

**PANEL OF THE IAAF ETHICS BOARD**

**Ms Catherine O'Regan (Chairperson)**

**Ms Maidie Oliveau**

**Mr Juan Pablo Arriagada**

**In the matter of MR AHMAD AL KAMALI and the IAAF Code of Ethics**

**DECISION**

**Record**

The matter was determined at a hearing on 10, 11 and 12 November 2020, pursuant to Ethics Board Procedural Rule 13(18). The hearing was conducted by video link.

Ms Kate Gallafent QC appeared as Prosecutor. Mr Alexandre Zen-Ruffinen and Mr Jirayr Habibian appeared as counsel on behalf of the Defendant.

**Introduction**

1. This case concerns allegations that the Defendant, Mr Ahmad Al Kamali, who is the President of the UAE Athletics Federation and was a member of the IAAF (now known as World Athletics) Council from 2011 to 2019, gave gifts of watches to delegates at the Confederation Africaine d' Athletisme (the "CAA") Congress in Addis Ababa in March 2015. The watches are said to have been Rolex watches and/or UAE branded Continental watches, and it is alleged that Mr Al Kamali gave them to delegates of the CAA in an attempt to persuade them to vote for him for the position of Council member

and/or Vice-President of the IAAF Council at the forthcoming elections in Beijing in August 2015.

**The IAAF Code of Ethics**

2. The relevant events occurred in March 2015. At that time Mr Al Kamali was a member of the IAAF Council and accordingly he was subject to the IAAF Code of Ethics: see A1(a) of the January 2015 Code of Ethics (the “Code”).
3. The provisions of the Code which Mr Al Kamali is alleged to have breached are as follows:

Article C1(11):

Persons subject to the Code shall not act in a manner likely to affect adversely the reputation of the IAAF, or the sport of Athletics generally, nor shall they act in a manner likely to bring the sport into disrepute.

Article C5(21):

Candidates for elected IAAF positions shall conduct their candidacies with honesty, dignity and respect for their opponents in accordance with the Rules Concerning Candidacy for IAAF Office and the Conduct of Elections (Appendix 3).

Paragraph 4 of Appendix 3 provides:

Candidates shall in no case and under no pretext give presents or offer donations or gifts or grant advantages or benefits of whatever nature to or at the request of any party who will vote in, or who may otherwise influence, an election.

Article D2(26):

Gifts and other benefits of nominal value may be given or accepted by an IAAF Official as a mark of respect or friendship. The giving or accepting of any other gift or benefit by an IAAF Official is prohibited. In all circumstances, the giving or accepting of cash by an IAAF Official in any amount is prohibited.

4. The allegations set out in the Notification of Charge<sup>1</sup> are as follows:

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<sup>1</sup> Hearing Bundle A, pp106-109.

## Jurisdiction

- a. During the relevant period you were a member of the IAAF Council and so were subject to the Code of Ethics (Article A1(a) of the January 2015 Code).

As a candidate for IAAF office, giving of gifts to parties who would vote in or otherwise influence the result of the IAAF election in Beijing in August 2015 (Article C5(21) of the January 2015 Code).

- b. Having decided that you would seek re-election to the IAAF Council in August 2015, in March 2015 you attended the Confederation Africaine d' Athletisme (the "CAA") Congress in Addis Ababa. Whilst there you offered gifts (in particular Rolex watches and/or UAE Athletics Federation branded Continental watches) to parties who would vote in or otherwise influence the result of the IAAF election in Beijing in August 2015.

As an IAAF Official, giving gifts of more than nominal value (Article D2(26) of the January 2015 Code)

- c. You gave gifts (in particular Rolex watches and/or UAE Athletics Federation branded Continental watches) which were of more than nominal value to delegates on the occasion of the CAA Congress in Addis Ababa in March 2015.

Acting in a manner likely to adversely affect the reputation of the IAAF (Article C1(11) of the January 2015 Code)

- d. In committing the acts described at paragraphs 10(b) and (c) above [paragraphs 4(b) and (c) of this Decision] you acted in a manner likely to adversely affect the reputation of the IAAF.

## Procedural history

5. On 7 March 2015, the IAAF Ethics Commission (now the Ethics Board) was contacted by a person who described themselves as a sports journalist of the name of Berhane, alleging that Mr Al Kamali was *"trying to win support to become a Vice President at the next IAAF congress meeting in China and is giving gold watches to people in order to win their friendship"* and naming three individuals who were said to have returned the watches *"because they did not want to be involved in unethical behaviour"*.
6. On 23 March 2015 the Spanish newspaper *El País* published an article written by the journalist Carlos Arribas alleging that Mr Al Kamali had offered Rolex watches to

delegates at the CAA Congress in Addis Ababa. The article also reported that a complaint had been made to the IAAF Ethics Commission (as it then was), although the details of the allegations published in *El País* differed in several respects from the details of the complaint received by the Ethics Commission.

7. On 21 April 2015 the Chairperson of the IAAF Ethics Commission, the Honourable Michael Beloff QC (the “**Chairperson**”) informed Mr Al Kamali that he had concluded that there was a prima facie case against him (i.e. a matter warranting investigation concerning possible breaches of the IAAF Code of Ethics).<sup>2</sup> In accordance with Rule 13 of the Ethics Board’s Procedural Rules (the “**Rules**”), the Chairperson appointed Mr Sharad Rao, a former Director of Public Prosecutions in Kenya, to investigate the matter further. The Notice of Prima Facie Case alleged that there was a violation of Appendix 3 paragraphs 2, 3 and 4 of the Code in force from 1 January 2015 to 30 April 2015 in that:

“as a candidate for the office of Vice-President of the IAAF during the African Athletics Association Congress in Addis Ababa, [Mr Al Kamali] offered Rolex watches to up to 40 delegates with voting rights. These included Vivian Gunguram of Mauritius, Dadou Joof of Gambia and Harold Adams of South Africa.”

8. On 16 July 2018 the Chairperson notified Mr Al Kamali that Mr Rao had informed the Ethics Board that he was not in a position to advance or complete the investigation in an expeditious manner and that the Chairperson had appointed a new investigator, Ms Gemma White QC (the “**Investigator**”) to conduct the investigation.<sup>3</sup>
9. On 1 November 2019, the Investigator presented her final investigation report to the Ethics Board (the “**Investigation Report**”), in accordance with Rule 13(9).<sup>4</sup> The Investigation Report concluded that there was no realistic prospect of a Panel of the Ethics Board finding the charge set out in the Notice of Prima Facie Case (see paragraph 7 above) proved. In particular, the three individuals named in the Notice of Prima Facie Case had denied that they were offered Rolex watches by Mr Al Kamali and the Investigator found no other evidence which would substantiate a finding that they were.<sup>5</sup> However, the Investigator recommended that a case against Mr Al Kamali

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<sup>2</sup> Hearing Bundle A, pp2-4.

<sup>3</sup> Hearing Bundle A, pp5-6.

<sup>4</sup> Hearing Bundle A, pp7-102.

<sup>5</sup> Hearing Bundle A, p8, §5(a).

should proceed to adjudication to determine whether: (i) as a candidate for IAAF office, Mr Al Kamali offered Rolex watches and/or UAE Athletics Federation branded Continental watches on the occasion of the CAA Congress in Addis Ababa in March 2015 to parties who would vote in or otherwise influence the result of the IAAF election in Beijing in August 2015; (ii) Mr Al Kamali gave gifts (in particular Rolex watches and/or UAE Athletics Federation branded Continental watches) of more than nominal value to delegates on the occasion of the CAA Congress in Addis Ababa in March 2015. The Investigator noted that the evidence of Mr Said Aouita directly contradicted the evidence of Mr Al Kamali in a number of important respects, and she concluded that there was a realistic prospect that a Panel of the Ethics Board could prefer his evidence to that of Mr Al Kamali.<sup>6</sup>

10. On receipt of the Investigation Report, the Chairperson appointed a member of the Ethics Board, Mr Tom Murray, to review the Investigator's final report and investigation files in accordance with Rule 13(10). Mr Murray concluded that there was sufficient evidence for the case against Mr Al Kamali to proceed to adjudication, and so notified the Chairperson in accordance with Rule 13(12).<sup>7</sup>
11. On 13 November 2019, the Chairperson directed that adjudicatory proceedings be commenced against Mr Al Kamali in accordance with Rule 13(12). A notification of charge dated 13 November 2019 was sent to Mr Al Kamali notifying him of the charges against him and that a Panel of the Ethics Board had been constituted to determine the case comprising: Ms Catherine O'Regan (Chairperson of the Panel) (South Africa), Mr Juan Pablo Arriagada Aljaro (Chile) and Ms Maidie Oliveau (USA).<sup>8</sup> The notification of charge also issued directions that any statement of defence from Mr Al Kamali and any evidence on which he proposed to rely (if defending the charges) was to be filed with the Ethics Board by 11 December 2019.
12. On 9 December 2019, Mr Al Kamali's representatives wrote to the Ethics Board to request an extension of the deadline for filing his defence until 15 January 2020. The Panel granted this request, and on 15 January 2020, Mr Al Kamali's legal representatives

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<sup>6</sup> Hearing Bundle A, p8, §5(a).

<sup>7</sup> Hearing Bundle A, pp103-106.

<sup>8</sup> Hearing Bundle A, pp107-110.

filed a document with the Panel setting out his case in defence to the charges.<sup>9</sup> At that stage, the hearing was scheduled to be held from 16-19 March 2020 in London.

13. In January and February 2020, Mr Al Kamali's legal representatives made a number of challenges to aspects of the proposed hearing, including the language of the proceedings, the location of the hearing, the witnesses to be called, the power to appoint a Prosecutor and the independence of the Prosecutor.
14. The Panel afforded both the Prosecutor and Defence the right to make submissions on the contested issues, following which the Panel made a preliminary determination on 19 February 2020.<sup>10</sup> The Panel's decision was as follows:
  - a. The language of the proceedings would be English, but that pursuant to Rules 3 and 8(1) of the Rules, Mr Al Kamali would have the right to choose when testifying whether to speak in English or French.
  - b. Mr Al Kamali's request that the Panel call Mr Gianni Merlo to give evidence at the hearing was refused. The Panel noted that Mr Al Kamali could choose to call Mr Merlo and that, by Rule 13(21), witnesses can give evidence by video conference.
  - c. Mr Al Kamali's request to ask questions of the Investigator, Ms Gemma White QC, was granted. The Panel noted that although the Prosecutor had indicated that she did not intend to call the Investigator to give evidence she had confirmed that the Investigator was available to give evidence at the hearing as needed.
  - d. Mr Al Kamali's request that the hearing be moved from London to Monaco was refused. The Panel noted that Mr Al Kamali had known of the proposed hearing dates and the location since 13 November 2019 but that the request for a change of location had not been made until 4 February 2020. The Panel also noted that: (i) the underlying facts had no connection to Monaco; (ii) neither the parties, their legal representatives, nor any of the witnesses or Panel Members were based in Monaco; (iii) the Chairperson of the Panel was based in the UK as was the Legal Secretary to the Panel and the Prosecutor, and there were frequent, direct flights to London from the UAE, the USA, Switzerland

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<sup>9</sup> Hearing Bundle A, pp111-129.

<sup>10</sup> Hearing Bundle A, pp130-134.

and Chile (being the locations of the Defendant, his legal representatives and the other Panel members); and (iv) the hearing had been arranged to be held at the London offices of Sport Resolutions, an organisation that acts as the secretariat to the IAAF's disciplinary tribunal and which is experienced in organising and hosting hearings of this nature, including providing all necessary logistical support.

- e. Mr Al Kamali's challenge to the power to appoint a Prosecutor was refused. The power to appoint a Prosecutor derives from Rule 13(16). The applicable procedural rules are those in force from time to time, and not those in force at the time of the alleged violation of the IAAF Code of Ethics: see *David Siya Okeyo and Joseph I Kinyua*, Ethics Board Decision 10/2018, 30 August 2018 at §16.
- f. Mr Al Kamali's challenge to the independence of the Prosecutor was rejected. The Panel noted that although the Prosecutor was a member of the same barristers' chambers as the Investigator, there is no requirement for the Prosecutor to be independent of the Investigator. In any event, the challenge misconstrued the nature of barristers' chambers in England and Wales. Members of the same chambers are not partners, but are self-employed and are independent of one another (see the factual description of the business model of barristers' chambers in London in *Laker Airways Inc v F L S Aerospace Ltd* [2000] 1 WLR 113, at 122-124) and can and do act on different sides of cases without any conflict of interest.

This was also relevant to Mr Al Kamali's objection to the membership of Chairperson of the Ethics Board and the Legal Secretaries at Blackstone Chambers. The Panel does not have jurisdiction to review those appointments but as noted above, members of barristers' chambers in England and Wales are independent of one another. In any event, the Panel is not influenced by the Chairperson of the Ethics Board or by the Legal Secretaries. It is the independence of the Panel which is paramount, to which no challenge has been made.

- 15. On 12 March 2020, the Panel decided to adjourn the hearing in the light of the global coronavirus pandemic and the international restrictions arising from it, which had rendered an in-person hearing in London (or anywhere) impracticable.

16. The Panel subsequently invited submissions from the parties on (i) the desirability and/or practicability of conducting the hearing by video conference; and (ii) their preferences as between three sets of alternative hearing dates (in July, September and November 2020). On receipt of those submissions, the Panel asked the parties to reserve two sets of dates, in September and November 2020, with a view to proceeding with an in-person hearing if possible within that timeframe but indicating that if not possible, the Panel considered that the hearing should proceed by video conference.
17. In view of the continuation of coronavirus restrictions, the Panel subsequently decided to proceed with a hearing by video conference in November 2020.

### **The evidence**

18. The Panel heard evidence from two witnesses: the Investigator, Ms Gemma White QC and Mr Said Aouita; and from the Defendant, Mr Al Kamali.

#### Ms Gemma White QC

19. Ms White submitted a 67-page report of her investigation to the Ethics Board along with a bundle of accompanying evidence. Her Report explains that she contacted all those who attended the CAA Congress in March 2015 whose contact details she was able to obtain, and she asked them by telephone and/or email (in some cases, on a number of occasions) to tell her everything they could recall in relation to Mr Al Kamali's attendance at the Congress and in particular about any gifts given (or said to have been given) by him. No one that she contacted admitted having received a Rolex from Mr Al Kamali but she spoke to a number of people who had received Continental watches, and she was able to inspect one. She also travelled to Dubai to interview Mr Al Kamali and (separately) his assistant Ms Euton, and the notes of those interviews are included in her Investigation Report.
20. Mr Al Kamali's legal representatives made an application to the Panel to be allowed to ask questions of Ms White. The Panel decided to grant that application and to call the Investigator to give evidence at the hearing.
21. Ms White was asked by the Panel about the investigative process she had undertaken. She confirmed that she had approached people in two "rounds", seeking to make contact with as many people who had attended the CAA Congress as she could. She did not receive many responses, particularly in the second "round" of emails she sent; fewer than half of those she contacted responded.

22. Mr Al Kamali's legal representatives then asked Ms White a number of questions about her independence, her connection with Blackstone Chambers (where she is a member of Chambers), her fees in this case, and whether she had looked for evidence which might tend to exonerate Mr Al Kamali as well as evidence which might tend to inculcate him. The Investigator confirmed that she had looked for evidence of both kinds, and that she had included everything which she considered relevant in her Report and the accompanying bundle of evidence. She also confirmed that she was a self-employed barrister at Blackstone Chambers and indicated that she was prepared to provide details of her fee receipts from the Ethics Board if that would assist the Panel.
23. The Panel considers the Investigator was an accurate and truthful witness, who carried out the investigative role assigned to her and discharged her duties diligently, independently and impartially. The Panel wishes to record its thanks to her for her even-handed and thorough Report and for her evidence at the hearing.

Mr Aouita

24. The Prosecutor served a witness statement on behalf of Mr Said Aouita, the former 5000 metre Olympic Gold medallist and world record holder, signed and dated 9 March 2020.<sup>11</sup> This statement served as Mr Aouita's evidence in chief at the hearing.
25. In that statement, Mr Aouita gave evidence as follows. He explained that in 2014-2015, he was working for the UAE National Olympic Committee, and he was also helping Mr Al Kamali to manage certain matters at the UAE Athletics Federation. He and Mr Al Kamali would meet 4-5 times a week at the office or they would meet for coffee, and they became close friends. In March 2015, Mr Aouita travelled with Mr Al Kamali and Ms Liesa Euton to Addis Ababa to attend the CAA Congress. At one point during the flight, Mr Al Kamali came to sit next to Mr Aouita and told him that he (Mr Al Kamali) planned to stand for election as Vice President in the August 2015 IAAF Council elections. On arrival at Addis Ababa, they went straight to the airport lounge rather than going through passport control and waited for their passports to be stamped there. While waiting in the lounge, Mr Al Kamali opened his suitcase and several watches in boxes fell out onto the floor. The watches had the UAE Athletics Federation logo on the face. Underneath these watches, Mr Aouita saw some other watches in square boxes. He picked one up and saw that it was a Rolex watch. Underneath the Rolex watches he

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<sup>11</sup> Hearing Bundle A, pp135-144.

saw piles of dollar and Euro bills. He estimated that there were around 30 Rolex watches in the suitcase. On the third day of the CAA Congress, Ms Euton, Mr Al Kamali and Mr Aouita met for breakfast at Ms Euton's hotel (which was the same hotel at which many of the African delegates to the CAA were staying). Ms Euton said that she had arranged with the hotel concierge for the Rolex watches to be left on the beds of the African delegates with a note saying "with the compliments of Mr Al Kamali".

26. Mr Aouita's witness statement continued to state that later, after their return to the UAE, Mr Al Kamali had called in the middle of the night saying that he needed to speak to him urgently. They had met at around 1 or 2am outside the offices of the National Olympic Committee, and Mr Al Kamali said he was in big trouble because someone had talked about the Rolex watches. He said that he needed a good lawyer and he asked Mr Aouita if he knew a lawyer from Europe who could take care of this. He also said that someone at the IAAF had spoken to him and said that they could hide the problem as long as he did not stand for Vice President, i.e. if he stood for election as an ordinary member of the IAAF Council instead.
27. Mr Al Kamali's legal representatives accused Mr Aouita of lying in every respect about the Rolex watches and of being motivated by a personal grievance against Mr Al Kamali. Mr Aouita admitted that he did not like Mr Al Kamali, describing him as "*a big cheater*" and "*a bad man*".<sup>12</sup> Nevertheless, he was adamant that he was telling the truth and stood by his account about the watches. When asked by the Panel why he had waited around three years before making this allegations, Mr Aouita said that Mr Al Kamali had friends in the IAAF,<sup>13</sup> implying that perhaps the allegations would not be taken seriously, but that he had not wanted to make the allegations earlier, as soon as there was a new IAAF President.
28. The Panel considers that Mr Aouita's evidence was inconsistent in important respects. At times it was unclear and contradictory. For example:
  - a. The number of watches: Mr Aouita told the Investigator that he thought there were "*maybe more than 50*" Rolex watches in the bag<sup>14</sup>. However in his witness statement he said "*it looked like the case could fit 5 x 6 of the Rolex boxes*" and

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<sup>12</sup> Transcript Day 1, p58, line 25.

<sup>13</sup> Transcript Day 1, pp94-95.

<sup>14</sup> Hearing Bundle A, p79.

estimated “around 30 of them in the suitcase”.<sup>15</sup> In cross-examination he said, “Maybe I’m not sure how many... maybe between 20 to 30 or something”<sup>16</sup> and then when pressed, “I’m not sure, it might be 20, it might be 19, it might be 21”.<sup>17</sup>

- b. The size and shape of the box: Mr Aouita initially told the Investigator that the Rolexes were in “a long box – same thing like the other one [the Continental watches]. Same size as the plastic boxes [of the Continental watches]. It was a beautiful long grey box”.<sup>18</sup> However in his witness statement Mr Aouita said the Rolexes were in square boxes while the UAE watches were in rectangular boxes, and “The Rolexes were in bigger boxes than the UAE Federation watches”.<sup>19</sup> In his evidence before the Panel, Mr Aouita said the Rolexes were in “round boxes and it’s open just a little bit from the – on the top”.<sup>20</sup> When the Chair of the Panel asked, “Now, you just said it was a round box, are you sure about that?”, he replied:

*“I don't know it's round, just don't make mistake, it's box - the watches are round, in the box is not rectangular. It's not rectangular, but just in the box which fits one watch like that, it's the Rolex in -- it's attached on something like that, but it's not a round but I can see square, big --big square box.”*<sup>21</sup>

- c. It was suggested to the Panel by Mr Al Kamali’s counsel that Mr Aouita was lying because Rolex boxes are green, not grey.<sup>22</sup> However, there was no evidence before the Panel as to the colour of Rolex boxes in general and it is not a matter of which the Panel may take judicial notice, which was suggested by counsel for Mr Al Kamali. After the close of Mr Aouita’s evidence, Mr Al Kamali’s counsel made an application to admit a document showing a Google image search of Rolex boxes.<sup>23</sup> The Panel heard submissions on behalf of Mr Al Kamali and the Prosecutor on the admissibility of that document and two other

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<sup>15</sup> Statement of Said Aouita, 9 March 2020, §25.

<sup>16</sup> Transcript Day 1, p53, lines 19-21.

<sup>17</sup> Transcript Day 1, p53, line 25.

<sup>18</sup> Hearing Bundle A, p88.

<sup>19</sup> Statement of Said Aouita, 9 March 2020, §§24-25.

<sup>20</sup> Transcript Day 1, p80, lines 14-15.

<sup>21</sup> Transcript Day 1, p80, lines 18-25.

<sup>22</sup> Transcript Day 1, p30; Transcript Day 3, pp23-24.

<sup>23</sup> Transcript Day 2, pp4 – 6.

documents which Mr Al Kamali sought to put before the Panel.<sup>24</sup> The Panel decided to admit the document showing the Google image search and to assess its weight in due course.<sup>25</sup> In light of that ruling, the Prosecutor indicated that she wished to re-call Mr Aouita so that he could be asked questions about the document.<sup>26</sup> Following that indication, Mr Al Kamali's counsel withdrew the application to admit the document.<sup>27</sup>

29. Mr Aouita was open about his antagonism towards Mr Al Kamali and the Panel did not conclude that he was lying to frame Mr Al Kamali. However, some of the key details of his evidence in relation to the Rolex watches simply did not correspond.

Mr Al Kamali

30. Because Mr Al Kamali did not take the opportunity afforded to him to file a witness statement in these proceedings, the Panel allowed time in the hearing schedule for his counsel to lead evidence from him in chief. However, during his evidence, Mr Al Kamali chose simply to confirm on oath that he stood by the truth of what he had previously told to the Investigator, Ms White.<sup>28</sup> The substance of what he had told the Investigator was that Mr Aouita was lying; Mr Al Kamali had never given Rolex watches as gifts; he had never had any intention to stand as a candidate for Vice President of the IAAF Council; and the Continental branded watches he had given out had been of nominal value only.
31. The Panel finds Mr Al Kamali to have been an unsatisfactory witness. On many occasions he refused to answer questions which were put to him.<sup>29</sup> On other occasions, Mr Al Kamali failed to confirm matters which he had previously admitted on the record, for example, the date when he decided to run for a second term of office as a member of the IAAF Council. In an email exchange between Ms White QC and Mr Al Kamali on 21 February 2019,<sup>30</sup> Mr Al Kamali admitted that he had discussed and decided the issue with the General Secretary of the UAE Athletics Federation "sometime towards the end

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<sup>24</sup> Transcript Day 3, pp1 - 11.

<sup>25</sup> Ruling - Transcript, 12.11.20 (Day 3).

<sup>26</sup> Transcript Day 3, p12, lines 17-24.

<sup>27</sup> Transcript Day 3, p3, lines 8-23.

<sup>28</sup> Transcript Day 1, p100, lines 16-25.

<sup>29</sup> See e.g. Transcript Day 2: p9, lines 1-12; p11, lines 1-21; pp30-32; pp33-34.

<sup>30</sup> See Hearing Bundle B pp52 - 53.

of 2014”, but during cross examination he appeared to deny this fact.<sup>31</sup> The Investigator’s Report made it clear that Mr Aouita’s testimony was that he had travelled to Addis Ababa with Mr Al Kamali to attend the CAA Congress in March 2015. This fact was not denied in Mr Al Kamali’s statement of defence dated 15 January 2020. Yet when asked to confirm that he had travelled to Addis Ababa with Mr Aouita, Mr Al Kamali responded that he did not travel with him<sup>32</sup> and that he could not recall if he went on the same plane.<sup>33</sup> His testimony in this regard did not accord with his statement of defence and undermined his credibility as a witness.

32. The Panel also notes that Mr Al Kamali did not cooperate fully in these proceedings. There is no obligation to serve a witness statement, to call witnesses in his defence or to give evidence, but a failure to do so cannot assist a person facing disciplinary charges under the Ethics Code and may, in some circumstances, lead to an adverse inference being drawn.<sup>34</sup>

### **Standard of proof**

33. Rule 11(7) provides:

The standard of proof in all cases shall be determined on a sliding scale from, at minimum, a mere balance of probability (for the least serious violation) up to proof beyond a reasonable doubt (for the most serious violation). The Panel shall determine the applicable standard of proof in each case.

34. Accordingly, the Panel must determine the applicable standard of proof. As Rule 11(7) makes clear, the key consideration is the seriousness of the disciplinary charges in issue. The least serious violation may be established on the balance of probability. The most serious violation must be established to the criminal standard, being proof beyond a reasonable doubt.
35. On behalf of Mr Al Kamali, it was submitted that the charges were among the most serious offences that an official may commit in the exercise of his official functions and that the criminal standard should apply.

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<sup>31</sup> Transcript Day 2, p53, line 21.

<sup>32</sup> Transcript Day 2, p129, line 14.

<sup>33</sup> Transcript Day 2, p130, line 16.

<sup>34</sup> See, e.g., *USADA v M & IAAF*, CAS 2004/O/645, §10.

36. The Prosecutor submitted that the charges fell in between conduct of the most serious kind and conduct of the least serious kind, and accordingly the appropriate standard of proof was the standard of comfortable satisfaction.
37. In *Okeyo and Kinyua*,<sup>35</sup> a differently constituted panel of the Ethics Board held that in determining the appropriate standard of proof, the most important consideration is the seriousness of the disciplinary charges in issue. In *Balachnichev, Melnikov, Dollé and Massata Diack*,<sup>36</sup> charges involving blackmail and extortion were held to constitute the most serious kind of charge and therefore required to be proved beyond reasonable doubt.
38. The Panel observes that the conventional standard for sports disciplinary proceedings is that of “comfortable satisfaction”.<sup>37</sup> The test of comfortable satisfaction “*must take into account the circumstances of the case*”.<sup>38</sup> As the CAS has explained, those circumstances include:

*“the nature of the conduct in question and the paramount importance of fighting corruption of any kind in sport and also considering the nature and restricted powers of the investigation authorities of the governing bodies of sport as compared to national formal interrogation authorities.”*<sup>39</sup>

39. In *Aleksandr Zubkov v IOC*, the CAS held:

*“The gravity of the particular alleged wrongdoing is relevant to the application of the comfortable satisfaction standard in any given case. In CAS 2014/A/3625, the panel stated that the comfortable satisfaction standard is:*

*‘a kind of sliding scale, based on the allegations at stake: the more serious the allegation and its consequences, the higher certainty (level of proof) the Panel would require to be “comfortably satisfied”.’*

*It is important to be clear, however, that the standard of proof itself is not a variable one. The standard remains constant, but inherent within that immutable standard is a*

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<sup>35</sup> See *David Siya Okeyo and Joseph I Kinyua*, Ethics Board Decision 10/2018, 30 August 2018 at §45.

<sup>36</sup> See Ethics Commission Decision 02/2016 VB, AM, GD & PMD at §14(i).

<sup>37</sup> See, e.g., *Andrei Korneeov v International Olympic Committee* 6 CAS OG 003-4, 1996, pp17-18; *Aleksandr Zubkov v IOC*, CAS 2017/A/5422, §671.

<sup>38</sup> *Besiktas Jimnastik Kulubu v UEFA*, CAS 2013/A/3258, §122.

<sup>39</sup> *FK Pobeda, Aleksandar Zabrcanec, Nikolce Zdraveski v UEFA*, CAS 2009/A/1920, §85.

*requirement that the more serious the allegation, the more cogent the supporting evidence must be in order for the allegation to be found proven. As the CAS Panel explained in CAS 2014/A/3630:*

*'...the standard of proof does not itself change depending on the seriousness of the (purely disciplinary) charges. Rather the more serious the charge, the more cogent the evidence must be in support.'*<sup>40</sup>

40. The Panel finds that the comfortable satisfaction standard is appropriate in this case. The charges in this case are not as serious as the charges of blackmail and extortion in *Balackhnichev, Melnikov, Dollé and Massata Diack*. Of the two alternative standards of proof argued for, the Panel prefers the Prosecutor's argument that the standard of comfortable satisfaction should apply. It was not suggested by either party that a mere balance of probabilities should apply to any of the charges and accordingly this did not fall to be considered. However, on some charges, significant parts of the factual basis of the charge were admitted (for example, as set out below, it was admitted that certain specific gifts were given, but disputed whether those gifts were of more than nominal value). The Panel expresses no concluded view whether a case in which the giving of a gift, said to be of more than nominal value and falling under Article D2(26), not Article C5(21), is factually disputed, would require to be proved on any more than a balance of probabilities under Rule 11(7) and observes that this may be fact-sensitive.

#### **Issues for determination**

41. The Panel considers that the following issues arise for determination:
- a. Did Mr Al Kamali make gifts of watches to delegates at the Confederation Africaine d' Athlétisme (the "CAA") Congress in Addis Ababa in March 2015?
  - b. If yes, were those watches Rolex watches and/or Continental watches branded with the UAE Athletics federation logo?
  - c. At the time of the CAA Congress in Addis Ababa in March 2015, was Mr Al Kamali a candidate for an elected IAAF position within the meaning of Article C5(21) of the Ethics Code in force at that time?

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<sup>40</sup> *Aleksandr Zubkov v IOC*, CAS 2017/A/5422, §§673-674.

- d. If Continental watches branded with the UAE Athletics federation logo were given, did they constitute gifts of “nominal value” within the meaning of Article D2(26) of the Ethics Code in force at the time?
- e. If it is found that Mr Al Kamali did make gifts of watches at the CAA Congress in Addis Ababa in March 2015, was his conduct in that regard likely adversely to affect the reputation of the IAAF, or the sport of Athletics generally in breach of Article C1(11) of the Ethics Code in force at that time?
- f. If it is found that Mr Al Kamali did make gifts of watches at the CAA Congress in Addis Ababa in March 2015, and he was at the time a candidate for office, was his conduct in making gifts of watches inconsistent with the requirement that candidates act with honesty, dignity and respect for their opponents?
- g. If any breach of the Ethics Code is found to have taken place, what is the appropriate sanction?

**Did Mr Al Kamali make gifts of watches to delegates at the CAA Congress in Addis Ababa in March 2015?**

42. Mr Al Kamali admitted giving gifts of watches to delegates at the CAA Congress in Addis Ababa in March 2015. He told the Investigator by email:

*“...[D]uring the African Athletics Association Congress in Addis Ababa, I have offered corporate gestures on behalf of the UAE Athletic Federation with the logo of the UAE AF imprinted therein. The corporate gift offered to delegate [sic] was in line with the applicable rules and regulations at that time and mostly in line with the UAE traditions and habits of my country and region. We don't go anywhere without any gesture of any kind.*

*As a matter of fact, the corporate gift I have presented to delegates at the Addis Ababa Congress was a watch that was branded with the UAE AF logo and purchased locally from a distributor in the UAE. The retail value of the watch/corporate gift does not exceed 40 to 50 USD per watch therefore I cannot be confused with a gift such as a Rolex.”*

**If yes, were those watches Rolex watches and/or Continental watches branded with the UAE Athletics federation logo?**

43. Mr Al Kamali says that the watches he gave were Continental branded watches with the UAE Athletics Federation logo. He strongly denies giving Rolex watches to delegates at the CAA in March 2015.
44. This was directly contradicted by Mr Said Aouita. Mr Aouita's evidence was that, having travelled with Mr Al Kamali to the CAA Congress in Addis Ababa, Mr Al Kamali opened his hand luggage in the arrival lounge, and a couple of Continental watches fell out. Mr Aouita said that underneath those watches he saw a number of Rolex watches, and underneath them there were stacks of dollar and Euro bills. Mr Aouita understood, and Mr Al Kamali later confirmed to him, that Mr Al Kamali intended to give the watches as gifts to delegates at the conference in order to persuade them to support his candidacy for the position of Vice-President.
45. As to how the watches were distributed, Mr Aouita's evidence was that Ms Liesa Euton, who was then the Director of International Relations at the UAE Athletics Federation, and who provided assistance to Mr Al Kamali, had told Mr Aouita that she had arranged for the Rolex watches to be given to delegates by leaving them in their hotel rooms with notes to make it clear that the watches were given "with the compliments of Mr Al Kamali".
46. The Panel notes that Mr Aouita and Mr Al Kamali were once close friends but they no longer like or respect one another. Mr Aouita admitted that he strongly disliked Mr Al Kamali, and that he considered him to be "*a big cheater*" and "*a bad man*".<sup>41</sup> Mr Aouita and Mr Al Kamali had had a dispute about Mr Aouita's salary, and Mr Aouita had also accused Al Kamali of encouraging athletes to dope. Clearly, by 2018 when Mr Aouita made the allegations about the Rolexes (some three years after the CAA Congress) the relationship between them had well and truly broken down.
47. The Panel was troubled by the inconsistencies in Mr Aouita's evidence. He was not clear as to the size and shape of the watch boxes, describing them alternately as long, square, and round, and he was inconsistent about the number of boxes in the suitcase.
48. The Panel also notes that there is no evidence that Rolex watches were ever actually received by any delegates at the CAA conference. Direct evidence of bribery is often

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<sup>41</sup> Transcript Day 1, p58, line 25.

difficult to obtain absent powers of criminal investigation, as both bribers and bribees are generally aligned in their interest in concealing the bribery. However, there being no direct testimonial or documentary evidence in support of the allegation other than Mr Aouita's testimony that Ms Euton told him that she had arranged for the gifts to be distributed, this heightened the importance of the nature and quality of Mr Aouita's evidence. As set out above, that evidence was subject to a number of inconsistencies which limited the weight that could be placed upon it. The Panel notes that Mr Al Kamali did produce a document labelled "Delivery Note" dated 02/01/2015 which appears to be a receipt for the Continental watches.<sup>42</sup> The documentary record (including how this Delivery Note had been sent and came to be put in evidence) was unsatisfactory.

49. The Panel considers it unfortunate that Mr Al Kamali did not call Ms Euton to give evidence. Indeed, several times during his cross-examination Mr Al Kamali suggested that the questions which were being asked of him ought to be put to Ms Euton instead. For example, when Mr Al Kamali was asked why Ms Euton would have told Mr Aouita that she arranged for the Rolexes to be given out to delegates if this had not happened, Mr Al Kamali said "ask her".<sup>43</sup> In circumstances where Mr Al Kamali had declined to call her as a witness, this was an uncooperative and evasive way to respond.
50. The Panel also became aware, during the course of the hearing, that Ms Euton is now employed by Mr Al Kamali as his assistant. Indeed it became apparent that Ms Euton was present in the room with Mr Al Kamali while he was giving evidence (the Panel having given permission for Mr Al Kamali to call his assistant into the room to help him to navigate the electronic bundle).
51. The Prosecutor urged the Panel to draw an adverse inference from Mr Al Kamali's failure to call Ms Euton as a witness, particularly in circumstances where she was employed by Mr Al Kamali as his assistant and was present in his offices during the course of the hearing. Alternatively, the Prosecutor submitted that Mr Al Kamali's obviously deliberate decision not to call Ms Euton as a witness weighs in the balance in the Panel's overall evaluation of the evidence, relying upon the principle established by the CAS in the Shobukhova case (CAS 2016/A/4417) at paragraph 260, "*This is not to say the Appellants had an obligation – formally – to call those (possible) witnesses and/or that*

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<sup>42</sup> Hearing Bundle B, p176.

<sup>43</sup> Transcript Day 2: p32, line 20; p65, lines 14 & 20.

*the burden of proof should be reversed. But if a person, who does not have the burden of proof, makes certain factual assertions in his defence, it is not unreasonable to expect of that person that he makes some effort to try and substantiate such assertion. That may not be a (formal) obligation. But it has an effect in the overall consideration and weighing of the evidence.”*

52. Had the positive evidence against Mr Al Kamali been more broadly based, or the narrow basis of Mr Aouita’s evidence been more coherent and reliable, the Panel would have found the failure to call Ms Euton to have weighed significantly against Mr Al Kamali in its evaluation. However, the Panel does not consider that the evidential threshold has been met in respect of the allegation that Mr Al Kamali gave Rolex watches for the application of that principle to have materially affected the overall outcome in the Panel’s evidential evaluation.
53. The comfortable satisfaction standard requires the Panel to consider the evidence in light of the seriousness of the charges, the nature of the conduct, the importance of fighting corruption in sport, and the restricted powers of sports governing bodies compared to national investigative authorities (see paragraph 38 above).
54. Applying this standard, the Panel does not find Mr Aouita to have been a dishonest witness (and notes that Mr Aouita was testifying in a language which was not his mother tongue). The Panel’s general impression was that Mr Aouita was more likely than not seeking to assist the Panel to the best of his recollection. However, in view of the discrepancies and contradictions in his evidence, his avowed intense dislike of Mr Al Kamali, and the absence of corroborating evidence in relation to the Rolexes, the Panel is not “comfortably satisfied” that Mr Al Kamali gave gifts of Rolex watches to participants at the CAA Congress in Addis Ababa.

**At the time of the CAA Congress in Addis Ababa in March 2015 was Mr Al Kamali a candidate for an elected IAAF position within the meaning of Article C5(21) of the Ethics Code in force at that time?**

55. The Panel finds that, at the time of the CAA Congress in March 2015, Mr Al Kamali was a candidate for an elected IAAF position within the meaning of Article C5(21) of the Code of Ethics in force at that time.
56. The Investigator obtained a copy of a nomination form dated 29 March 2015 nominating Mr Al Kamali for the position of IAAF Council member. Although this form was dated

after the CAA Congress, in the Panel's view, the date of the form is not significant. The question is whether he had decided to stand at the time of the Congress, given that the elections were imminent, and whether it was known that he intended to do so.

57. Mr Al Kamali admitted to Ms White that by the time of the CAA Congress he was planning to stand for election to the IAAF Council at the elections in Beijing in August 2015 and that he had discussed this decision with his colleagues in the UAE Athletics Federation.<sup>44</sup> Although under cross examination, Mr Al Kamali denied that he had discussed his candidature with the General Secretary towards the end of 2014,<sup>45</sup> the Panel found this denial to be implausible, given Mr Al Kamali's own admission to the contrary in his email to Ms White.
58. In addition, at least one of the delegates to the CAA Congress suggested that they knew Mr Al Kamali was a candidate for election to the IAAF Council when he attended the CAA Congress in Addis Ababa.<sup>46</sup>
59. The Panel notes that if the term "candidate" in Article C5(21) of the Code were interpreted as requiring a nomination form to have actually been submitted, or alternatively to have been accepted by the IAAF, this would lead to undesirable consequences. It would be possible, for example, for a person who had decided to stand for election, but who had not yet submitted their nomination form, to act without the requisite honesty, dignity and integrity in such a way as to influence prospective voters, without being subject to the same constraints as other candidates in the same election who happened to have submitted their nomination forms at an earlier time.
60. While there may be some doubt as to whether a person can be considered a "candidate" within the meaning of C5(21) of the Code of Ethics when their nomination form has not been submitted and the elections in question are somewhere on the more distant horizon, that is not this case. In this case the decision to stand for election had been taken, it had been discussed with colleagues and appears to have been public knowledge, the elections were reasonably proximate, and the nomination form was in fact submitted just a few weeks later. On the facts on the record in this case, Mr Al

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<sup>44</sup> See Hearing Bundle B, p52.

<sup>45</sup> See Transcript, Day 2, p53, lines 14 - 16.

<sup>46</sup> Mr Aboud Said, see the Investigator's Report, Hearing Bundle A, p61 ("I remember he was in Addis. I remember some candidates, not only him") and p62 ("He was an IAAF member. He was there to be re-elected to the same position.")

Kamali was a “candidate” within the meaning of this provision at the time of the CAA Congress, and it was in his capacity as a candidate that he attended the Congress and sought to lobby other delegates to vote for him.

61. The question whether Mr Al Kamali was a candidate for Vice President of the IAAF at that time is more difficult. Mr Al Kamali strongly denies that he ever intended to stand for election as one of the four Vice-Presidents of the IAAF Council. His evidence before the Panel was that he had not discussed standing as a candidate for Vice President with anybody and that it was never his intention.<sup>47</sup>
62. On the other hand, Mr Aouita’s evidence was that Mr Al Kamali told him on the flight to Addis Ababa in March 2015 that he (Mr Al Kamali) intended to stand as a candidate for Vice-President in August 2015.
63. It is not necessary for the Panel to determine for the purposes of this charge whether Mr Al Kamali intended to stand for the position of Vice President in March 2015. The relevant provision of the Code of Ethics applies to candidates for *any* elected position in the IAAF. Given that the Panel has determined that, at the time of the CAA Congress, Mr Al Kamali was a “candidate” within the meaning of C5(21) for IAAF office, it does not matter whether he was seeking election as an IAAF Council Member or as a Vice President.

**If Continental watches branded with the UAE Athletics federation logo were given, did they constitute gifts of “nominal value” within the meaning of Article D2(26) of the Ethics Code in force at the time?**

64. Mr Al Kamali admits that he gave Continental watches branded with the UAE Athletics Federation logo to delegates at the CAA Congress.
65. The Panel finds that the Continental watches were gifts of more than “nominal value” within the meaning of Article D2(26) of the relevant Code of Ethics.
66. The Panel is conscious that Article D2(26) needs to strike a balance between the need to accommodate cultural traditions of gift giving with the institutional imperative of avoiding any perception that gifts are given to win favours. In view of that institutional imperative, and the need to protect the reputation and integrity of the sport, the Panel

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<sup>47</sup> Transcript Day 2: pp43-45, 54-56, 65.

considers that “nominal value” must be set at a low threshold, such as, by reference to examples given in this case, small boxes of sweets or dates, simple branded pens or notepads, or other similar items. It is not necessary or desirable to set a precise threshold because the assessment of what is “nominal value” is likely to be multifactorial. Relevant considerations may include:

- a. The purchase price;
- b. The actual value of the item;
- c. The actual value of the item to the particular recipient or proposed recipient;
- d. The perceived value of the item, in general or to the particular recipient or proposed recipient; and
- e. The context in which the gift is given.

67. Mr Al Kamali claimed that the Continental watches were purchased for around USD 40 each. The Investigator found the same or very similar watches online for sale at around £145, marked down to £86. Mr Al Kamali’s legal representatives strongly disputed that the watches found by the Investigator were the same as those given by Mr Al Kamali.
68. The Panel does not consider it necessary to resolve this question. Whether the watches were for sale at USD 40, £86 or £145, the Panel finds that they were gifts of more than merely nominal value. They are not akin to a box of sweets or dates. They are gifts of a type which are in principle capable of influencing or being seen as improperly influencing another person. They therefore contravene the prohibition in Article D2(26) of the Code.

**If it is found that Mr Al Kamali did make gifts of watches at the CAA Congress in Addis Ababa in March 2015, and he was at the time a candidate for office, was his conduct in making gifts of watches inconsistent with the requirement that candidates act with honesty, dignity and respect for their opponents in breach of Article C5(21)?**

69. The Panel finds that Mr Al Kamali’s conduct in giving gifts of Continental watches was inconsistent with the requirement that candidates act with honesty, dignity and respect for their opponents and the prohibition against giving of gifts to parties who would vote in or otherwise influence the result of the IAAF election in Beijing in August 2015.

70. The Panel notes that Mr Al Kamali has already been found to have violated the prohibition on giving gifts of more than nominal value, and that those gifts were given to electors or potential electors in the context of an election in which Mr Al Kamali was a candidate for IAAF office. The giving of the Continental watches as gifts was not consistent with the dignity and respect for opponents which is required of candidates for IAAF office.
71. The Panel emphasises that candidates for elected office should act conscientiously in accordance with the Code of Ethics at all time. Candidates for elected office in the IAAF are seeking to serve as leaders of the IAAF (now World Athletics) and as representatives of the sport of athletics as a whole. Their conduct must be unimpeachable.
72. The Panel therefore finds that Mr Al Kamali breached Article C5(21).

**If it is found that Mr Al Kamali did make gifts of watches at the CAA Congress in Addis Ababa in March 2015, was his conduct in that regard likely to affect adversely the reputation of the IAAF, or the sport of Athletics generally, in breach of Article C1(11) of the Ethics Code in force at that time?**

73. There was no specific evidence before the Panel that the reputation of the IAAF or the sport of Athletics generally had been adversely affected by Mr Al Kamali's conduct, although of course the duty is not to act in a way which is likely so to adversely affect the reputation of the IAAF or the sport. However, this was not a matter which was pressed in submissions by either the Prosecutor or by Mr Al Kamali's counsel. Furthermore, the Panel notes that not every finding of a violation of the Code of Ethics will necessarily entail a finding of breach of Article C1(11).
74. A gift of Rolexes to delegates in an effort to influence their votes in an election for IAAF Council positions would certainly, if established, constitute conduct, and a breach of the Code, likely adversely to affect the reputation of the IAAF. The gift of Continental watches is by comparison a less serious offence. In all the circumstances, having analysed and upheld breaches under Articles C5(21) and D2(26) on the facts found, the Panel does not consider it is necessary separately to analyse the facts as a breach of Article C1(11).

### Appropriate sanction

75. Having found the charges partially upheld, it remains for the Panel to determine the appropriate sanction.
76. The range of sanctions open to the Board to impose under the Code are set out at Section D17 of the Statutes of the Ethics Board as follows:
  - a. Issuing a caution or censure;
  - b. Ordering payment of a fine;
  - c. Suspension (with or without conditions) or expulsion from any relevant office held;
  - d. Suspension or prohibition from taking part in any Athletics-related activity, including Events and Competitions;
  - e. Removing any award or other honour bestowed by the IAAF;
  - f. Imposing any sanctions as may be set out in specific Rules; or
  - g. Imposing any other sanction that the Panel may deem to be appropriate, including community service within athletics and/or restitution.
77. The Panel notes that Mr Al Kamali has been found to have violated the Code of Ethics by his conduct, as an elected IAAF Official, in giving gifts of more than nominal value and in failing to act with dignity and respect for his opponents as a candidate for IAAF office. The purpose of the prohibition on giving valuable gifts is to maintain the integrity and impartiality of IAAF officials and of the IAAF as an institution. The public perception of integrity and impartiality is also important in this regard. This imperative is only heightened when a gift is given at the time when an individual is a candidate for elected office in the sport. Athletics requires conduct which is not only clean but clearly perceived to be clean both on and off the track.
78. Accordingly, the Panel considers it appropriate to impose a 6 month ban upon Mr Al Kamali from taking part in any athletics-related activity including holding any relevant office in athletics (whether at national, regional or world level). The Panel imposes this sanction with effect from the date of this decision.
79. In addition, the Panel determines that Mr Al Kamali shall be required to pay a fine to World Athletics in the sum of €5000.

## Costs

80. Rule 16(2) provides:

If the Panel has determined that there has been [a] violation of the Code of Ethics, the procedural costs shall be borne by the party that has been sanctioned. The procedural costs imposed on the sanctioned party may be reduced or waived in exceptional circumstances in particular taking into account the parties' financial circumstances.

81. The Panel has found that Mr Al Kamali has violated the Code of Ethics. The general rule is that the party that has been sanctioned should bear the costs of the proceedings.

82. Mr Al Kamali has not identified any exceptional circumstances such as would warrant the costs being reduced or waived. However, the total procedural costs incurred by the Ethics Board were necessarily substantial and the Panel does not consider that Mr Al Kamali should be required to pay the full procedural costs in circumstances where not all of the charges against him have been upheld. In the circumstances, the Panel has decided that Mr Al Kamali should make a contribution to the procedural costs of the Ethics Board in the sum of €15,000.

## Right of appeal

83. There is a right of appeal against this decision to the Court of Arbitration for Sport, within 21 days of the date of this decision, in accordance with the procedure set out in rule R47 et seq. of the CAS Code of Sports-related arbitration (<https://www.tas-cas.org/en/arbitration/code-procedural-rules.html>).

## **Signed:**

Ms Catherine O'Regan (Chairperson of the Panel)

Ms Maidie Oliveau

Mr Juan Pablo Arriagada

**15 December 2020**