had no alternative. Mr Makudi stated that in that period the FAT ExCo almost assembled every second day as the time limit was very short. He indicated that there must be minutes of the relevant FAT ExCo meeting in the offices of the FAT, but that he had to leave them in the office. He indicated that he considered the recommendations of the DOPA to be compulsory. Mr Makudi confirmed that he signed the altered FAT Statutes and instructed a messenger to deliver the FAT Statutes to be registered. Mr Makudi indicated that he subsequently won the elections for FAT President and that the chairman of Pattaya FC lost. When the President of Pattaya FC lost the elections, he filed a case. Mr Makudi clarified that the FAT members were informed that the amended FAT Statutes had been registered, but that the attention of the members was not specifically drawn to the amendments based upon the DOPA's recommendations because all the members were aware by the public news, as the media published on every aspect of the FAT Statutes revision process. Mr Makudi also indicated that there was no complaint of Pattaya FC during the elective FAT Congress after the revised FAT Statutes had already been registered.

*b) The findings of the Panel*

115. The majority of the Panel found the testimonies of the witnesses called by Mr Makudi, in conjunction with the letter sent by the DOPA to Pattaya FC dated 6 January 2015, indicating, *inter alia*, that “*there are some lawful amendments which were executed and mandated by the legal officer of the Legal Division of [the DOPA]*”, to be sufficiently strong to corroborate Mr Makudi's allegation that it was the DOPA that initiated the two alterations to the FAT Statutes and that Mr Makudi could reasonably understand that the FAT ExCo acted within the discretion granted to it by the FAT Congress' decision of 23 August 2013. As such, the Panel finds that Mr Makudi could reasonably conclude that he could sign the amended FAT Statutes and offer them to Registrar of Associations on 27 September 2013.
116. There is no indication on file suggesting that the two relevant alterations to the FAT Statutes were the brainchild of Mr Makudi or of any other FAT ExCo member. Rather, the majority of the Panel is satisfied to accept that the initiative to alter these two provisions was solely prompted by the DOPA. Although Mr Phatthanarat and Mr Suwannanonda did not attend the in-person meetings between the DOPA and the FAT and that their testimonies are therefore largely based on hearsay, the Panel finds that the testimonies of Mr

Leotprasitthiphan, Dr Kosinkar and Mr Khammee were sufficiently strong to establish that it was the DOPA that prompted the two relevant alterations. While Dr Kosinkar and Mr Khammee were FAT officials, Mr Leotprasitthiphan is a former DOPA representative. These testimonies did not strike the majority of the Panel as being untruthful and the majority of the Panel considers it important that the testimonies of Dr Kosinkar, Mr Khammee and Mr Leotprasitthiphan are consistent with each other while they used to represent different bodies/institutions involved in the process.

117. The Panel notes in this respect that the FAT, by means of its Secretary General, attempted to register the FAT Statutes with the SAT already on 27 August 2013. The majority of the Panel finds that this corroborates Mr Makudi's proposition that it was not his idea to make the relevant alterations, because if the government authorities in Thailand had approved the FAT Statutes as adopted by the FAT Congress on 23 August 2013, there would have been no possibility to alter the FAT Statutes afterwards.
118. Furthermore, the majority of the Panel finds that it was actually Mr Makudi's duty to register the FAT Statutes as amended by the FAT ExCo with the Registrar of Association in his role as President of the FAT and that it is therefore difficult to hold Mr Makudi personally responsible for registering the amended FAT Statutes. The majority of the Panel notes that there is no evidence on file suggesting that Mr Makudi alone accepted to follow the DOPA's recommendations. The testimonies of the witnesses rather indicate that such decision was indeed taken by the FAT ExCo as a whole. The majority of the Panel finds that there is no evidence on file setting Mr Makudi aside from the other members of the FAT ExCo in this regard.
119. FIFA's argument that it may have opened or may still open ethics proceedings against other FAT ExCo members, but that such information cannot be disclosed due to confidentiality reasons, is not considered to be convincing by the majority of the Panel.
120. All the above is not to say that the process adopted by the FAT in order to have the amended FAT Statutes registered was flawless or exemplary for other associations. One could even conclude that the FAT ExCo exceeded the discretion granted to it by the FAT Congress by making alterations to the FAT Statutes that cannot be considered "minor". However, the majority of the Panel finds that Mr Makudi's actions do not reach the threshold of "indirect intent" or "*dolus eventualis*", also not in the context of using a forged document.
121. Indeed, the majority of the Panel is not convinced that Mr Makudi knew that there was a significant risk that registering the altered FAT Statutes might constitute or result in an offence of forgery or falsification and manifestly disregarded that risk.
122. Although it is certainly true that the Adjudicatory Chamber, the FIFA Appeal Committee and the Panel in the present appeal arbitration proceedings are to make their own independent investigation and that they should not simply rubberstamp the outcome of criminal law proceedings, and while acknowledging that the standard of proof to be applied is different, the majority of the Panel finds that it cannot be ignored that the Bangkok Appeal Court may be better-positioned to appreciate the intricacies of Thai law and the dealings of the DOPA

and that such court ultimately acquitted Mr Makudi and Dr Kosinkar, and particularly that such court considered that they legitimately believed that they had the power to make the relevant alterations to the FAT Statutes:

*“[...] [T]he change in the meeting quorum and the deletion of the word “members” would not be the matter which both Accused parties had done without any reasonable ground, but, with the cause begotten from the dissuasion of the [DOPA] [...]. Furthermore, the Congress Meeting had given the authority to make corrections of minor errors. If the situation at such period of time should be taken into consideration, both Accused parties would have to perform immediately the actions on the registration of the revised Statutes of the Association, [...] for successful completion. Based on the reason as decided by the Appeal Court above, both Accused parties would certainly believe that they had the power to proceed with the actions to make such change”.*

123. The majority of the Panel finds that the rather chaotic process leading to the registration of the amended FAT Statutes by the Registrar of Association on 14 October 2013 (comprising one ordinary FAT Congress, two extraordinary FAT Congresses, a decision of the FAT Congress to delegate powers to the FAT ExCo and subsequent use of this discretion by the FAT ExCo), is more likely to be explained by the time pressure exerted on the FAT, than by the *mens rea* (i.e. guilty mind) or reckless behaviour of Mr Makudi or any of the other FAT ExCo members. The majority of the witnesses testified that they considered the recommendations of the DOPA to be binding and that a failure to comply with the recommendations would lead to considerable delays.
124. The majority of the Panel also finds that, if certain FAT members considered that the process implemented was inappropriate, they could have sought to invalidate the amended FAT Statutes. However, none of the FAT members initiated any such action and the amended FAT Statutes are still in force today. Although the majority of the Panel would not qualify this as a ratification of the amended FAT Statutes, it does consider it relevant that, besides Pattaya FC, none of the FAT members appears to have been displeased with the process implemented, while the actions of Pattaya FC may well have been prompted by rancour of Pattaya FC's President over having lost the elections for the position of FAT President to Mr Makudi.
125. In any event, Pattaya FC ultimately withdrew its action and did not appeal the Bangkok Appeal Court decision by means of which Mr Makudi was acquitted. While lodging a criminal complaint against Mr Makudi, Pattaya FC did not attempt to invalidate the amended FAT Statutes.
126. The Panel is cognizant of the fact that Mr Makudi used the present appeal arbitration proceedings before CAS to bring several witnesses, while he did not call such witnesses in the proceedings before the Adjudicatory Chamber and the FIFA Appeal Committee. In this respect, FIFA indicated during the hearing that if such evidence had been available to its adjudicatory bodies, this could have resulted in a different outcome or that additional investigations would have been needed.
127. The majority of the Panel finds that the witnesses brought by Mr Makudi were indeed important for the outcome of the case and that the outcome of the proceedings before the

Adjudicatory Chamber and the FIFA Appeals Committee could very well have been different if Mr Makudi had brought such evidence before FIFA's adjudicatory bodies. The Panel finds that FIFA cannot be held responsible for this and that this should have consequences for the costs of the present proceedings, as set out below.

128. Consequently, the majority of the Panel finds that Mr Makudi did not violate Article 17 FCE.

**ii. *Did Mr Makudi violate Article 41 FCE?***

129. While the Adjudicatory Chamber of the FIFA Ethics Committee found Mr Makudi guilty of three violations of Article 41 FCE, the FIFA Appeal Committee only found Mr Makudi guilty of one violation.

130. Article 41 FCE determines as follows:

*“Obligation of the parties to collaborate*

1. *The parties shall be obligated to act in good faith during the whole proceedings.*
2. *The parties shall be obligated to collaborate to establish the facts of the case. In particular, they shall comply with requests for information from the investigatory chamber and the adjudicatory chamber of the Ethics Committee and with an order to appear in person.*
3. *Whenever necessary, the parties' statements may be verified using the appropriate means.*
4. *If the parties are dilatory in responding, the chairman of the appropriate chamber may, after warning them, impose further disciplinary measures on them.*
5. *If the parties fail to collaborate, the investigatory chamber may prepare a final report using the file in its possession or the adjudicatory chamber may reach a decision on the case using the file in its possession, taking into account the conduct of the parties to the proceedings”.*

131. The Panel notes that, although there initially was some confusion about when Mr Makudi received the reasoned decision of the Southern Bangkok Criminal Court, it ultimately transpired that Mr Makudi undisputedly received the relevant decision from the Southern Bangkok Criminal Court on 3 September 2015. This was explicitly acknowledged in the letter of Mr Makudi to the chairman of the Investigatory Chamber dated 29 September 2015 (cf. Exhibit A-38), by means of which Mr Makudi provided the Investigatory Chamber with the relevant decision.

132. In particular also in light of Mr Makudi's assurances to the Investigatory Chamber by letters dated 24 July and 27 August 2015 that he would forward the decision to FIFA immediately upon receipt thereof, while it ultimately took him almost a month to do so, the Panel finds that Mr Makudi was indeed dilatory in complying with the Investigatory Chamber's reasonable and repeated requests to be provided with such decision.

133. The Panel finds that FIFA's allegation that there is no certainty that Mr Makudi would have provided the Southern Bangkok Criminal Court decision if the Investigatory Chamber would not have informed him on 28 September 2015 that the decision was issued is speculative and that such hypothetical scenario cannot be taken into account in sanctioning Mr Makudi for a violation of Article 41 FCE.
  134. The Panel finds that the delays cannot be justified by the need to translate the relevant decision, as Mr Makudi filed the original Thai version of the relevant decision to the Investigatory Chamber on 29 September 2015, while the translation into English was only sent on 2 October 2015.
  135. The Panel finds that Mr Makudi's argument that the sanction provided for in Article 41 FCE is contrary to Article 6(1) of the European Convention on Human Rights (the "ECHR") is to be dismissed.
  136. Insofar Article 6(1) ECHR includes the privilege against self-incrimination, the Panel finds that such provision is not applicable here, because Mr Makudi is not sanctioned for having failed to collaborate with the Investigatory Chamber by providing the relevant decision, but merely for having failed to timely provide a document. There is no indication on file suggesting that Mr Makudi provided the Southern Bangkok Criminal Court decision under protest or otherwise expressed his discomfort with providing such decision to the Investigatory Chamber. Indeed, as argued by FIFA, Mr Makudi himself confirms that he never refused to cooperate with the Investigatory Chamber.
  137. Consequently, the Panel finds that Mr Makudi indeed violated Article 41 FCE.
- iii. *Are the sanctions imposed on Mr Makudi by the FIFA Appeal Committee disproportionate?***
138. The Panel observes that the FIFA Appeal Committee clarified that the sanctions imposed on Mr Makudi by means of the Appealed Decision can be separated from each other. Indeed, the FIFA Appeal Committee indicated that a ban on taking part in any football-related activity for a period of three years was imposed for the violation of Article 17 FCE and that such sanction was to be increased with a ban on taking part in any football-related activity for a period of 6 months for the violation of Article 41 FCE (cf. para. 202 of the Appealed Decision).
  139. Given that the Panel finds that Mr Makudi is not guilty of having violated Article 17 FCE, the ban on taking part in any football-related activity for a period of three years is set aside.
  140. As to the ban on taking part in any football-related activity for a period of six months for having violated Article 41 FCE, the Panel finds that such sanction is disproportionate in view of the overall circumstances of the case.
  141. The Panel notes that Mr Makudi in general collaborated and corresponded with the Investigatory Chamber in a timely fashion and ultimately provided it with the Southern Bangkok Criminal Court decision one day after being confronted with FIFA's letter dated 28

September 2015 indicating that it appeared that the decision had been issued on 3 September 2015. The Panel notes that the one-day time limit given to Mr Makudi in FIFA's letter dated 28 September 2015 was no exception, and that, notwithstanding the fact that the Investigatory Chamber regularly imposed rather short time limits on him, Mr Makudi generally timely complied with such short time limits.

142. The Panel notes that although several rather short time limits were imposed on Mr Makudi by the Investigatory Chamber throughout the investigations, no specific time limit was given to him to provide the Southern Bangkok Criminal Court decision. Mr Makudi simply indicated that he would provide such decision "immediately" as soon as he received it. When the Investigatory Chamber on 28 September 2015 confronted Mr Makudi with the fact that it had been provided with the decision by a third party already on 3 September 2015, Mr Makudi answered the Investigatory Chamber on 29 September 2015, in accordance with the time limit imposed on him by the Investigatory Chamber. Accordingly, although Mr Makudi was late in providing the Southern Bangkok Criminal Court decision, he did not violate any specific time limit imposed by the Investigatory Chamber.
143. A further aspect to be taken into account in reproaching Mr Makudi for being dilatory in cooperating with the Investigatory Chamber is that the FIFA Ethics Committee itself can also not be said to have acted expeditiously with Mr Makudi's case. Indeed, while the Adjudicatory Chamber issued its decision already on 10 October 2016, the grounds of this decision were only provided to Mr Makudi on 7 August 2017 (i.e. almost 10 months later), while Mr Makudi all this time remained suspended. The Panel finds that this delay on the side of FIFA puts Mr Makudi's delay of 26 days in perspective.
144. The Panel also notes that Mr Makudi's contention that Mr Angel Maria Villar was sanctioned with a fine of CHF 25,000 for a complete non-cooperation with the FIFA Ethics Committee remained uncontested by FIFA. In light of this, and in the absence of any justifications put forward by FIFA in this respect, the Panel finds that a six month ban for a single violation of Article 41 FCE is disproportionate.
145. While FIFA submits that the FIFA Ethics Committee banned Mr Franz Beckenbauer with a provisional ban from taking part in any football-related activity for a period of 90 days, the Panel notes that such ban was indeed of a provisional nature only and that such comparison is therefore of limited value. In any event, a ban of 90 days is considerably shorter than a ban of six months. Also, this leads the Panel to the conclusion that the six month ban from taking part in any football-related activity imposed on Mr Makudi is disproportionate.
146. On the other hand, the Panel finds that an aggravating factor to be taken into account is that, on 25 August 2015, the Investigatory Chamber already issued a warning to Mr Makudi as to his future conduct in accordance with Article 41(4) FCE for not answering the Investigatory Chamber's letter dated 14 August 2015.
147. In view of the above, considering the relatively limited severity of the violation committed, the Panel finds that a six month ban from taking part in any football-related activity is excessive and shall be reduced to a reprimand.

148. Furthermore, as to the fine of CHF 10,000 imposed on Mr Makudi, neither the Appealed Decision, nor the First Instance Decision indicate for which violation such fine was imposed. Para. 204 of the Appealed Decision determines as follows in this respect:

*“Furthermore, the Panel concurs with the adjudicatory chamber that the mere imposition of a ban on taking part in any-football related activity is not sufficient to sanction the misconduct of the appellant adequately, and considers the imposition of an additional fine as being justified (cf. art. 6 of the FCE). In this respect, and taking into account the above-mentioned considerations, the Panel concurs with the adjudicatory chamber that a fine of CHF 10,000 is appropriate”.*

149. Given that the fine of CHF 10,000 is imposed for the combination of having violated Article 17 and 41 FCE, while the Panel finds that Mr Makudi is only guilty of having violated Article 41 FCE, the Panel finds that the fine of CHF 10,000 shall also be reduced. In this respect, the Panel deems it just and fair that a fine of CHF 5,000 is imposed on Mr Makudi.

## **B. Conclusion**

150. Based on the foregoing, and after taking due consideration of all the evidence produced and all arguments made, the Panel finds that:
- i. Mr Makudi did not violate Article 17 FCE;
  - ii. Mr Makudi violated Article 41 FCE;
  - iii. Mr Makudi is sanctioned with a reprimand and a fine of CHF 5,000.
151. All other and further motions or prayers for relief are dismissed.

## **ON THESE GROUNDS**

### **The Court of Arbitration for Sport rules that:**

1. The appeal filed on 4 June 2018 by Mr Worawi Makudi against the decision rendered by the Appeal Committee of the Fédération Internationale de Football Association on 23 January 2018 is partially upheld.
2. The decision rendered by the Appeal Committee of the *Fédération Internationale de Football Association* on 23 January 2018 is confirmed, save for para. 3, 4 and 5 of the operative part, which is amended as follows:



3. *Mr Worawi Makudi is found guilty of infringing art. 41 (Obligation of the parties to collaborate) of the FIFA Code of Ethics.*
  4. *Mr Worawi Makudi is reprimanded, in accordance with art. 6 par. 1 let. b of the FIFA Code of Ethics.*
  5. *Mr Worawi Makudi shall pay a fine in the amount of CHF 5,000 to FIFA, in accordance with art. 6 par. 1 let. c of the FIFA Code of Ethics, within 30 days of notification of the present decision.*
3. (...).
  4. (...).
  5. All other and further motions or prayers for relief are dismissed.