



Arbitration CAS 2021/A/8435 Moatasem Gaafar Serr Al-Khetm v. Sudan Football Association (SFA), award of 17 April 2023 (operative part of 15 March 2022)

Panel: Mr Frans de Weger (The Netherlands), President; Mr Mark Hovell (United Kingdom); Mr Emin Özkurt (Turkey)

Football

Exclusion from the list of candidates to an election for failure to pass the integrity check

Role of Art. R58 of the CAS Code

Request for intervention

Admissibility of an amicus curiae brief

Obligation to conduct procedurally and materially sound integrity checks

1. The main purposes of Article R58 is to ensure that the rules and regulations by which all members are bound in equal measure are also applied to them in equal measure, which can only be ensured if a uniform standard is applied in relation to central issues. Article R58 of the CAS Code serves to restrict the autonomy of the parties, since even where a choice of law has been made, the ‘applicable regulations’ are primarily applied, irrespective of the will of the parties. Hence any choice of law made by the parties does not prevail over Article R58 of the CAS Code, but is to be considered only within the framework of Article R58 of the CAS Code and consequently affects only the subsidiarily applicable law.
2. Article R41.4(1) of the CAS Code provides that a third party may only participate in the arbitration if it is bound by the arbitration agreement or if it and the other parties agree in writing. If this not the case, the status of the third party is to be assessed in accordance with Article R41.4(5) of the CAS Code. The third party must demonstrate that it has a direct legal interest and that it is directly and personally affected by the outcome of the procedure. In this respect, there is a lack of direct legal interest if there is a further decision-making process and the potential third party is not automatically and directly replacing the Appellant.
3. *Amicus curiae* briefs interfere with the concept of two-party arbitration and may cause an imbalance between or an unequal treatment of the parties, following which such briefs must only be accepted where their disadvantages are offset by their positive effects. At the same time, *amicus curiae* briefs can bring to the attention of a CAS panel matters not already brought to its attention by the parties and so may be of considerable help. Positive effects of an *amicus curiae* brief can prevail over possible disadvantages for reasons of good governance, increase of transparency and/or public dimension of the matter at stake.
4. There is no basis in the FIFA Code of Ethics and in the related codes of ethics of the

national associations to found the idea that an integrity check is only limited to brief investigations that can justify for a candidate submitted to such check not to be given the possibility to defend him- or herself during the proceedings, or that the integrity process is a free pass to exclude nominees for elections absent sufficient grounds.

I. PARTIES

1. Dr Moatasem Gaafar Serr Al-Khetm (the “Appellant”) holds Sudanese nationality and was the former President of the Sudan Football Association (the “Respondent”, or the “SFA”) for two consecutive periods from 2011 until 2017.
2. The Respondent is an association with its registered offices in Khartoum, Sudan, and is affiliated to the *Fédération Internationale de Football Association* (“FIFA”).
3. The Appellant and the Respondent are hereinafter jointly referred to as the “Parties”.

II. INTRODUCTION

4. These proceedings revolve around the decision of the SFA Appeals Committee (the “Appealed Decision”) to declare the Appellant ineligible for the 2021 elections of the SFA. With the present appeal arbitration proceedings before the Court of Arbitration for Sport (the “CAS”), the Appellant is challenging the Appealed Decision, arguing that he should be declared eligible to stand in the elections of the SFA.

III. FACTUAL BACKGROUND

5. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the Parties, the virtual hearing and the evidence examined in the course of the proceedings. This background information is given for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.

A. Background Facts

6. The Appellant had been involved in multiple roles with the SFA from 1998 until 2017.
7. The Appellant was a nominee in the presidency elections of 2017 held by the end of 2017, but did not finish first. However, for these elections he passed all the required checks and fulfilled all the required conditions by the SFA statutes and regulations.

8. On 22 May 2018, the SFA sent a letter to the Appellant and Mr Osama Atta Al-Mannan Hassan concerning the audit observations for the years 2015, 2016 and 2017. In this letter, the documentation sent by the Appellant regarding several payments from the SFA to the Appellant were discussed. The letter, *inter alia*, provides that:

“The documents submitted by [the Appellant], which estimated by 1,111,135 Egyptian pounds are the costs of the team’s travel to several countries, and we would like to inform you of the following:

1- These invoices are addressed to the Ministry of Youth and Sports, not the Association.

2- These amounts were not mentioned in the accounts of the Association and it hadn’t been registered in the Association’s records as debts on the Association.

[...]

Therefore, we did not verify the authenticity of the documents. We hope to work to recover the amounts received by the above- mentioned. If they have any additional documents, they shall submit them to the financial administration of the Association to review and verify their validity later”.

9. In 2021, Appellant chose to compete in the elections of the SFA for the presidency.

B. Proceedings before the SFA Ethics Committee

10. After the Investigatory Chamber of the SFA Ethics Committee (the “Investigatory Chamber”) requested the Appellant to fill in an integrity check in relation to his participation in the elections for 2021, on 17 October 2021, the Ethics Committee of the SFA (the “Ethics Committee”) issued its decision, with the following operative part (the “First Instance Decision”):

“The decision shall be as follows:

- 1. The candidate Dr. Mutasim Jaafar Sir Al-Khatem shall be excluded from the list of candidates due to lack of eligibility substantively and subject to his failure to pass the integrity check.*
- 2. The aforementioned candidate shall be notified by the General Secretariat and the Elections Committee shall also be.*
- 3. All parties shall receive a copy of the operative – without merits of the subject – is delivered to the parties. The excluded candidate has the right to receive a copy of the merits for the purposes of appeal, and he shall be notified of his right within a week.*
- 4. The Appeals Committee shall have the right to obtain a copy of the rationale and documents for the purposes of deciding on the appeal”.*

11. Also on 17 October 2021, the grounds of the First Instance Decision were communicated to the Parties, determining, *inter alia*, the following:

- *“The Code of Ethics of the FIFA is considered a constitution for the global football system with regard to the moral duties that are abrogated by those who work in football activities and are subject to the provisions of this constitution and they shall respect the higher values that are protected by the stipulated international rules of ethics.*
- *It is contained in Rule No. {13} with its five paragraphs, which obligate all employees in the football system at all its international, regional, and national levels to abide by, fulfill and practice their moral duties and responsibilities, especially with regard to financial transactions related to those activities, and obligated them not to act in an inappropriate manner that causes damage to the reputation of the Federation.*
- *One of the (important values) is the rules stipulated in Articles (25) related to (preventing the abuse of sports position) Article 27 (Prevention of bribery and corruption) and Article (28)(Prevention of misappropriation and misuse of funds). What is meant here is to prevent the embezzlement or misuse of funds of FIFA, Continental or National Federation or clubs, either directly or indirectly.*
- *Article {7} regarding the conduct of officials and bodies of the Statute of the Sudanese Football Association for the year 2017, in force, states that: 7/1 The organs and officials of the federation must observe the statute, regulations, directives, decisions and rules of ethics of the International Federation, the African Union and the Federation in their activities. In this regard, the First Instance Decision also refers to Article 13 of the SFA Statutes, Article 63 of the SFA Statutes, and Article 2 of the SFA Rules of Ethics.*
- *This text is a clear text and meaning. It gives the Ethics Committee of the Sudanese Football Association the authority to apply the rules contained in the Code of Ethics of the Sudanese Football Association to the violations that occur after the issuance of those national rules – and gives the committee the right to apply the rules contained in the rules of ethics issued by the International Federation to the violations that occurred Prior to the issuance of the rules of the Sudanese Federation.*
- *After reviewing the financial statements, the national auditing reports of the Sudanese Football Association for the years 2014 – 2020, the documents attached to the appeals and the document proving that the candidate Mutasim Jaafar Sir Al-Khatem paid the amount subject of the violation attributed to it, an amount equal to 352,041 SAR and equal to 1,284,949 SAR. It is an amount allocated from the Arab Federation to the Sudanese Federation in 2016 AD, which was received by the abovementioned candidate in his capacity as the President of the Federation, and this amount was disbursed by him, as stated in the report of the auditors Jaber and Co.*
- *The audit of the financial statements for the year 2016 AD, and this confirms that the incident of embezzlement of the amount took place in 2016 AD, and the amount was not returned by Mr. Mutasim Jaafar until 6/6/2018 AD. Thus, the incident of Mr. Mutasim Jaafar’s violation of the international Code of Ethics starts with the violation of Rule (13) with its five paragraphs related to the duties that workers in the football system must adhere to in their conduct and activities in the field of football, especially the obligation to act with integrity and credibility with regards to the funds of FIFA and national and continental federations.*

- *Is what [the Appellant] did considered an exploitation of the sports position, thus penalizing him of violating the rule (25) for private gain? The answer is yes – taking money out of the Federation’s treasury without authentication or any other document would not have been possible for [the Appellant] if he was not at the President of the Federation. There is no justification for taking the Federation’s money out of the treasury and placing it at the disposal of [the Appellant] for a period of two years or more. Not to mention that if the auditor had not disclosed the embezzlement, perhaps the amount would never have been refunded.*
- *Rule (28) of the FIFA Code of Ethics prohibits persons subject to it – and Mr. Mutassim Jaafar, president of a national federation, is one of the persons subject to those rules – from embezzlement or misuse of funds, or any conduct or activity that appears to put them in violation of this rule. And through the established audit reports, it is evident that Mr. Mutasim withdrew the amount subject of the violation from the treasury of the Sudanese Federation without authentication or documents authorizing him to conduct such withdrawal, and without the knowledge of the Federation, and thus was able to put the mentioned amount at his personal disposal during the period from 2016 to 2018, and did not return it to the Federation until after the violation appeared in the audit report and he was asked to return the embezzled money, as he did so on 6/6/2018. This return of the money does not absolve him from being held accountable and taking responsibility for the violation. Thus, we decide that Mr. Mutasim Jaafar Sir Al-Khatem has violated the rules of the International Code of Ethics, Article (28).*
- *[The Appellant] is further unable to protect himself by quoting the statute of limitations stipulated in Rule (12) of the International Code, because in the case of violating Article (28) related to embezzlement and misuse of funds, the statute of limitations is ten years (Article 12.2), which is a statute of limitations for preventing the opening of criminal cases only and does not include the prevention of accountability through the Ethics Committee for violating the International Code of Ethics”.*

C. Proceedings before the SFA Appeals Committee

12. In October 2021, the Appellant filed an appeal against the First Instance Decision before the SFA Appeals Committee.
13. On 23 October 2021, the SFA Appeals Committee issued the Appealed Decision, with the following operative part:

“Thus, the Committee decided the following:

 - 1- *Accepting the appeal in form.*
 - 2- *Rejecting the appeal substantially and confirming the decision of the Ethics Committee”.*
14. Also on 23 October 2021, the grounds of the Appealed Decision were communicated to the Parties, determining, *inter alia*, the following:

“Dr. Mutasem Jaafar Sir Al Khatem filed an appeal against the decision issued by the Committee of Ethics of the Sudan Football Association that judged his exclusion from the candidate list of the said association elections for ineligibility (substantively) because he didn’t pass the integrity testing soliciting to abolish the decision according to reasons stated in his appeal, we summarize it as follows:

- 1- The appellee violated the stipulation of Art. (23) Paragraph (12) of the Ethics Codes for 2021 as he hasn’t been given a chance to defend himself.*
 - 2- The appellee violated Art. (63) of the statute of the Sudan Football Association and didn’t adhere to items 2-3-4 (Provisions) that expressly identified the cases of not passing the integrity testing.*
 - 3- The committee violated the stipulation of Art. 24 of the Ethics Codes that identified the litigation manner before the committee, the committee only identified it by filing the complaints, therefore it established an approach unavailable in the regulations, as it accepts complaints against the candidate integrity at the phase of integrity testing.*
 - 4- The committee was mistaken in its decision, although the amount subject of the complaint was accepted by the General Assembly in the 2014 budget and there is no comment on its decision. In addition, documents supporting the exchange were excluded under the guidance of the current head of the Association for auditing although he has no right to do that.*
- The appellant has signed the questionnaire of the integrity testing as other candidates and accepted to be subject to the test according to the elections regulations provisions, ethics regulation, and this annex.*
 - The word “officials” was defined in the definitions provided in the Ethics Codes for year 2021 as follows (any individual, other than the players, who perform an activity related to the football game in the association, any authority, club, or team regardless to his position, the duration of the activity and its type (administrative, sportive, or any other activity) (including the administrative and technical bodies ...). The appellant was occupying a high sportive position in the Sudan Football Association in former tournaments, and through his current nomination, he practices a sportive activity individually or in a team. So, we didn’t find any violation to the definition included in the regulation by the appellee, as well as we didn’t find a violation to the stipulation of Article 63 of the statute of Sudan Football Association.*
 - The committee has chosen the right of search and make sure of information through official documents, found at the Association files. These documents were sufficient and the committee didn’t open an investigation by which it shall declare the necessity of summoning parties according to Article (23) Paragraph (7). This Article stipulates that ‘The Ethics Committee may summon parties or any individual that it considers the necessity of listening to him like experts with compliance to the confidentiality principle of investigation. If the appellee committee has opened an investigation and didn’t allow parties to submit their defenses, the matter would have been changed but the reality assures that the ethics committee has detected and searched according to information provided in the complaint and the appellee is entitled to search for any information mentioned in the questionnaire or known by any authority to make sure of the eligibility of the candidate. Therefore, we didn’t see any violation to Article 23 Paragraph (12) and Article (24) as we didn’t find a lawful asset prohibit the approach of the committee when it searched without investigation and accepted the complaint to get more information.*

- *The committee didn't find any violation to clauses 2-3-4 of the General Provisions mentioned in the questionnaire of the integrity testing, as well as, the appeal. The reasons of not passing integrity testing are not limited to the cases in the mentioned clauses only. So, whenever the candidate commits an offence, mentioned in the Ethics Codes for year 2021 and the International Regulation, he shall be exposed to exclusion.*
- *The appellee has approved the financial statements and the audit reports of the Sudan Football Association for the years (2014-2020). The violation attributed to the appellant was proven, as he received an amount in Saudi riyals in 2016, then transferred it to the account of the Association and withdrew it again without ratification or documents. This amount is allocated by the Union of Arab Football Association to the Sudan Football Federation, and the appellant returned it back in Sudanese pounds on 6/6/2018 by cheque no. (10708) drawn from the Bank of Khartoum by the appellant.*
- *I have reviewed the reports and clarifications mentioned in the merits of the appellee's decision (the Ethics Committee). We shall refer that the financial statements and reports are official documents that can only be challenged by forgery. In his appeal, the appellant did not claim that the appellee had based its decision on a forged report. Rather, it was stated that the amount was approved by the General Assembly for the year 2018, and no comment shall be on the decision of the General Assembly. In addition, the opinion of the auditor relies on the directives of the current head of the Association. Therefore, we shall state that what the appellant claimed doesn't exclude him from the violation, as he accepted what was stated in the report and paid the amount subject to the violation by his own will in the year 2018 after two years.*
- *As well as, that official documents cannot be overridden or contradicted except in certain ways that the appellant did not use, but rather accepted the auditor's report and paid the amount. It's inevitable that these official documents, issued by a technical authority authorized by law, shall be accepted and considered in accordance with the Sudanese Evidence Law and Art. (27) of the Ethics Codes 2021. On the other hand, there's no way to take into account what was stated in the appeal memorandum that the amount subject of the complaint approved by the General Assembly as there's no way to take into account the principle of good faith in this regard, because we are not facing criminal proceedings, but rather the application of binding regulations.*
- *The Art.(6) of the Ethics codes stipulated the following (the officials and those concerned with the application of the rules shall not misuse the funds of the International Federation, the (CAF), clubs or federations, whether directly or indirectly through the third parties. In addition, any activity or behavior, that may lead to violating this article, shall be prohibited). This Article stipulates that "A person who violates this article shall be punished with a fine not exceeding (200.000) pounds and suspension from participating in any football-related activity for a period not exceeding five years".*

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

15. On 9 November 2021, the Appellant filed a Statement of Appeal with the CAS against the Appealed Decision, in accordance with Articles R47 and R48 of the 2021 edition of the CAS Code of Sports-related Arbitration (the "CAS Code"). In his submission, the Appellant

requested that these proceedings were expedited in accordance with Article R44.4 of the CAS Code, and that the operative part of this appeal be rendered prior to 12 November 2021. In case no expedited procedure was implemented, the Appellant subsidiarily applied for provisional measures. In this regard, the Appellant asked for the suspension of the elections pending the CAS proceedings and asked for the stay of the execution of the Appealed Decision and to allow him to participate in the elections that were to take place on 13 November 2021. In this submission, the Appellant nominated Mr Mark Andrew Hovell, Solicitor in Manchester, United Kingdom, as arbitrator.

16. On 10 November 2021, the CAS Court Office informed the Parties that it was materially impossible to implement an expedited procedure under the terms requested by the Appellant (i.e. with a decision to be rendered by 12 November 2021) but, in any event, invited the Respondent to comment on this request. Further to this, the Respondent was also invited to file its position as to the Appellant's subsidiary request for provisional measures in case no expedited procedure was implemented. In the same letter, the CAS Court Office also informed the Respondent of another appeal that had been registered, under CAS 2021/A/8436, and invited the Parties to inform the Panel whether they agreed to submit these proceedings and the mentioned proceedings to the same Panel.
17. On 11 November 2021, the Respondent filed its comments on the Appellant's requests for the implementation of the expedited procedure and the request for provisional measures, opposing to both requests.
18. On 12 November 2021, the President of the Appeals Arbitration Division of the CAS rendered the Operative Part of the Order on Request for a Stay and Provisional Measures, which provides as follows:

- "1. The Request for a Stay and for Provisional and Conservatory Measures filed by Mr Moatasem Gaafar Serr Al-Khetm on 7 November 2021 with respect to the decision of the Appeals Committee of the Sudanese Football Association of 23 October 2021, is partially upheld.*
- 2. The decision of the Appeals Committee of the Sudanese Football Association of 23 October 2021 is stayed until final decision in the present arbitral procedure.*
- 3. Mr Moatasem Gaafar Serr Al-Khetm is provisionally declared eligible to stand in the elections of the Sudanese Football Association scheduled on 13 November 2021.*
- 4. Should Mr Moatasem Gaafar Serr Al-Khetm be elected, his effective assumption of office shall be postponed pending final decision in the present arbitral procedure.*
- 5. The request to suspend and postpone the elections of the Sudanese Football Association is dismissed.*
- 6. The costs deriving from the present order will be determined in the final award or in any other final disposition of this arbitration".*

19. On 21 November 2021, the Respondent nominated Mr Emin Özkurt, Attorney-at-Law in Istanbul, Republic of Türkiye, as arbitrator.
20. On 23 November 2021, the CAS Court Office informed the Parties that Mr Kamal Shaddad (Mr Shaddad), who also participated in the election for President of the SFA on 13 November 2021, had filed an application for intervention in accordance with Article R41.3 of the CAS Code with the CAS Court Office. The Parties were invited to file their comments in this regard.
21. On 30 November 2021, the Respondent filed its comments with regard to the application for intervention submitted by Mr Shaddad. In its submission, the Respondent rejected the application for intervention by Mr Shaddad.
22. On 3 December 2021, the Appellant filed his comments with regard to the application for intervention submitted by Mr Shaddad. In his submission, the Appellant requested the CAS to reject the application for intervention by Mr Shaddad.
23. On 1 December 2021, the CAS Court Office informed the Parties that the request for intervention would be referred to the Division President.
24. On 6 December 2021, the Appellant filed his Appeal Brief in accordance with Article R51 of the CAS Code.
25. On 29 December 2021, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division, pursuant to Article R54 of the CAS Code, had decided that the Panel appointed to decide the case was constituted as follows:

President: Mr Frans de Weger, Attorney-at-Law, Haarlem, The Netherlands
Arbitrators: Mr Mark Hovell, Solicitor, Manchester, United Kingdom
Mr Emin Özkurt, Attorney-at-Law, Istanbul, Republic of Türkiye
26. On 27 December 2021, the SFA filed its Answer in accordance with Article R55 of the CAS Code.
27. On 5 January 2022, the Appellant informed the CAS that he preferred for a hearing to be held in these proceedings. The Respondent remained silent as to its preference for a hearing to be held.
28. On 18 January 2022, the Panel rejected the application for intervention by Mr Shaddad. Nevertheless, the Panel invited Mr Shaddad to file an *amicus curiae* submission, and the Parties were invited to subsequently comment on this *amicus curiae* submission.
29. On 4 February 2022, Mr Shaddad filed his *amicus curiae* submission.
30. On 9 February 2022, the Respondent filed its comments to the *amicus curiae* submission.

31. On 22 February 2022, the Appellant filed his comments to the *amicus curiae* submission.
32. On 23 February 2022, the Panel decided to admit the *amicus curiae* submission to the file and informed the Parties that the reasons for this decision would be set out in the final award.
33. On 22 and 28 February 2022, the Appellant and the SFA respectively returned duly signed copies of the Order of Procedure to the CAS Court Office provided to them on 3 February 2022.
34. On 24 February 2022, the Appellant sent an email to the CAS Court Office along with two further exhibits, i.e. a letter from the General Secretariat of the “*Union Arabe de Football Association*” to the SFA from and a receipt for the payment from the SFA.
35. On 25 February 2022, a hearing was held by video-conference. At the start of the hearing, the Appellant and the Respondent confirmed that they had no objection as to the constitution and composition of the Panel.
36. In addition to the members of the Panel and Mr Giovanni Maria Fares, CAS Counsel, the following persons attended the hearing:
 - a) For the Appellant:
 - 1) Mr Paolo Torchetti, Counsel;
 - 2) Mr Eldin Azzam, Counsel;
 - 3) Mr Islam Hisham, Counsel;
 - 4) Mr Youssef El-Amín, Legal Trainee;
 - 5) Dr Moatasem Gaafar Serr Al-Khetm, Party Representative;
 - 6) Mr Abubakar, Interpreter.
 - b) For the Respondent:
 - 1) Ms Ghada Mubarak Ibrahim, Party Representative;
 - 2) Mr Muhammad Ahmed Suleiman, Party Representative;
 - 3) Mr Ali, Interpreter.
37. The following persons were heard, in order of appearance:
 - 1) Ms Amal Hussein Mohamed, ex-Financial Manager of the SFA, witness called by the Appellant;
 - 2) Mr Moataz Mohamed, member of the SFA board of directors, witness called by the Appellant.
38. All witnesses were invited by the President of the Panel to tell the truth subject to the sanction for perjury under Swiss law. Both Parties had full opportunity to examine and cross-examine the witnesses and the Appellant.

39. The Parties were given full opportunity to present their cases, submit their arguments and answer the questions posed by the members of the Panel.
40. Before the hearing was concluded, the Parties expressly stated that they had no objection to the procedure adopted by the Panel and that their right to be heard had been respected.
41. 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.
42. For the avoidance of doubt, this Award solely concerns the legal relationship between the Appellant and the Respondent, not the legal relationship between Mr Osama Atta Al-Mannan Hassan and the Respondent. Any references to Mr Osama Atta Al-Mannan Hassan are a consequence of the fact that the Appellant and Mr Osama Atta Al-Mannan Hassan were represented by the same counsel and filed joint written submissions and letters until the start of the hearing and because Mr Osama Atta Al-Mannan Hassan is also a relevant person in the factual matrix of the proceedings between the Appellant and the Respondent.

V. SUBMISSIONS AND REQUESTS FOR RELIEF

A. The Appellant

43. The Appellant's Statement of Appeal and Appeal Brief, jointly filed with the Appeal Brief of the appellant in CAS 2021/A/8436, in essence, may be summarised as follows:
 - The Appellant submits that he has clearly satisfied the requirements for an "integrity check". He has never been subject to criminal convictions or disciplinary sanctions by a state court or sporting body or convicted and sentenced for any offence which involves fraud or dishonesty by a competent court or sporting body. Candidates cannot be excluded based on speculations or non-serious incidents. In this regard, the Appellant refers to CAS 2015/A/4311.
 - The SFA Ethics Committee was incorrectly and illegally constituted as its members did not undergo an integrity check stipulated by Article 61(3) of the SFA Statutes.
 - The SFA Ethics Committee acted *ultra vires* as the power to admit or disqualify candidates' standing was vested in the SFA Electoral Committee. In this regard, Appellant refers to Article 3, 6 and 10(1) of the SFA Electoral Code.
 - In two previous similar cases, SFA has allowed candidates to participate in the elections based on similar facts to the present case.
 - The Appellant should be allowed to participate as he has no pending financial outstanding obligations towards SFA and even the alleged outstanding payment was already settled at the time of making this payment in 2016.

- The limitation period to sanction the Appellant for being guilty has in any case elapsed. The main reference in establishing the limitation period is the FIFA Code of Ethics.
- The Appellant is not in breach of the FIFA Code of Ethics. The Appellant paid significant amounts that were proved by certified documents, but were not reflected in the SFA's records. It cannot be imagined that a person who pays significant amounts can be charged with any accusation that goes against his integrity and honour.
- Assuming that the Appellant committed a mistake, *quod non*, it shall be deemed a very common simple oversight that cannot constitute any grounds for the Appellant's disqualification. Not all minor breaches are grounds for exclusion. In this regard, the Appellant refers to CAS 2021/A/7875.
- The Appellant was prevented from exploiting his right to be heard. The Appealed Decision states on various occasions that the Appellant was never given any opportunity to defend his position on the basis that the SFA Ethics Committee did not have sufficient time. The Appealed Decision should therefore be deemed null and void.
- The Appellant fulfils all conditions in the SFA Statutes to be qualified as a nominee, as he has never been i) convicted of a crime; or ii) found guilty by a previous ethics board before wither FIFA or another tribunal.
- The criterion for the integrity check is established in Article 36(3) and (4) of the SFA Statutes and Article 4 of Part I of the Annex to the SFA Electoral Code. The SFA Electoral Committee initially found the Appellant eligible to stand in the elections on the basis of the application of this basic criterion.
- The Appellant is ineligible if they are found that they have "*been found guilty and/or sentenced by the FIFA Ethics Committee or any other sporting body with a sanction that would seriously put into question the discharge of the office concerned*". This wording and language of the integrity check criterion refers to the past tense.
- Article 8 of the Electoral Code specifically states that the criteria for the ethics check are the exclusive domain of the SFA Statutes and the SFA Electoral Committee, and Article 6 of the SFA Electoral Code (general duties of the Electoral Committee) does not refer to the SFA Code of Ethics. Furthermore, the SFA Code of Ethics does not refer to the SFA Electoral Code in any manner.
- The SFA Code of Ethics applies to "*officials*", whereas The SFA Electoral Code does not apply to "*officials*" but to potential candidates who wish to stand in federation elections.

- As the SFA Electoral Code does not refer to the application of the SFA Code of Ethics in the integrity check to be conducted prior to elections and as they only refer to the SFA Ethics Committee as a judicial body, but not the substance of the Code of Ethics itself, in finding that the Appellant did not meet the criteria the SFA Ethics Committee acted *ultra vires* the powers afforded to it with respect to the criteria for the integrity check.
- The application of the plain meaning rule in the interpretation of statutes leads supports this interpretation of the SFA Statutes and Electoral Code. In this regard, the Appellant refers to CAS 2017/A/5356.
- Enabling the SFA to incorporate criteria that are not enumerated in the SFA Statutes and the SFA Electoral Code would violate the principle of *nulla poena sine lege*. This principle requires that sport federations must abide by the “predictability test”.
- If the Panel finds that the Ethics Committee does have the jurisdiction to conduct a fresh integrity check, that the Appellant have satisfied the criteria of the SFA Code of Ethics and ought to be declared eligible.

44. On this basis, the Appellant submits the following prayers for relief in his Appeal Brief:

“The Appellants request the following:

- 1. To allow the appeal and set aside the decision of the SFA, declaring the Appellant eligible to stand in the elections and allowing Mr. Moatasem Gaafar Serr Al-Khetm to occupy the position of president of the SFA.*
- 2. To allow the appeal and set aside the decision of the SFA, declaring the Appellant eligible to stand in the elections and allowing Mr. Osama Atta Al-Manna Hassan to occupy the position of vice-president of the SFA.*
- 3. To fix a sum of 10,000 CHF to be paid to each of the Appellants to contribute to the payment of their legal fees and costs”.*

B. The Respondent

45. The Answer brief submitted by the Respondent, in essence, may be summarised as follows:

- It is established through the budgets approved by the General Assembly until the year 2020, that the Appellant and Mr. Jaafar are not debtors of the SFA, and are not subject to any penalties or sanctions by a civil court or sports body.
- In this regard, the Respondent alleges that “[t]hrough the budgets and reports of the financial department of the Sudan FA, it was made clear to us that the candidate for the position

of the president was a creditor of Sudan FA and not the other way around, which was confirmed by the association's internal auditor according to the budgets and documents in his possession as an internal auditor".

46. On this basis, the Respondent submits the following prayers for relief in its Answer:

"We kindly request, Your Excellency, to settle the case in front of you, in the sake of the stability of the Association, due to the importance of the presence of the President and the First Vice-President to run the working wheel in the best way".

C. *Amicus curiae* brief

47. The *amicus curiae* brief, submitted by Mr Shaddad on 25 January 2022, in essence, may be summarised as follows:

Factual clarifications

- The actions of the SFA immediately following the elections of 13 November 2021 raise legitimate and serious doubts as to whether the SFA will seriously and sincerely defend the decisions of its Ethics Committee. This would damage the integrity of the CAS proceedings.
- The first act of the interim President was to order the dissolution of the Disciplinary Committee, Ethics Committee and Appeal Committee. This is not possible or provided for in the SFA Statutes.
- The Appellant has held various positions within the SFA since 1998. In particular, he served as the President of the SFA from 2010 to 2017. At the end of 2017, he lost the presidential elections to Mr Shaddad.
- The Ethics Committee of the SFA, which was established in February 2021, opened investigations against the Appellant immediately after its constitution on the basis of the above-mentioned facts and confirmed this fact in writing. On 23 January 2022, the Appellant was convicted by the Ethics Committee of the SFA.

Applicability of the FIFA Code of Ethics and the FIFA Governance Regulations

- The Electoral Code of the SFA states that the eligibility criteria for the positions to be filled within the relevant provisions of the Statutes of the SFA. However, these do not contain an exhaustive listing of the criteria a candidate must comply with.
- In this regard, the Sudan Football Association Ethics Committee's Rules & Work Methodology refers to the 'international rules' and 'international rules of ethics', which should be understood as references to the FIFA Code of Ethics (the "FCE"), the FIFA Governance Regulations (the "FGR"), and the jurisprudence of the CAS.

- In addition, Article 8(1) of the FIFA Statutes states that all bodies and officials must observe the Statutes, regulations, decisions and Code of Ethics of FIFA in their activities. In particular for eligibility checks, FIFA expressly recommends that the guidelines established by FIFA are considered and applied in order to avoid different standards.
- Therefore, FIFA's criteria should apply alongside the SFA regulations.

Principles deriving from the FIFA regulations

- Article 1(4) of Annexe 1 of the FGR establishes the two cornerstone principles for any eligibility check. These principles are also continuously confirmed in CAS jurisprudence.
- First, the standard which should be applied is a flexible one, and the decisive question is whether the individual standing for elections is trustworthy and of integrity. FIFA's stance on offences of a financial nature is unambiguous, and convictions or sanctions regarding offences of a financial nature are considered to be issues that are not compatible with a function within a FIFA committee.
- The second cornerstone principle involves that a body charged with ruling on eligibility of candidates is bestowed a wide margin of appreciation. An appeal body may therefore not simply place its own appreciation in lieu of the one exercised by the specialist body.
- By decision of 23 January 2022, the SFA Ethics Committee found the Appellant guilty of violating general duties, the duty to cooperate, conflicts of interest, abuse of position and misappropriation of funds. This conviction is covered by Annex A Article 1(4)b of the Electoral Code of the SFA. Since CAS has *de novo* competence, it should take this decision into account.
- Independent of the SFA Ethics Committee Decision, the Appellant should also be declared ineligible in view of his serious misconduct. In this regard, he does not meet the required standard as i) the violations were of utmost seriousness; ii) he was one of the highest representatives of the SFA when he committed the offences; and iii) the amount the Appellant gained was significant.

VI. JURISDICTION

48. Article R47 of the CAS Code (2021 edition) provides as follows:

“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration

agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body”.

49. The jurisdiction of CAS derives from three separate provisions in the regulatory framework of the SFA.

50. Article 66 of the SFA Statutes provides as follows:

“1. [...]

2. Disputes shall be submitted to the National Arbitration Tribunal for Sport (NATS) recognized by SFA or the Court of Arbitration for Sports (CAS) in Lausanne, Switzerland.

3. [...]

4. As long as within the territory of the Republic of the Sudan no Arbitration Tribunal has been installed and recognized by the General Assembly of SFA, any dispute of national dimension may only be referred in the last instance to the CAS in Lausanne, Switzerland”.

51. Article 67 of the SFA Statutes provides as follows:

“1. Recourse may only be made to an Arbitration Tribunal in accordance with Art 66 once all internal channels of SFA have been exhausted”.

52. Article 68 of the SFA Statutes provides as follows:

“1. In accordance with the relevant provisions of the FIFA Statutes, any appeal against a final decisions [sic.] passed by FIFA, CAF, or SFA could be appealed to the Court of Arbitration for Sports (CAS) in Lausanne, Switzerland [...].”

53. The jurisdiction of CAS is not contested and is further confirmed by the Order of Procedure duly signed by the Parties, respectively by the lack of any objection raised by the Respondent, either in its submission or during the hearing.

54. It follows that CAS has jurisdiction to adjudicate and decide on the present dispute.

VII. ADMISSIBILITY

55. In the absence of a time limit to appeal set forth in the SFA Statutes, the appeal was filed within the default deadline of 21 days set by Article R49 of the CAS Code.

56. The appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fee.

57. It follows that the appeal is admissible.

VIII. APPLICABLE LAW

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

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

59. By submitting their dispute to CAS, by signing the Order of Procedure and not filing any objections in this regard, according to the Panel, the Parties have implicitly and indirectly chosen for the application of the conflict-of-law rule in Article R58 of the CAS Code, leading to the primary application of the regulations of the SFA.

60. This conclusion is in line with the main purposes of Article R58 of the CAS Code, which is to ensure that the rules and regulations by which all members are bound in equal measure are also applied to them in equal measure, which can only be ensured if a uniform standard is applied in relation to central issues.

61. The Panel also adheres to the so-called ‘Haas-doctrine’, from which it follows that Article R58 of the CAS Code “serves to restrict the autonomy of the parties, since even where a choice of law has been made, the ‘applicable regulations’ are primarily applied, irrespective of the will of the parties. [...] Hence any choice of law made by the parties does not prevail over Art. R58 of the CAS Code, but is to be considered only within the framework of Art. R58 of the CAS Code and consequently affects only the subsidiarily applicable law” (HAAS U., Applicable law in football-related disputes – The relationship between the CAS Code, the FIFA Statutes and the agreement of the parties on the application of national law, Bulletin TAS / CAS Bulletin, 2015/2, p. 11-12).

62. The Panel is therefore satisfied to accept application of the various regulations of SFA, and, subsidiarily, Sudanese law.

63. Further to this, and in light of Article R58 of the CAS Code, the Panel deems it appropriate to also take into account the FIFA regulations, in particular the FIFA Code of Ethics, where applicable, as will be further discussed below.

IX. PRELIMINARY ISSUES

64. Before turning to the examination of the merits of the case, the Panel has to address preliminary points, which were raised in the course of the present arbitration.

A. Request for intervention

65. On 22 November 2021, Mr Shaddad filed his request for intervention. In this regard, Mr Shaddad submitted that he had a legal interest in participating in the proceeding as he would be affected by the reversal of the Appealed Decision. In particular, Mr Shaddad took the position that he would be elected as the new President in case the CAS would uphold the Appealed Decision.
66. By means of its letter of 30 November 2021, the Respondent rejected the intervention request as new elections would be held in case any of the seats became vacant. On 3 December 2021, the Appellant also expressed his view on the request and also rejected the request for intervention.
67. On 18 January 2022, the CAS Court Office informed the Parties that the Panel had decided to reject the application for intervention filed by Mr Shaddad. In this letter the Parties were informed that the Panel had considered that Mr Shaddad had failed to establish that he was directly and personally affected by the outcome of this procedure. On that same day, Mr Shaddad was informed by the CAS Court Office that his request for intervention was rejected. In this regard, Mr Shaddad was informed that the Panel established that he did not have a direct legal interest in the dispute and that he was not directly and personally affected by the outcome of the procedure, as requested by the jurisprudence surrounding Article R41.3 of the CAS Code. This in particular considering Article 36(8) of the SFA Statutes, according to which, should the present appeal be dismissed, Mr Shaddad (or any other participant to the elections) would not directly take office but, rather, new elections would have to be called.
68. By means of the *amicus curiae* brief, Mr Shaddad reiterated his request to intervene despite the rejection and also requested to participate at the hearing. On 23 February 2022, the CAS Court Office informed the Parties as well as Mr Shaddad that the Panel decided to reject the new request for intervention as well as the request to participate at the hearing.
69. By means of this final Arbitral Award, the Panel now explains its decision for the rejection of the application for intervention and the request to participate at the hearing filed by Mr Shaddad.
70. As a first step, the Panel refers to Article R41.4(1) of the CAS Code from which it follows that a third party may only participate in the arbitration if it is bound by the arbitration agreement or if it and the other parties agree in writing. This is not the case as Mr Shaddad is not bound by the arbitration agreement and the Parties did not agree to the participation of Mr Shaddad.
71. Therefore, the Panel must further determine the status of Mr Shaddad in accordance with Article R41.4(5) of the CAS Code. In this respect, Mr Shaddad must demonstrate that it has a direct legal interest and that he was directly and personally affected by the outcome of this procedure.

72. To further support the Panel's decision for the rejection of Mr Shaddad's request, in the letter of the CAS Court Office of 18 January 2022, reference was already made to the jurisprudence surrounding Article R41.3 of the CAS Code. In this regard, the Panel draws a strong parallel to the jurisprudence of the CAS from which it follows that a direct legal interest must exist in similar cases (see, *inter alia*, CAS 2015/A/4343 and CAS 2015/A/4151). In fact, there is a lack of direct legal interest if there is a further decision-making process and the potential third-party is not automatically granted a seat.
73. More specifically, to successfully request the intervention, Mr Shaddad had to demonstrate that he would directly replace the Appellant, which Mr Shaddad however failed to do. As a matter of fact, so finds the Panel, it does not follow from any provision in the SFA Statutes or regulations that Mr Shaddad would automatically be given the position of President. To the opposite, it seems to follow from Article 36(8) of the SFA Statutes that new elections would have to be called should the Appellant's appeal be dismissed. What is more, which the Panel does not want to leave unmentioned either, also from the letter of the Respondent dated 30 November 2021, as referred to above, it is clear that new elections would be held in case any of the seats become vacant. In other words, if the Appellant would fail in its appeal against the Appealed Decision Mr Shaddad would not be automatically granted the position of President.
74. The Panel is mindful that Mr Shaddad has a different interpretation of the *ratio legis* of Article 36(8) of the SFA Statutes arguing that it does not concern a resigned member of the Board, but rather that the Appellant was not permitted to participate in the election in the first place. However, even if such interpretation would be the right one, the Panel recalls that it still does not follow from this, or any other provision in the SFA Statutes or regulations, that Mr Shaddad would automatically be given the position of President, which is the threshold here. Put differently, it is far from clear, and it was not demonstrated by Mr Shaddad, that Mr Shaddad would automatically replace the Appellant, although it appears, as referred to above, that the Respondent would go for new elections as this also clearly follows from its letter of 30 November 2021.
75. Be that as it may, under the circumstances, the Panel was not comfortably satisfied to accept Mr Shaddad's request to intervene as he does not have a direct legal interest and is not directly and personally affected by the outcome of this procedure. The Panel is strongly convinced of its approach as this would otherwise mean that any other party participating to such elections, whilst not automatically being granted a seat, would be able to successfully claim an intervention. It speaks for itself that this could not be accepted.
76. For the above reasons, the Panel decided to reject the application for intervention filed by Mr Shaddad and, consequently, also the request to participate at the hearing and the request to receive the two entire case files or at least both appeal briefs including enclosures as well as the answers to the appeals, as requested by Mr Shaddad on 19 January 2022, were rejected.

B. Admissibility of the *amicus curiae* brief

77. In the same letter from the CAS Court Office of 18 January 2022, as referred to above, the Parties and Mr Shaddad were informed, on behalf of the Panel, that the Panel was however open to consider any *amicus curiae* brief that may be filed. In the same letter, the Parties were also informed that they would also be given the possibility to comment on the admissibility and merits of any such brief.
78. On 25 January 2022, Mr Shaddad filed its *amicus curiae* brief, of which the arguments are already extensively set out above.
79. On 9 February 2022, the Respondent informed the CAS Court Office that it “*does not accept or agree that they are a party to this case in any capacity, and does not agree to any memorandum written by them even as amicus curiae*”.
80. On 18 February 2022, also the Appellant found that the Panel had to “*set aside the positions and content of the amicus curiae briefs as they are inadmissible*”.
81. Having considered the positions of Mr Shaddad and the Parties, in particular their objection to the *amicus curiae* brief, expressed by means of the Parties’ further submissions, as referred to above, on 23 February 2022, the Parties, and Mr Shaddad by separate letter on that same day, were informed by the CAS Court Office that the Panel had decided to admit the *amicus curiae* brief to the file. Although the Panel had decided to reject the application for intervention, as mentioned before, the Panel did find it of relevance to admit such brief to the present file, for reasons set out below.
82. As a starting point, the Panel is mindful that *amicus curiae* briefs interfere with the concept of two-party arbitration and may cause an imbalance between or an unequal treatment of the parties, following which such briefs must only be accepted where their disadvantages are offset by their positive effects (see, *inter alia*, CAS 2008/A/1639).
83. Having this in mind, also the Panel is reluctant to accept any *amicus curiae* brief. However, at the same time, *amicus curiae* briefs could bring to the attention of the Panel matters not already brought to its attention by the parties and so may be of considerable help (MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, 2015, p. 297).
84. Against the above background and carefully examining the documents on file, the Panel notes that the Respondent only submitted very brief submissions and, what is more, it more or less did not defend its position. In this regard, the Panel also takes into account the concerns Mr Shaddad has whether the Respondent seriously and sincerely defends its position before the CAS as it alleges that the Appellant already exercise great influence within the SFA. As such, Mr Shaddad alleges that the Appellant already exerted influence on the present CAS proceedings by preventing the SFA to file an answer and influence the content in his favour.

85. The Panel cannot establish with certainty that this is the case, but if this were true, this would seriously touch upon the integrity of the Respondent and, in more general, football affairs in Africa, all the more so taking into account that the level of integrity expected from a candidate for the position at stake is particularly elevated. Put differently, and noting that it concerns an integrity check here and so touches upon a public interest as serious doubts would be in the mind of football community and of the public at large in the absence of clean and transparent appearance by top football officials, the Panel finds an *amicus curiae* brief would considerably assist the Panel in order to have a better view on the case (see, *inter alia*, CAS 2016/A/4579 and CAS 2015/A/4311). The serious allegations in terms of any influence from the side of the Appellant, also by means of the Respondent's limited defense, as indicated before, justifies, so finds the Panel, at the least, that the *amicus curiae* brief must be admitted to the file. In fact, any disadvantages are offset by their positive effects of having such *amicus curiae* brief.
86. In other words, and under the present circumstances, the positive effects of the *amicus curiae* brief would prevail over possible disadvantages and this threshold is reached, as set out above, also for reasons of good governance (and keeping in mind that it concerns an eligibility matter) and the public dimension to the matter at stake. By means of the *amicus curiae* brief relevant matters can be brought to the attention of the Panel that were not brought to its attention yet. Therefore, benefits are linked to the admissibility of the *amicus curiae* brief in the present case, so the Panel finds, also in light of increase of transparency (MAVROMATI/REEB, *The Code of the Court of Arbitration for Sport*, 2015, p. 298; see also FACH GÓMES K., *Rethinking the Role of Amicus Curiae in International Investment Arbitration: How to Draw the Line Favourably for the Public Interest*, *Fordham International Law Journal* 35 (2012), p. 542).
87. Therefore, in view of the above circumstances, and empowered to do so in accordance with Article 41(4) of the CAS Code, the Panel has decided, after consulting the relevant parties, to admit the *amicus curiae* brief which means that these *amicus* submissions will be taken into account for the drafting of this Award.

C. Lifting of the suspension under the Order

88. On 9 February 2022, the Respondent requested the CAS to lift the Appellant's suspension of the assumption of office as was ordered under the Operative Part of the Order on Request for a Stay and Provisional Measures dated 12 November 2021.
89. At the outset of the hearing, the President of the Panel explained that, given the urgency of the matter, the operative part of the Award would be issued within 10 days.
90. Consequently, and in the absence of any objection thereto from the side of the Appellant during the hearing, it is not necessary to further address the request for the suspension.

D. Admissibility additional documents

91. The final preliminary issue to address relates to the submission of two further exhibits submitted by the Appellant by means of his email of 24 February 2022. The first exhibit is a letter from the General Secretariat of the “*Union Arabe de Football Association*” to the SFA and the second exhibit concerns a receipt for the payment from the SFA.
92. During the hearing, the Panel asked the Respondent whether or not it could agree with the admittance or not of these documents to the file. The Respondent did not object.
93. Against this background and considering the absence of any objection from the side of the Respondent, the two exhibits will be admitted to the file. As such, it follows that no question arises as to the application of Article R56 of the CAS Code which would justify the exclusion of these documents. The Appellant is entitled to rely on the documents.

X. THE MAIN ISSUES

A. Introduction

94. The case revolves, in essence, around the question whether the Appellant was rightfully excluded from the list of candidates for Presidency for the 2021 election by the SFA Ethics Committee and the SFA Appeals Committee for failure to pass the integrity test. In particular, by means of the First Instance Decision, confirmed by the SFA Appeals Committee in appeal by means of the Appealed Decision, the Appellant was found guilty of violating Articles 13, 25 and 28 of the FIFA Code of Ethics and, more specifically, Article 6 of the SFA’s Code of Ethics, for embezzling and misuse of money belonging to the SFA and placing it at his personal disposal for a period of more than two years before returning the money to the SFA’s treasury.
95. The Appellant, however, holds that the SFA Code of Ethics is not applicable in this case, and that he meets all requirements for eligibility as set out in the SFA Statutes and the SFA Electoral Code. Further to this, and in the alternative, even if the SFA Code of Ethics is applicable to the case, it is the Appellant’s position that it has satisfied all the criteria, including those as enumerated in the SFA Code of Ethics.
96. In light of the above, the main issues to be resolved by the Panel are the following:
- i. Does the scope of the eligibility check extend to the SFA Code of Ethics?
 - ii. Did the Appellant violate provisions under the applicable regulations?
 - iii. What are the consequences thereof?
97. The Panel will address these substantive issues in turn.

B. The Substantive Issues

i. Does the scope of the eligibility check extend to the SFA Code of Ethics?

98. As a starting point, the Panel notes that the criteria for the integrity check are basically founded in the SFA Statutes and the SFA Electoral Code.

99. In this regard, Article 36 paragraph 3 of the SFA Statutes reads:

“The mandate of the President, Vice-President, the four (4) Vice-Presidents the woman member and the ordinary Members of the Board of Directors is for four years. They shall undergo an integrity check, to be conducted by the Ethics Committee in accordance with the Electoral Code of SFA, prior to their election or re-election. Their mandates shall begin after the end of the General Assembly which has elected them. They may be re-elected for two further terms (being a maximum of three four – year terms). A term will be considered to belong to the member of the member of the Board of Directors who was originally elected for the position. If a person replaces the original member, this term shall not be counted as his term or mandate”.

100. Furthermore, from Article 36 paragraph 4 of the SFA Statutes it follows that:

“The candidate to the Board of Directors must fulfil the following:

a) be a Sudanese.

b) not have been convicted of an offense involving honesty or moral turpitude.

c) has full legal capacity

d) may not be a senior government official of Directorate of the Ministry of Youth and Sports.

e) be at least twenty five (25) years of age

f) residing in the Republic of Sudan

g) be literate.

h) active experience of not less than two (2) years in football

i) may not be a registered player.

j) may not be a Board of Directors Member of Sports Association of another Discipline”.

101. In particular, from Part 1 (“General Provisions”) of Annex A (“Questionnaire for integrity checks”) of the SFA Electoral Code, it follows that:

“The candidate or holder shall be deemed not to have passed the integrity check, if he:

a) has been subject to criminal convictions or disciplinary sanctions by a state court, in particular if the offense in question was a substantive issue and not a minor infraction or procedural misconduct;

b) has been found guilty and/or sentenced by the FIFA Ethics Committee or any other sporting body with a sanction that would seriously put into question the discharge of the office concerned”.

102. The Panel notes that it is the Appellant’s position that the eligibility check is limited to the provisions as set out above in the SFA Statutes and the SFA Electoral Code. As mentioned, the Appellant argues that the SFA Code of Ethics does not apply to the case.

103. The Panel does not agree with the Appellant and finds that the eligibility check is not the exclusive domain of the SFA Statutes and the SFA Electoral Code, as also argued by Mr Shaddad in his *amicus curiae* brief. The SFA Ethics Committee and the SFA Appeals Committee, so finds the Panel, could consider checks not only arising from the SFA Statutes and the SFA Electoral Code, but also from the SFA Code of Ethics.

104. In this regard, the Panel notes that Annex A is wider than just Part 1, as referred to above. In fact, from Part 2 (“Screening process”) from the same Annex 4 it follows that:

“The body in charge of performing the integrity check may conduct independent research and/or investigations in order to obtain further relevant information on a particular candidate or holder, which may include information on intermediaries and related parties, mandates, potential conflict of interest and significant participations as well as civil and criminal proceedings/ investigations”.

105. What is more, Part 3 (“Questionnaire”) of Annex 4 of the SFA Electoral Code, contains a detailed questionnaire that clearly indicates that Annex 4 is wider than the Appellant claims. As a matter of fact, it follows from the statement under point 4 of Part 3 that:

*“I am fully aware that I am subject to the provisions of the Disciplinary Code and **Ethics Code of SFA** [sic] and to the provisions of the Statutes and other regulations of SFA that may address integrity issues, and I fully comply with such provisions” (emphasis added by the Panel).*

106. The Panel is mindful that at the moment the Appellant signed the above questionnaire, which was on 14 December 2020, the SFA Code of Ethics did not apply yet as it was only ratified on 8 September 2021. However, at the moment the First Instance Decision was made, which was on 17 October 2021, the SFA Code of Ethics was already in force.

107. As such, the Panel determines that the SFA Ethics Committee and the SFA Appeals Committee were acting within their powers to consider any potential breach, not only of the SFA Statutes and the SFA Electoral Code, but also of the SFA Code of Ethics.

108. As a final note, and as referred to before, the Panel is also mindful that it follows from the First Instance Decision and the Appealed Decision that the FIFA Code of Ethics applied to the case at hand as it was decided that the Appellant also violated several provisions under the FIFA Code of Ethics. The Panel wishes to note that the SFA Ethics Committee and the SFA

Appeals Committee, and noting that it seems to the Panel that Mr Shaddad intended to revert to the provisions under the FIFA Code of Ethics where it incorrectly referred to provisions of SFA Code of Ethics, were also acting within their powers to consider any potential breach of the FIFA Code of Ethics.

109. In particular, and to further support the view that also the FIFA Code of Ethics applies, it follows from Article 13 of the SFA Statutes that members of the SFA are also obliged to comply with the regulations of FIFA. Further to this, in Part 3 (“Questionnaire”) of Annex 4 of the SFA Electoral Code reference is made to any violations under the FIFA Code of Ethics that had to be reported by the Appellant. Moreover, it also makes sense to the Panel that the SFA Ethics Committee and the SFA Appeals Committee were empowered, as it concerns an eligibility check by a FIFA member, such as the SFA, to apply the guidelines and criteria established by FIFA, such as the FIFA Code of Ethics, also to avoid different standards. Let alone that it also follows from the SFA Code of Ethics, more specifically Article 2 paragraph 3, that the FIFA Code of Ethics had application to any violations prior to the entry into force of the SFA Code of Ethics.

ii. Did the Appellant violate provisions under the applicable regulations?

110. Before addressing the accusations and any potential violations under the applicable regulations, as set out above, in more detail, first the Panel wishes to make a few more general comments in relation to the accusations made towards the Appellant.

➤ *In general*

111. As a point of departure and having the above in mind, the Panel wishes to note the particularities of the case as it is confronted with a limited defense from the side of the Respondent, as set out above, in which the Respondent more or less did not defend its position. What is more, the Respondent even argued that the Appellant was not a creditor of the SFA, which was also confirmed by the financial auditor. In other words, the reason for which the Appellant was not permitted to attend the elections did not seem to be correct, which is, at least now, the Respondent’s view.
112. On the one hand, the Panel cannot simply disregard the defense by means of the Respondent’s Answer. On the other hand, the serious allegations in terms of influence from the Appellant’s side, as mentioned before, also made the Panel decide to take into account the *amicus curiae* brief as it was argued that the Appellant exerted influence on the present CAS proceedings by preventing the SFA to file an answer and influence the content in his favour. Although there are only accusations, the Panel did feel the need to take the *amicus* submissions into account when deciding on the present dispute, but, once again, cannot be immune for the Respondent’s current position. Put differently, in the process of its decision, it cannot be expected from the Panel not to attach reasonable weight to the Respondent’s Answer in the absence of any conclusive evidence that the Appellant actually exerted influence on the Respondent in the present CAS proceedings.

113. Furthermore, the Panel is aware that most of the allegations come from Mr Shaddad by means of the *amicus curiae* brief, recalling the limited defense submitted by the Respondent, but the Panel cannot turn a blind eye to the fact that Mr Shaddad was in a competitive position towards the Appellant during the latest elections in 2021. The Panel notes that Mr Shaddad makes a lot of accusations. In this regard, the Panel wishes to draw attention to the fact that the allegations must be of a certain severity and should so not be based on mere speculation (see, *inter alia*, CAS 2015/A/4311).
114. Additionally, the Panel is mindful that the Appellant argues that the CAS does not have the ability to execute a *de novo* integrity check for the elections in 2021. However, the Panel does not agree with the Appellant on this point as it finds that the CAS has full power, in accordance with Article R57 of the CAS Code, as was rightfully argued by Mr Shaddad by means of the *amicus curiae* brief, to review the facts and the law. To further support the *de novo* approach, the Panel, again, refers to Part 3 (“Questionnaire”) of Annex 4 of the SFA Electoral Code, more specifically under point 9 which reads:
- “I am fully aware and confirm that I must notify the body conducting the integrity check of any relevant facts and circumstances arising after the integrity check has been completed”.*
115. Put differently, also later facts and circumstances that arose after the integrity check and that are deemed relevant for the case, had to be reported, and, consequently, can so be taken into account by the CAS Panel. It is now up to the Panel to establish whether the Appellant violated any provisions under the applicable regulations, as set out above. Obviously, the Panel will specifically examine the reasons following which the SFA Ethics Committee, and on appeal the SFA Appeals Committee, initially decided to exclude the Appellant from the list of candidates for Presidency for the 2021 election, but accusations after the decisions will also be considered in the present proceedings.
116. As a final general note, the Panel is further mindful that the Appellant also raised procedural complaints concerning the proceedings before the SFA Ethics Committee. In particular, the Appellant argued that the SFA Ethics Committee violated Article 23 paragraph 12 of the SFA Code of Ethics from which it follows that the Appellant had to be given the possibility to defend himself before any decision would be taken. It is the Appellant’s position that he was not provided the possibility to defend himself.
117. The Panel has some doubts as to certain statements of the SFA Ethics Committee, i.e. that the eligibility process can only be limited to brief investigations and that the urgency of the integrity process makes that there is no time for lengthy investigations. Although this does not seem to accord with Article 23(12) of the SFA’s Code of Ethics, which has its foundation in Article 71 of the FIFA Code of Ethics, and the Appellant’s right to defense, there is no need to address these procedural issues at this stage in any detail as it is CAS practice that the matter at hand will be considered afresh and any procedural deficiencies before the national committees are cured by the Panel’s *de novo* review, as also already mentioned before. However, the Panel will discuss any deficiencies later in this award, as the urgency of investigations, let alone procedural shortcomings, can obviously have an impact on a solid eligibility process.

➤ *In particular*

118. Having addressed the above general matters, as an introduction, the Panel will now examine the accusations in more detail, including the ones made by Mr Shaddad.
119. In light of the Appellant's integrity process and as follows from the First Instance Decision, confirmed in appeal by means of the Appealed Decision, challenges were lodged by several persons, among others Mr Shaddad, against the participation of the Appellant to the 2021 elections, which, in essence, came down to the accusation that an amount of EGP 1,284,949 of the SFA's funds were spent without approval and the Appellant had no documents to demonstrate there had been the necessary approval. More specifically, he was accused of receiving such sum from the Union Arabe de Football Association (the "Arab Federation") under his Presidency in 2016, although this amount was subsequently refunded by him to the SFA in 2018.
120. Confronted with these accusations, the SFA Ethics Committee requested the financial statements, including audit reports, of the SFA for the years 2014-2020 to review the financial statements in relation to the above period. After having reviewed the documents, the SFA Ethics Committee found it proven that an amount of EGP 1,284,949 was embezzled by the Appellant. Consequently, the Appellant was excluded by the SFA Ethics Committee from the elections in 2021. As set out above, the First Instance Decision was confirmed in appeal by the SFA Appeals Committee.
121. Carefully examining this accusation and the Appellant's defense on this particular issue, also during the hearing, the Panel notes that the Appellant argued that he funded various types of expenditures and costs of the SFA during his former presidency. When he was confronted with the missing amounts, the Appellant submitted certified documents evidencing that he paid the amount back to the SFA. Also, when he was asked by the SFA to pay the amount upon the SFA's review of the financial documents, the Appellant acted accordingly and paid the amount to the SFA, which payment was made in good faith despite having apparently been entitled to the money, as was stated by the Appellant, which was confirmed by him during the hearing when confronted with this issue.
122. Although it is difficult to establish that it was practice that officials of the SFA funded various types of costs and expenditures, as was argued by the Appellant, let alone that the given reasons justify such practices, it is clear to the Panel that the sum that the Appellant received under his Presidency in 2016 was paid back by him to the SFA, as was also confirmed during the hearing by the witnesses when confronted with these matters by the Panel. It seems to the Panel that the SFA Ethics Committee took its decision to exclude the Appellant from the 2021 elections based on an issue that was already settled as it is to the Panel that the Appellant had paid the amount back to the SFA, which was also proven by means of certified documents, as also confirmed by means of the written statement of Ms Amal Hussein Mohamed, the ex-Financial Manager and internal auditor of the SFA until 2021. It is unclear to the Panel why Mr Shaddad during his Presidency refused to approve

the certified documents as these were already approved in the period prior to his Presidency.

123. As such, it therefore even seems to the Panel, now that the Appellant paid a similar amount to the SFA in cash, again, this time in 2018, as per the latter's request, he is now indeed a creditor, instead of a debtor, of the SFA. This was not only admitted in the SFA's Answer, which cannot be fully ignored by the Panel, as already explained before, but what is more, during the hearing it was also confirmed, when confronted with such question by the Panel, by the same Ms Amal Hussein Mohamed that the amount that was repaid by the Appellant to the SFA in 2018 will be returned to him.
124. Further to this, the Panel notes that the payment made by the Arab Federation was made as financial support for the SFA. In this regard, Mr Shaddad argues that there are no justifying documents or ratification as to why this money was placed in the personal accounts of the Appellant. However, the Appellant has demonstrated in the present proceedings by means of a letter of the Arab Federation dated 16 February 2016 that it was not possible to transfer money to Sudan because there was a ban on transferring money to Sudan, which was confirmed during the hearing. Further to this, the Appellant also submitted a document dated 25 July 2016 that contains a payment receipt from which it follows that the Appellant actually received money from the Arab Federation. These documents were only submitted for the first time during the present CAS proceedings and, indeed, speak in favour of the Appellant.
125. Specifically looking at Mr Shaddad's *amicus* submissions, it was argued that the Appellant did not reimburse the amount until the accounts of the SFA were audited in May 2018. This is true, but it does not mean *per definition* that he embezzled any amounts. This is mere an allegation, without any further evidence. In fact, following the line of reasoning of the Appellant, there was no reason to pay any amounts. It is also true that he did refund the amount, but this was also only done in good faith, as the Appellant explained. The Panel sees no reason to put this in doubt, also because the SFA made such request upon further review of financial documents. As was confirmed during the hearing, as set out above, the SFA will return the amount to the Appellant.
126. Further to this, Mr Shaddad submitted that there was no evidence or proof that the Appellant had recorded the relevant transaction in the SFA books. The Panel, however, has a different view on this as it was demonstrated by the Appellant that it was Mr Shaddad himself, in his position as former President, expressed in his letter of 22 May 2018 to the financial auditors, that refused to admit the Appellant's certified documents whilst the same payment was already approved prior to Mr Shaddad's Presidency.
127. By the same token, the Panel can also not ignore the fact that the Appellant was accepted as a nominee in the Presidency elections for 2017 and, apparently, which is not in dispute, did pass the eligibility test for these elections, whilst this was after the accusations for embezzlement in 2016. It was only after these elections in 2017, and after Mr Shaddad became the new President, that Mr Shaddad sent a letter to the financial auditor requesting

him not to admit the Appellant's certified documents. This is another pointer of direction for the Panel that the payment issue between the Appellant and the SFA had been already settled prior to Mr Shaddad's Presidency.

128. Moreover, and although the Panel does not find it relevant that similar scenarios seem to have taken place in relation to Mr Shaddad for the 2021 elections, as was argued by the Appellant, the latter did submit a FIFA report from which it follows that there existed also unsettled amounts that were received by other officials of the SFA, including Mr Shaddad. The Panel emphasises that this case relates to the eligibility process of the Appellant and not Mr Shaddad, but at the same time it remains unclear to the Panel why similar accusations for potential embezzlement were set aside so easily by the SFA in relation to other officials, including Mr Shaddad, for the 2021 elections.
129. Further to this, it can also be questioned why, as was also rightfully argued by the Appellant, no further investigation or disciplinary proceedings were directly opened after the issue was raised by the SFA in 2018. It would have made sense, so finds the Panel, that any further investigations or proceedings would be started immediately after such serious accusations, which degree of seriousness was also explicitly acknowledged by Mr Shaddad as referred in his *amicus curiae* brief, came to light.
130. In any event, by not starting such procedures immediately after this was raised, such as reporting the embezzlement to the state authorities, which was not done at all, this is, for the Panel, another reason leading to the conclusion that the payment was, indeed, already settled by the Appellant. In this regard, Mr Shaddad also raised that disciplinary investigations were initiated. However, it cannot be left unmentioned that this was only after the establishment of the Ethics Committee of the SFA in February 2021, which was five years after the alleged embezzlement took place. Even if the Panel follows a more favourable scenario for Mr Shaddad in the sense that it was only possible to start such proceedings after the creation of the Ethics Committee of the SFA, which was in February 2021, it was still only after eight months that such proceedings were opened. It would appear to the Panel, and it cannot rule out, that the initiation of these proceedings was triggered by the Appellant's application to participate to the 2021 elections. As such, the Panel has some serious difficulties to accept these arguments to the detriment of the Appellant.
131. In the context of the above disciplinary proceedings, the Panel wishes to note, after having closely examined the first instance decision of the Ethics Committee of the SFA, as submitted by Mr Shaddad and drawn to the attention of the Panel, that it follows from such decision that the Appellant was suspended from practicing any football related activities for a period of eighteen years. However, the Panel notes that the Appellant has demonstrated in the present proceedings that he successfully appealed against such first instance decision. In fact, the Appellant submitted a decision of the Appeals Committee of the SFA of 20 February 2022 following which the first instance body was already temporarily dismissed at the moment it took its decision, but it was also established that the Appellant was not given the possibility to defend himself in these proceedings.

Therefore, also in light of the *de novo* review, which was, after all, also raised by Mr Shaddad, as set out above, it has not been demonstrated that the Appellant was condemned in these disciplinary proceedings.

132. Finally, as regards the procedural complaints that were raised by the Appellant before the SFA Appeals Committee concerning the proceedings before the SFA Ethics Committee, more specifically the violation of his right to defense, the Panel has already considered that any such procedural deficiencies before the national committees are cured by the Panel's *de novo* power. However, it cannot be left unmentioned that Article 23(12) of the SFA's Code of Ethics, which parallel provision in the FIFA Code of Ethics is Article 71, was not respected as the Appellant was not given the possibility to defend himself during these prior proceedings. Regardless of these procedural shortcomings, which fall under the *de novo* review, as mentioned before, the Panel wishes to note that had the Appellant been given the chance to defend himself by expressing his side of the case and that his right to defense had been respected in the eligibility process for the position of President of the SFA, the SFA Ethics Committee, and in appeal the SFA Appeal Committee, should have come to a different outcome, as also the Panel in this case, based on all relevant documents on file, including the Appellant's arguments, comes to the conclusion that no violations under the regulations have taken place.
133. Therefore, in view of the accusations as set out above, the Panel is not comfortably satisfied that the Appellant violated any provisions under the applicable regulations, in particular that the Appellant had to be found guilty of violating Articles 13, 25 and 28 of the FIFA Code of Ethics and, more specifically, Article 6 of the SFA's Code of Ethics, for embezzling and misuse by him of money that belonged to the SFA.

iii. What are the consequences thereof?

134. Having taken into consideration all the submissions on file, including the *amicus curiae* brief, there was simply no conclusive evidence before the Panel to support the Appealed Decision, by means of which the First Instance Decision was confirmed, i.e. that there were valid grounds in order to exclude the Appellant from the 2021 elections.
135. Although the Panel supports the fact that a certain deference should be given to the SFA Ethics Committee and the SFA Appeals Committee whether a person is a suitable candidate (see CAS 2015/A/4311), this does, however, not mean that the integrity process is a free pass to exclude nominees for elections absent of sufficient grounds.
136. Consequently, having reached the conclusion that the Appellant did not violate any provisions under the applicable regulations, as set out above, the Panel will so reach a different conclusion than the one in the Appealed Decision and First Instance Decision.
137. In view of the above, the Panel is of the view and, as such, is comfortably satisfied that, in light of the specific circumstances of the present case, as discussed above, the First Instance Decision as well as the Appealed Decision must be overturned and annulled.

138. Consequently, the Panel accepts the Appellant's appeal and confirms that the Appellant is declared eligible to stand in the elections of the SFA held on 13 November 2021.

C. Conclusion

139. Based on the foregoing, and after due consideration of all the evidence produced and all submissions made, including the *amicus curiae* brief, the Panel determines that:

- the Appealed Decision rendered on 23 October 2021 by the Appeals Committee of the SFA as well as the First Instance Decision rendered on 17 October 2021 by the Committee of Ethics of the SFA is set aside; and
- the Appellant is declared eligible to stand in the elections of the SFA held on 13 November 2021.

140. Any further claims or requests for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 9 November 2021 by Mr Moatasem Gaafar Serr Al-Khetm against the decision rendered on 23 October 2021 by the Appeals Committee of the Sudan Football Association is upheld.
2. The decision rendered on 23 October 2021 by the Appeals Committee of the Sudan Football Association is set aside.
3. The decision rendered on 17 October 2021 by the Committee of Ethics of the Sudan Football Association is set aside and Mr Moatasem Gaafar Serr Al-Khetm is declared eligible to stand in the elections of the Sudanese Football Association held on 13 November 2021.
4. (...).
5. (...).
6. All other and further motions or prayers for relief are dismissed.