CAS 2019/A/6665 Ricardo Terra Teixeira v. Fédération Internationale de Football Association

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President:	Mr Hendrik Willem Kesler, Attorney-at-law, Enschede, The Netherlands
Arbitrators:	Mr Rauf Soulio, Judge, Adelaide, Australia
	Prof. Luigi Fumagalli, Attorney-at-law, Milan, Italy
Clerk:	Ms Stéphanie De Dycker, Attorney-at-Law, Lausanne, Switzerland

in the arbitration between

Ricardo Terra Teixeira, Rio de Janeiro, Brazil

Represented by Mr Michel Asseff Filho, Attorney-at-law at Asseff Zonenschein Advogados, Rio de Janeiro, Brazil

- Appellant -

and

Fédération Internationale de Football Association, Zurich, Switzerland

Represented by Mr Miguel Liétard Fernandez-Palacios, Director of Litigation at FIFA and Mr Jaime Contreras Cambreleng, Head of Litigation at FIFA

- Respondent -

I. PARTIES

1. Mr Ricardo Terra Teixeira, Brazilian national, is a former high-ranking football official (the "Appellant"). He was the president of the *Confederação Brasileira de Futebol* ("CBF") from 1989 until 2012; member of the FIFA Executive Committee from 1994 until 2012 as well as of several standing committees of FIFA (Organizing Committee for the FIFA Confederations Cup, Organizing Committee for the FIFA World Cup, Referees Committee, Marketing and TV Committee, Futsal and Beach Soccer Committee, Ethics Committee and Committee for Club Football); and member of the Executive Committee of the *Confederación Sudamericana de Fútbol* ("CONMEBOL").

2. The *Fédération Internationale de Football Association* ("FIFA" or the "Respondent") is the international governing body of football. FIFA is an association under the Swiss Civil Code with its headquarters in Zurich, Switzerland.

II. FACTUAL BACKGROUND

3. Below is a summary of the main relevant facts and allegations based on the Parties' submissions and allegations. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.

A. Background of the dispute

4. On 27 May 2015, the United States Department of Justice ("DOJ") issued a press release in relation to an indictment issued by the United States District Court, Eastern District of New York (the "Indictment"). In the Indictment, the DOJ charged several international football executives with "*racketeering, wire fraud, and money laundering conspiracies, among other offenses, in connection with their participation in a twenty-four-year scheme to enrich themselves through the corruption of international soccer*". The Indictment was followed by the arrest of several persons accused therein, in Europe and elsewhere.

5. In a superseding indictment by the United States District Court dated 25 November 2015 (the "Superseding Indictment"), additional football officials were included in the list of defendants charged with criminal offences in relation to the scheme described in the Indictment, including the Appellant. According to the Superseding Indictment, the Appellant was charged with the following counts:

- Count 1: Racketeering conspiracy;
- Count 2: Wire fraud conspiracy: CONMEBOL Copa Libertadores Scheme 2;
- Count 10: Money laundering conspiracy: CONMEBOL Copa Libertadores Scheme 2;
- Count 11: Wire fraud conspiracy: CBF Copa do Brasil Scheme;
- Count 12: Money laundering conspiracy: CBF Copa do Brasil Scheme;
- Count 83: Wire fraud conspiracy: Copa America Centenario;

- Count 84: Money laundering conspiracy: Copa America Centenario.[1]

6. The main factual allegations of the Superseding Indictment with respect to the Appellant can be summarized as follows:

"CONMEBOL Copa Libertadores Scheme […]:
[…] Beginning in or about 1999 and continuing through 2015, T&T Sports Marketing Ltd ("T&T"), [a subsidiary company of "Torneos y Competencias S.A." ("Torneos")], acquired the exclusive worldwide broadcasting rights to each edition of the Copa Libertadores, and eventually to the Copa Sudamericana and Recopa Sudamericana, through a series of contracts between T&T and CONMEBOL. […] In or about 2005, Alejandro Burzaco acquired a minority ownership interest in Torneos and began to manage the day-to-day operations of the company. […] CONMEBOL and T&T entered into a number of contracts during the years after Alejandro Burzaco became an owner of Torneos through which T&T retained the broadcasting rights to subsequent editions of the Copa Libertadores, Copa Sudamericana, and Recopa Sudamericana. Each of those contracts required the support of CONMEBOL officials who were receiving bribes from Burzaco and other co-conspirators affiliated with T&T. […] At various times, […] RICARDO TEIXEIRA also solicited and received bribe and kickback payments from Alejandro Burzaco and Co-Conspirator […] in exchange for their support of T&T as holder of the rights to the Copa Libertadores, among other tournaments. […]

CONMEBOL/CONCACAF Copa America Centenario Scheme:

[…] In or about June 2010, CONMEBOL and [a company named Full Play Group, owned and controlled by two brothers, Mr Hugo Jinkis and Mr Mariano Jinkis ("Full Play")] entered into an agreement pursuant to which Full Play was designated CONMEBOL's exclusive agent for the commercialization of the media and marketing rights to the 2015, 2019, and 2023 editions of the Copa America, among other tournaments. Traffic International and Traffic USA, alleging that the agreement violated a contract signed in 2001 that gave Traffic the rights to the 2015 edition of the tournament and an option to retain those rights for the subsequent three editions, sued CONMEBOL, Full Play, and others […]. […] The lawsuit was settled in or about June 2013. […] In the months preceding the settlement, Jose Hawilla and other representatives of Traffic met with the defendants HUGO JINKIS and MARIANO JINKIS, as well as Alejandro Burzaco, to discuss a resolution of Traffic's lawsuit that would involve Full Play, Torneos, and Traffic jointly acquiring commercial rights to the Copa America in exchange for Traffic agreeing to end the lawsuit and assume its share of the costs associated with those rights. Specifically, the representatives of the three companies discussed forming a new company that would obtain and exploit the commercial rights to the 2015, 2019, and 2023 editions of the tournament, as well as to a special centennial edition of the tournament to be held in the United States in 2016. […] At a meeting in Buenos Aires, Argentina in or about March 2013 among Jose Hawilla, Alejandro Burzaco, and the defendants HUGO JINKIS and MARIANO JINKIS, Hawilla was told that Full Play and Torneos had agreed to make bribe payments to CONMEBOL officials in connection with the Copa America rights, and had already made some of the bribe payments. Hawilla was asked to contribute $10 million toward the cost of expenses, including the bribes, to date. Hawilla agreed to make these bribe payments and subsequently caused them to be made. […] The creation of the new company, Datisa, was

[1] The paragraphs of the Superseding Indictment in which the Appellant is explicitly mentioned are the following: 53, 95, 104, 105, 108, 114, 120, 122, 123, 150, 183, 186, 189, 192, 194, 195, 197, 200, 348, 363, 364, 379, 381, 383, 385, 502 and 504.

formalized in a shareholders' agreement dated May 21, 2013. Among other things, the agreement provided that Traffic, Torneos, and Full Play each held a one-third interest in the company. […] Four days later, in London, England, Datisa entered into a contract with CONMEBOL and Full Play whereby Datisa obtained from CONMEBOL the exclusive worldwide commercial rights to the 2015, 2019, and 2023 editions of the Copa America.

CBF Copa do Brasil Scheme:
Between in or about 1990 and 2009, Traffic entered into a series of contracts with CBF, the Brazilian soccer federation, to acquire the commercial rights associated with the Copa do Brasil, an annual tournament for Brazil's top club teams. During the course of this period, the defendant RICARDO TEIXEIRA - the long-time president of CBF and member of the FIFA executive committee - solicited and received bribes from Jose Hawilla in connection with the sale of the Copa do Brasil media rights. […] As a result of an agreement reached between CBF and Traffic on or about January 22, 2009, Traffic Brazil owned the rights to each edition of the Copa do Brasil to be played from 2009 through 2014. […] On or about December 8, 2011[…] a Traffic competitor [named Klefer and owned by Mr Leite] entered into a contract with CBF to purchase the commercial rights for all editions of the Copa do Brasil between 2015 and 2022. […] In order to obtain the contract from CBF, [Mr Leite] agreed to pay an annual bribe to the defendant RICARDO TEIXEIRA, as Jose Hawilla had done in the past. […] The signing of the foregoing contract between [Klefer] and CBF led to a dispute between [Mr Leite] and Jose Hawilla […]. On or about August 15, 2012, to resolve this dispute, Traffic Brazil and [Klefer] entered into a contract to pool their marketing rights for future editions of the Copa do Brasil, from 2013 to 2022, and to share equally in the profits. As part of the contract, Traffic Brazil also agreed to pay 12 million Brazilian reais [Klefer] over the course of the contract. As of August 15, 2012, 12 million reais equated to approximately $5.9 million. […] [Mr Leite] advised Jose Hawilla of the bribe payments he had agreed to make to the defendant RICARDO TEIXEIRA. [Mr Leite] further advised Hawilla that the bribe payment he had originally negotiated with the defendant RICARDO TEIXEIRA had increased when other CBF officials, the defendants JOSE MARIA MARIN (who became the president of CBF in or about 2012) and MARCO POLO DEL NERO (who was elected by CBF in 2014 to take over as MARIN's successor in 2015), requested bribe payments as well. Hawilla agreed to pay half the cost of the bribe payments, which totaled 2 million Brazilian reais per year, to be distributed among TEIXEIRA, MARIN, and DEL NERO. As of August 15, 2012, 2 million reais equated to approximately $988,000. […]"

7. Following the indictments of Mr Napout, Mr Burga and Mr Marin, a jury trial was held in the United States District Court throughout November and December 2017 (the "Trial"). All three defendants were charged with racketeering conspiracy while Mr Napout and Mr Marin were also charged with wire fraud and money laundering conspiracy. During the Trial, several witnesses were heard and various documentary evidence was presented. On 22 December 2017, the jury found Mr Napout and Mr Marin guilty of most of the charged crimes.

B. Investigation by the Investigatory Chamber of the FIFA Ethics Committee

8. Based on the Indictment of the aforementioned officials and the Appellant's alleged involvement in the schemes, the Chairman of the Investigatory Chamber of the FIFA Ethics Committee decided to start investigation proceedings against the Appellant. On 4 December 2015, the Appellant was notified that investigation proceedings had been opened against him in relation to possible violations of various provisions of the FIFA

Code of Ethics (the "FCE").

9. On 28 May 2019, the appointed chief of investigation, Ms Janet Katisya, informed the Appellant that the investigation proceedings had been concluded and that a final report (the "Final Report") would be submitted to the Chairperson of the Adjudicatory Chamber of the FIFA Ethics Committee.

10. The findings of the Investigatory Chamber in the Final Report can be summarized as follows:

"[…]
FACTUAL FINDINGS
[…]
3.1. Role of Mr Teixeira within the association football

[…] Taking account all the above-mentioned evidence, it can be concluded that Mr Teixeira was a one-man show in the business affairs at CBF, while deciding solely the future of this member association football. In addition, as established above, Mr Teixeira, along with other CONMEBOL officials (Mr Grondona and Mr Leoz), were the trio power force of South American football. All the strategic decision had to go through them. As it will be established below, Mr Teixeira, along with other CONMEBOL officials, would come to use their power and influence to unlawfully enrich himself.

3.2. CONMEBOL Copa Libertadores

[…] In view of the foregoing and of all the evidence gathered, the investigatory chamber establishes, to its comfortable satisfaction, that:
- As of 2006, Mr Teixeira start demanding to T&T annual bribe payments in exchange for his support of said company, in particular to the contracts that were in place between CONMEBOL and T&T in respect of Copa Libertadores;
- The payments started to be made as from 2006 until 2012 and Mr Teixeira would receive USD 600,000 per year;
- The majority of those payments were made via offshore companies and black market brokers in order to conceal the identity of Mr Teixeira;
- Mr Marguiles, the intermediary that used accounts in the names of offshore corporations to make payments on behalf of marketing companies such as T&T or Traffic, destroyed most of the documents evidenced those transfers;
- Mr Marco Antonio was involved in this scheme as confirmed by Mr Marguiles and Mr Burzaco; and
- Mr Teixeira accepted at least a total bribe payment in the amount of USD 4.2 M in connection with Copa Libertadores contracts.

Accordingly, the investigatory chamber concludes that Mr Teixeira accepted the following bribe payments in connection with the contracts for Copa Libertadores tournament:
- USD 600,000, in 2006
- USD 600,000, in 2007
- USD 600,000, in 2008
- USD 600,000, in 2009

- USD 600,000, in 2010
- USD 600,000, in 2011
- USD 600,000, in 2012
[…]

3.3. CONMEBOL / CONCACAF Copa America

[…] Based on the evidence in possession of the investigatory chamber, the sequence of events and facts seem to be, to the largest extent, established. Based on this, the investigatory chamber is convinced that Mr Teixeira has been offered and accepted the payment of bribes in connection with contracts for the Copa America. The available evidence corroborates and includes convincing testimonies, specific information and documents written long before the indictments. Accordingly, the investigatory chamber takes the following conclusions:
- For the signature of the Datisa Agreement: a bribe of USD 1,000,000 has been offered and accepted to Mr Teixeira. […]

3.4. CBF Copa do Brasil

[…] The sequence of events and facts described by the Mr Hawilla were confirmed by the relevant documentary evidence and recordings that bribes in connection with the contract for Copa do Brasil tournament were being offered to and accepted by Mr Teixeira.
In this context, Mr Teixeira, together with Mr Marin and Mr Del Nero, solicited and agreed to receive bribes in the amount of BRL 2,000,000 per year provided by Klefer in connection with Copa do Brasil contracts entered into between CBF, Klefer Group and Traffic for 2013 to 2022 editions of said event.[…]

LEGAL DISCUSSION

[…] For a violation of the prohibition of bribery and corruption pursuant to art. 21 par. 1 of the FCE 2012 to occur, the following requirements must be cumulatively met in this case:
1. Persons bound by the FCE;
2. Offering, promising, giving or accepting;
3. A personal or undue pecuniary or other advantage;
4. To or from anyone within or outside FIFA; and
5. In order to obtain or retain business or any other improper advantage.

All the above mentioned elements in respect of the charge of bribery are to be analysed in the context of the bribes being solicited, offered, promised and/or accepted by Mr Teixeira from Mr Burzaco and/or T&T (or any subsidiaries or shelf companies), Traffic, Klefer in the total amount of several millions of USD in connection with Copa Libertadores, Copa America and Copa do Brasil. […]

In conclusion of the above, all the above mentioned requirements in respect of the charge of bribery are met in connection with Copa Libertadores, Copa America and Copa do Brasil schemes and as a result Mr Teixeira has breached art. 21 of the FCE 2012. […]

As established above, Mr Teixeira institutionalized bribery in awarding contracts in CONMEBOL and in CBF with that, he damaged the integrity of football. As detailed above, Mr Teixeira committed various acts of misconduct continuously and repeatedly during his term as an official in different high-ranked and influential positions at CBF, CONMEBOL and FIFA. He did so in violation of the specific FCE 2012 sections cited in the report (art. 13, art. 15, art. 19, art. 20 and art. 21 of the FCE 2012).[…]"

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

11. On 29 May 2019, the Chairperson of the Adjudicatory Chamber of the FIFA Ethics Committee (the "FIFA EC") opened adjudicatory proceedings against the Appellant. The Appellant was also provided with a copy of the Final Report and its enclosures, and informed of the deadlines within which he would have to provide his position on the Final Report and to request a hearing.

12. By letter dated 6 June 2019, the Appellant's legal representatives requested a hearing and an extension of the time limit to provide his position.

13. By letter of the same day, the Appellant was informed that his request for a hearing as well as his request for an extension of the time limit to provide his position were granted.

14. On 20 June 2019, the Appellant was informed that a hearing would take place on 26 July 2019 at the FIFA headquarters in Zurich, Switzerland.

15. By letter dated 28 June 2019, the Appellant provided his statement of defence.

16. On 8 July 2019, the Appellant was informed that some exhibits to his statement of defence had not been enclosed. On 13 July 2019, the Appellant provided the abovementioned enclosures.

17. By letter dated 23 July 2019, the Appellant's legal representatives informed that, in view of the Appellant's "*delicate health*", the Appellant was not in state to testify at the hearing and requested the postponement of the hearing.

18. On 24 July 2019, the Appellant was informed that his request to postpone the hearing was dismissed in view of the organizational issues that such postponement would cause, but that he would be allowed to be represented by his legal representatives at the hearing.

19. On 26 July 2019, a hearing before the Adjudicatory Chamber was held at the headquarters of FIFA in Zurich, Switzerland. The Appellant did not attend the hearing, but was represented by his legal representatives.

20. On 26 July 2019, the FIFA EC decided (the "Appealed Decision") as follows:

"1. Mr Ricardo Teixeira is found guilty of infringement of art. 27 (Bribery) of the FIFA Code of Ethics.

2. Mr Ricardo Teixeira is hereby banned for life from taking part in any kind of football related activity at national and international level (administrative, sports or any other) as of notification of the present decision, in accordance with article 7 lit. j) of the FIFA

Code of Ethics in conjunction with art. 6 par. 2 lit. c) of the FIFA Disciplinary Code.

3. Mr Ricardo Teixeira shall pay a fine in the amount of CHF 1'000'000 within 30 days of notification o the present decision. […]

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

5. Mr Ricardo Teixeira shall bear his own legal and other costs incurred in connection with the present proceedings.

6. This decision is sent to Mr Ricardo Teixeira. A copy of the decision is sent to the CONMEBOL and to CBF. A copy of the decision is also sent to the chief of investigation, Ms Janet Katisya."

21. The reasoning of the Appealed Decision in the present matter can be summarized as follows:

"*[…] The adjudicatory chamber notes that the relevant conduct has been committed in the period 2006 – 2012 (according to the Indictment, the Superseding Indictment and the other various evidence mentioned in the final report), as will be presented in the following section, at a time when Mr Teixeira was a member of various FIFA committees (cf. par. I.1 above). […] Consequently, the FIFA Ethics Committee is entitled to judge his conduct as per art. 30 par. 1 of the FCE. […]*

D. Assessment of potential violations of the FCE committed by Mr Texeira

a.) Possible violation of art. 27 FCE (Bribery)

1. Relevant facts

[…]

A. CONMEBOL Copa Libertadores […]

From around 1999 to 2015, the broadcasting company "T&T Sports Marketing Ltd." (hereinafter "T&T"), a subsidiary of a production company named "Torneos y Competencias S.A." (hereinafter "Torneos"), held – by virtue of several contracts with CONMEBOL – the exclusive worldwide broadcasting rights for the Copa Liber-tadores, the Copa Sudamericana and the Recopa Sudamericana editions between 2000 and 2020. In or about 2005, Mr Alejandro Burzaco acquired an ownership share in Torneos and took care of the day-to-day operations.

[…] The agreements between T&T and CONMEBOL were made through various contracts, contract amendments and extensions that were supported, approved and, some of them, even signed by Mr Teixeira, in his capacity as member of the CONEMBOL Executive Committee (and president of CBF).

[…] In particular, Mr Burzaco testified the following course of events:

- *A bribe payment of USD 600,000 per year was paid to Mr Teixeira in exchange for his support to T&T contract in respect of Copa Libertadores;*
- *As to how Mr Teixeira would receive said bribe payment, Mr Burzaco stated "Riccardo Teixeira had very unusual and weird banking, or financial houses instructions";[…]*

[…] Mr Burzaco, Mr Eladio Rodriguez […] and Mr Jose Hawilla […] confirmed the relevant payment in their testimonies given as part of the US DOJ proceedings. Furthermore, various documentary evidence (ledgers prepared by Mr Rodriguez, recordings, Mr Alexandre Silveira's interview) also attest the aforementioned payments which were made via offshore companies and black market brokers in order to conceal Mr Texeira's identity.

[…] In conclusion, for the scheme in relation to the Copa Libertadores, Mr Teixeira ac-cepted to receive a total amount of USD 4,200,000 from 2006 until 2012.

B. CONMEBOL / CONCACAF Copa America […]

In or around June 2010, a company named "Full Play Group" [Full Play] - owned and controlled by Mr Hugo Jinkis and Mr Mariano Jinkis - entered into an agreement with CONMEBOL, at a time when Mr Texeira was a member of the Executive Committee of the confederation, and therefore approved such contract. According to this agreement, Full Play became the exclusive agent to commercialize the media and marketing rights for the 2015, 2019 and 2023 editions of the Copa América. When Traffic became aware of this agreement, they filed a lawsuit against CONMEBOL, CONMEBOL officials and Full Play in the United States. […] In order to settle this legal dispute, Traffic, Full Play and Torneos agreed to acquire the commercial rights for the Copa América jointly. To that end, they created the company "Datisa S.A." (hereinafter "Datisa") to formally engage with CONMEBOL. Datisa was established on 21 May 2013; Traffic, Full Play and Torneos each held a one-third interest in the company.

[…] Before that, in or around March 2013, Mr Burzaco (Torneos), Mr Hugo Jinkis and Mr Mariano Jinkis (Full Play) and Mr Hawilla (Traffic) met in Buenos Aires. At that meeting, Mr Hawilla was informed by the other meeting participants that Full Play and Torneos had agreed to make regular bribe payments to CONMEBOL officials in connection with the Copa América rights. Consequently, Traffic was asked to con-tribute USD 10 million towards the costs (which included the bribes) which had in-curred to that date, to which Mr Hawilla agreed. Traffic paid the relevant sum as follows: On 17 June 2013, Traffic transferred USD 5 million to a company called "Cross Trading", an affiliate of Full Play. Also on 17 June 2013, Traffic wired USD 5 million to a company named "FPT Sports", an affiliate of Torneos. The respective payments were made under the guise of fictitious "advisory agreements" between these companies.

[…]

Mr Burzaco testified the following:

- *Around April/May of 2010 Mr Hugo Jinkis, owner of Full Play, requested Mr Bur-zaco "to obtain Nicholas Leoz, Julio Grondona and Riccardo Teixeira's support to terminate the Traffic contract and to get the long-term contract with Full Play";*
- *The proposal of Full Play to terminate the contract with Traffic involved a payment of a bribe by said company to Mr Teixeira of USD 3 million per Copa America edition, being USD 1 million paid at the signature of the contract and the remaining (USD 2 million) before the first Copa America took place;*
- *An agency agreement was signed in 2010 between Full Play and CONMEBOL, where Full Play represented CONMEBOL, selling sponsorship and selling TV rights, offering CONMEBOL a minimum guarantee and sharing in a larger pro-*

portion to CONMEBOL, and in a small proportion to the agent, the revenues above that minimum guarantee;

- *The payment of USD 1 million bribe payment to be made to Mr Teixeira due to the signature of the agency agreement was delayed until 2011. Indeed, Mr Burzaco received "instructions from Riccardo Teixeira and from Julio Grondona to get that $1 million paid to Julio Grondona instead of to Riccardo Teixeira"; […]*
- *Again, under the Datisa contract, bribe payments were agreed to be paid to Mr Teixeira, Mr Del Nero and Mr Marin as follows: USD 3 million for the Copa America 2015 edition. Then Mr Del Nero and Mr Marin would receive USD 3 million for the signature of the contract and USD 3 million for the remaining Copa America edition (2016, 2019, 2023);*

[…]

In conclusion, Mr Teixeira has been offered and accepted the payment of bribes in connection with contracts for the Copa America. In particular, he was offered and accepted a bribe payment of USD 1 million in relation to the initial contract between CONEMBOL and Full Play signed in 2010 also by Mr Teixeira. According to Mr Burzaco, this amount was paid in 2011 to Mr Grondona, upon Mr Teixeira's instructions (to offset a debt Mr Teixeira allegedly had towards the former).

C. CBF Copa do Brasil […]

[…] From around 1990 to 2009, CBF had assigned the commercial rights in relation to the CBF Copa do Brasil to Mr Hawilla's company Traffic. On 8 December 2011, however, a competitor of Traffic named "Klefer Produções Ltda." (hereinafter "Klefer"), owned by Mr Kleber Leite, concluded a contract with CBF to purchase the commer-cial rights for the editions of the CBF Copa do Brasil from 2015 to 2022.

[…] The contract between CBF and Klefer led to a dispute between Mr Leite (Klefer) and Mr Hawilla (Traffic). In order to settle this dispute, Traffic and Klefer entered, in August 2012, into an agreement to pool their marketing rights for future editions of the Copa do Brasil (i.e. from 2013 to 2022) and to share the profits equally.

[…] In this context, around one month later, Mr Leite informed Mr Hawilla of the bribe payments he used to pay to Mr Teixeira. In this context, Mr Leite mentioned that he had to increase the bribe when Mr Marin and Mr Del Nero took over Mr Texeira's position and requested bribe payments as well, in addition to the one that were being paid to Mr Teixeira. Mr Hawilla agreed to pay 50% of the bribe, i.e. BRL 2 million per year (at that time, approx. USD 988,000), amount which was distributed among Mr Teixeira, Mr Marin, and Mr Del Nero.

[…] The following recordings/text messages/e-mails were produced in front of the US court:

- *Phone conversation between Mr Leite and Mr Hawilla that was held on 24 March 2014. Those recordings evidence the secrecy of the bribe payments […].*

[…]

- *Phone conversation between Mr Hawilla and Mr Leite on 28 March 2014. Mr Leite referred that he had a moral commitment of paying a bribe to Mr Teixeira and that "an equation was created to include more people", which Mr Hawilla confirmed*

that those people were now three, Mr Teixeira, Mr Marin and Mr Del Nero. Finally, in said recording Mr Leite stated that "I have my own in my safe and from my handwriting not done by any fucking machine or anyone else. I wrote it myself", which Mr Hawilla confirmed that Mr Leite has written "on a piece of paper and put it in his save the non-official commitments that he made".

[…]

- *Phone conversation between Mr Leite and Mr Hawilla on 2 April 2014. In said recording, Mr Leite and Mr Hawilla are discussing about the payments in connection with the Copa do Brasil contract. […]*

In conclusion, Mr Teixeira, together with Mr Marin and Mr Del Nero, solicited and agreed to receive bribes provided by Klefer in connection with Copa do Brasil contracts entered into between CBF, Klefer Group and Traffic for 2013 to 2022 editions of said event, for an amount of BRL 2 million per year for the period 2013-2022, for a total of BRL 20 million. Of that amount, Mr Teixeira's share was BRL 1 million per year, for a total of BRL 10 million (approximately USD 2,5 million) for the respective period.

3. Legal Assessment

[…]

B. Persons involved

The first two elements set out in art. 27 par. 1 FCE are that (i) the person acting must be bound by the FCE and (ii) the counterpart must be a person within or outside FIFA. As has already been shown (cf. par. II.4 above), Mr Teixeira was an official bound by the FCE at the relevant time. As he solicited and accepted the kickbacks from different third parties (including Messrs Burzaco, Hawilla, and Leite, as well as their respective companies), the counterpart condition is also fulfilled in casu. […]

C. Accepting, giving offering, promising, receiving, requesting or soliciting an advantage

For a violation of art. 27 par. 1 of the FCE to occur, an undue pecuniary or other advantage (see par. II.60 et seqq. below) must be accepted, given, offered, promised, received, requested or solicited by the persons involved. Both the acceptance of an offer or a promise on the one hand and of the actual advantage on the other hand constitute acts of bribery and corruption. From a legal perspective, it is therefore not decisive if benefits were actually given (e.g. payments actually made) or received. The exchange of the promise or of the advantage itself does not necessarily have to occur between the offeror and the offeree themselves. […]

<u>CONMEBOL Copa Libertadores</u>

[…] In the adjudicatory chamber's view, there is sufficient evidence that in connection with the CONMEBOL Copa Libertadores, Mr Teixeira accepted payments of USD 600,000 per year between 2006 and 2012. Among the supporting evidence are the witness testimonies of Mr Burzaco, Mr Rodriguez, Mr Hawilla and Mr Sil-veiro, the ledgers and payment sheets prepared by Mr Rodriguez, as well as record-ings and transcripts of phone conversations between Mr Marguiles (the intermediary that used accounts in the names of offshore corporations to make payments on behalf of marketing companies such as T&T or Traffic) and Mr Hawilla. […]

CONMEBOL/CONCACAF Copa América

[…] In the adjudicatory chamber's view, there is equally sufficient evidence that in connection with the CONMEBOL/CONCACAF Copa América, Mr Teixeira accepted a payment of USD 1 million for the signing of the contract between CONMEBOL and Full Play in 2010. […]

CBF Copa do Brasil

[…] Finally, also for the CBF Copa do Brasil, there is sufficient evidence, in the adjudicatory chamber's view, that Mr Teixeira accepted to receive the payments of BRL 2 million per year, shared with two other officials (Mr Marin and Mr Del Nero), of which his share was BRL 1 million per year, for the period 2012-2022, for a total of BRL 10 million (approximately USD 2,5 million).[…]

In view of the above, the adjudicatory chamber concludes that Mr Teixeira systematically / repeatedly accepted the offers and promises of various bribes of approximately USD 7,7 million in total, in relation to the aforementioned three tournaments (CONMEBOL Copa Libertadores, CONMEBOL/CONCACAF Copa América and CBF Copa do Brasil).[…] Accordingly, the relevant requirement of art. 27 par. 1 of the FCE (regarding the acceptance, receipt, or acceptance of an advantage) is met in the present case.[…]

D. Personal or undue pecuniary or other advantage

[…]

Without any doubt, the various bribes offered, accepted and/or received by Mr Teixeira gave him a pecuniary advantage within the meaning of art. 27 par. 1 of the FCE. […]

The pecuniary advantages described previously […] were all offered, accepted or paid to Mr Teixeira personally, and therefore represent personal benefits. […] The adjudicatory chamber notes that in the present case, there are no indications whatsoever of any legal or (proper) contractual basis for the abovementioned payments, and offers and promises of payments, to Mr Teixeira. In fact, the witnesses and other evidence even expressly confirmed that they were bribe payments and promises […].

E. Ratio of equivalence

The core element of art. 27 par. 1 of the FCE is the establishment of a "quid pro quo" (ratio of equivalence) between the undue advantage and a specific action by the official obtaining it. […] [T]he adjudicatory chamber is comfortably satisfied that Mr Teixeira was offered and accepted the benefit in question as a return – quid pro quo – and, hence, as an incitement for the execution of an official act within the meaning of art. 27 par. 1 of the FCE. […]

F. Conclusion

All in all, and in the light of the considerations and findings above, the adjudicatory chamber holds that Mr Teixeira by his conduct presently relevant, has violated art. 27 of the FCE (Bribery). […]

F. Sanctions and Determination of sanctions

In conclusion and in light of the above considerations, Mr Teixeira is hereby banned

for life from taking part in any football-related activity (administrative, sports or any other) at national and international level. In accordance with art. 42 par. 1 of the FCE, the ban shall come into force as soon as the decision is communicated. […] In the present case, the adjudicatory chamber is of the opinion that the imposition of a ban on taking part in any football-related activity is not sufficient to sanction the misconduct of Mr Teixeira adequately, in particular since a personal financial motive and gain were involved. Hence, the adjudicatory chamber considers that the ban imposed on Mr Teixeira should be completed with a fine. […] Accordingly, Mr Teixeira shall pay a fine of CHF 1,000,000. […]"

22. The Appealed Decision with its motivation was notified to the Appellant on 29 November 2019.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

23. On 20 December 2019, in accordance with Article R47 of the Code of Sports-related Arbitration, edition in force since 1 January 2019 (the "CAS Code"), the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport ("CAS") against the Respondent to challenge the Appealed Decision. In its Statement of Appeal, the Appellant nominated Mr Rauf Soulio, Judge in Adelaide, Australia, as an arbitrator.

24. On 30 December 2019, the Appellant filed his Appeal Brief.

25. On 8 January 2020, the Respondent nominated Professor Luigi Fumagalli, Attorney-at-law in Milan, Italy, as arbitrator.

26. On 21 January 2020, the CAS Court Office informed the Parties that the Panel appointed to decide the present proceedings was constituted as follows:

President:	Mr Hendrik Willem Kesler, Attorney-at-law in Enschede, The Netherlands
Arbitrators:	Mr Rauf Soulio, Judge in Adelaide, Australia
	Prof. Luigi Fumagalli, Attorney-at-law in Milan, Italy

27. On 31 January 2020, the Respondent requested an extension of the time limit to file its Answer until 28 February 2020.

28. On 3 February 2020, the Appellant objected to the Respondent's request to extend the time limit to file his Answer.

29. On 5 February 2020, the CAS Court Office informed the Parties that the Panel had decided to extend the Respondent's time limit to file its Answer by fourteen days.

30. On 19 February 2020, the Respondent filed its Answer to the CAS Court Office.

31. On 21 February 2020, the CAS Court Office invited the Parties to inform whether they preferred a hearing to be held in this matter or for the Panel to issue an award based solely on the Parties' written submissions.

32. On the same day, the Respondent informed the CAS Court Office that, in its view, a hearing was not necessary in this matter. On 27 February 2020, the Appellant indicated that he preferred a hearing to be held in this matter.

33. On 2 March 2020, the CAS Court Office informed the Parties that the Panel had decided to hold a hearing in this matter and consulted the Parties as to possible hearing dates.

34. On 24 March 2020, the CAS Court Office informed the Parties that a hearing would be held in this matter on 3 June 2020 in Lausanne, Switzerland and invited the Parties to provide the CAS Court Office with the list of all persons who would attend the hearing on or before 30 April 2020.

35. On 23 April 2020, the CAS Court Office issued on behalf of the President of the Panel an order of procedure (the "Order of Procedure") confirming *inter alia* the jurisdiction of the CAS and the admissibility of the appeal, and invited the Parties to return a completed and signed copy of it, which the Parties did on 30 April 2020.

36. On 15 May 2020, the Panel decided, in light of the COVID-19 pandemic, to postpone the hearing and proposed new hearing dates to the Parties.

37. On 19 May 2020, the CAS Court Office informed the Parties that a hearing would be held on 24 August 2020, and invited the Parties to communicate the names of all persons attending the hearing.

38. On 27 July 2020, the Respondent communicated the names of the persons who would attend the hearing.

39. On 7 August 2020, the CAS Court Office invited the Appellant to inform the CAS Court Office whether, in light of the current travel restrictions due to the COVID-19 pandemic, he requested that the hearing be held in person – in which case the hearing would likely be postponed - or if he agreed to attend the hearing remotely by videoconference. The CAS Court Office also informed the Parties that Judge Rauf Soulio would attend the hearing by videoconference and invited the Respondent, if it so wished, to submit its position with respect to the hearing.

40. On 12 August 2020, both Parties informed the CAS Court Office that due to the current COVID-19 pandemic, they preferred to postpone the hearing.

41. On 15 December 2020, the CAS Court Office requested the Parties to indicate their position as to the continuation of the present proceedings.

42. On 21 December 2020, FIFA informed the CAS Court Office that it is willing to continue the present proceedings, and in particular hold a virtual hearing in this case.

43. On 11 January 202, the CAS Court Office consulted the Parties regarding possible hearing dates.

44. On 15 and 19 January 2021, FIFA and the Appellant respectively confirmed their availability on the proposed hearing dates.

45. On 19 January 2021, the CAS Court Office informed the Parties that a hearing will be held in the present matter on 24 February 2021 by video conference, and invited the Parties to communicate the names of all persons who will be attending the hearing,

which the Parties did on 1 and 4 February 2021.

46. On 4 February 2021, the Appellant submitted new documents with the CAS Court Office.

47. On 15 February 2021, FIFA objected to the submission of new documents.

48. On 16 February 2021, the CAS Court Office informed the Parties that the Panel shall decide on the admissibility of the new documents filed by the Appellant in due course.

49. On 24 February 2021, a hearing was held in Lausanne by video conference. In addition to the Panel, Mr Fabien Cagneux, Counsel to the CAS, and Ms Stéphanie De Dycker, Clerk to the CAS, the following persons attended the hearing:

For the Appellant:	Mr. Michel Asseff Filho, Mrs. Mariana Zonenschein, Mr. João Marcello Costa and Mr. Alan Sapir, legal counsels.
For the Respondent:	Mr Jaime Contreras Cambreleng, Head of Litigation at FIFA; Mr Miguel Liétard Fernandez-Palacios, Director of Litigation at FIFA.

50. At the hearing, the Parties were given a full opportunity to present their case, submit their arguments and submissions, and answer the questions posed by the Panel.

51. At the end of the hearing, the Parties' counsel confirmed that they were satisfied with the hearing and that their right to be heard was provided and fully respected.

IV. THE PARTIES' SUBMISSIONS

52. The following summary of the Parties' positions and submissions is illustrative only and does not necessarily comprise each and every contention put forward by the Parties. The Panel, however, has carefully considered all of the submissions made by the Parties, even if no explicit reference is made in what immediately follows.

A. The Appellant

53. The Appellant's submissions may be summarized as follows:

- The present disciplinary case is basically based on evidence produced in a criminal case where the Appellant was not a party. The Appellant was never brought to trial and therefore he has never been able to analyse evidence, exercise his right to cross-examination and defend himself in the lawsuit where such evidence was collected.
- The Appellant denies all charges: he never received bribes or practiced corruption in relation to the facts of the present case. The Appealed Decision is based on mere assumptions without any evidence to support the indictment.
- FIFA does not have jurisdiction to prosecute the Appellant, either because the alleged facts under investigation were not committed because of the Appellant's position at FIFA, or because the facts occurred after the beginning of 2012, when the Appellant had resigned from any position in football.

- As to the factual findings in the Appealed Decision, the Appellant stresses the following:
  - With respect to CONMEBOL Copa Libertadores: the evidence is merely testimonial and was provided in the course of a trial in which the Appellant was not a party:
    - ✓ The testimony of Mr Alejandro Burzaco cannot be considered as evidence, since (i) the Appellant could not cross-examine the witnesses; (ii) Mr Alejandro Burzaco had every motivation not to say the truth in order to enjoy benefits from the US attorney's office, and (iii) Mr Alejandro Burzaco could not confirm the alleged bribe payments made to the Appellant with any bank or bank account details. The Appellant filed a lawsuit against Mr Burzaco in Brazil.
    - ✓ The testimony of Mr Rodriguez should also be disregarded, since (i) the Appellant never met this person and (ii) his allegation that various payments had been made on specific accounts is not accompanied by any evidence whatsoever such as bank or bank account details.
    - ✓ Finally, the Adjudicatory Chamber did not take into account the testimony of Mr Silveira in which he confirmed to the Investigatory Chamber of the FIFA Ethics Committee never having had any contact with Mr Burzaco, contrary to what the latter stated during the Trial.

    In sum, there is not even on reliable legal evidence that can be used against the Appellant, and the Appellant in turn finds himself in the absolute impossibility of bringing negative evidence in the present matter.
  - With respect to CONMEBOL/CONCACAF Copa America: The charges clearly lack evidence:
    - ✓ The testimony of Mr Alejandro Burzaco cannot be considered as evidence, since (i) the Appellant could not cross-examine the witness as he was not a party to the Trial, and (ii) Mr Alejandro Burzaco had every motivation not to say the truth in order to enjoy benefits from the US attorney's office.
    - ✓ The Appellant further contests the veracity of the recording of conversation between Mr Burzaco, Mr Hawilla and Mr Jinkis, and stresses that such conversation does not specify the type of contract related to Copa America nor the value received for it and in addition, it occurred at a time when he was no longer a football official.
    - ✓ The Appellant also contests the veracity and legitimacy of Mr Leite's notes and argues that such document required a forced interpretation in order to accuse the Appellant; in addition, a Brazilian judicial decision ordered the return of the seized material in the only search and seizure operation suffered by Mr Leite. Therefore, said document cannot be substantiated.

In addition, the findings in the Appealed Decision lack sense, since the Appellant was no longer a football official since the beginning of 2012 well before the establishment of Datisa S.A. ("Datisa") on 21 May 2013 and the signature of the agreement between Datisa and CONMEBOL as to the commercialisation of the media and marketing rights for the 2015, 2019 and 2023 editions of the Copa America (the "Datisa Agreement"). Finally, the Appellant finds himself in the absolute impossibility of bringing negative evidence in the present matter.

- With respect to CBF Copa do Brasil: the Appealed Decision relies on evidence which belongs exclusively to 2014, when the Appellant was no longer a football official - in particular telephone conversation between Mr Leite and Mr Hawilla. The evidence produced refers to payments, which were made between Mr Leite and Mr Hawilla with respect to the joint exploitation of the rights in the *Copa do Brazil* as agreed for the period between 2013 and 2022. None of the evidence refers to the Appellant, which makes sense since at the time of this evidence, in 2014, the Appellant was no longer active in football and had therefore no more power in football, so that it would make no sense for third parties to pay bribes to him.

- The Appellant argues that the Appealed Decision is null and void because it is based on "evidence that was not submitted to the sifting of the contradictory" described as a "basic principle of law". The Appellant was not allowed to cross-examine the witnesses at the Trial where such testimonies were collected and therefore challenges all evidence which was not submitted to cross-examination by the Appellant.

- The Appellant submits that, if the Panel were to find that the Appellant breached Article 27 of the FCE, the sanction is not disproportionate.

54. In his Appeal Brief, the Appellant requested the Panel to decide as follows:

"*a) Preliminary, the declaration that FIFA does not have jurisdiction to prosecute Mr. Teixeira for the reasons already set forth;*

b) If the preliminary application is not accepted, that the evidences that were not submitted to the cross-examination are totally rejected and disregarded;

c) the absolution of Mr. Teixeira;

d) the production of all admitted evidences in the hearing;

e) that the hearing is not open to the public."

B. FIFA

55. FIFA's submissions may be summarized as follows:

- FIFA clearly complied with its burden of proof pursuant to Article 49 of the FCE; the Appellant failed to bring forward any arguments let alone evidence in support of his line of argumentation.

- The evidence submitted is admissible. In particular:

  - The transcript of interviews of individuals given under oath during the

Trial shall not be considered as witness statements but as documentary evidence, which the Parties had ample opportunity to discuss in the present proceedings. Alternatively, even if these transcripts of individuals' interviews taken during the Trial would be considered as witness statements, the mere fact that they could not be tested under cross-examination does not mean that they ought to be disregarded, since the testimonies were given under oath and subject to sanctions of perjury and in the context of judicial proceedings, which led to the conviction beyond reasonable doubt of the Appellant's alleged co-conspirators, and since the Appellant had ample opportunity to comment on these transcripts in the framework of the present proceedings.

- As to the notes of Mr Leite, they are admissible pursuant to Article 46 FCE and they were accepted in the framework of the Trial, and should therefore a fortiori be accepted in the present proceedings; besides, CAS panels and Swiss doctrine in international arbitration confirm that an international arbitral tribunal seated in Switzerland is not *per se* prevented from considering evidence that could have been obtained illegally from the perspective of a civil or commercial court.

- Pursuant to Swiss law and Article 47 of the FCE, the FIFA EC and now the Panel, has wide discretion in relation to the probative value of the evidence on file, which includes both direct and circumstantial evidence, the acceptance of the latter being confirmed by CAS panels and the Swiss Federal Tribunal. In particular:
  - The Appellant cannot expect to be subjected to the rules of a criminal procedure, to which he had the opportunity to participate if he had accepted his extradition to the United States of America.
  - Mr Burzaco's status as "cooperating witness" of the DOJ does not undermine his testimony as he was subject to an inquisitive examination during the Trial and is subject to sanctions of perjury in case of false testimony, which could result in several additional years of imprisonment and void any agreement which he had reached.
  - The evidence on file matches one another:
    - ✓ With respect to CONMEBOL Copa Libertadores: the Appellant received and accepted bribe payments of USD 600,000 between 2006 and 2012 in exchange of his support for the contracts between CONMEBOL and T&T:
      - Mr Burzaco testified under oath that the Appellant was receiving, as of 2006, bribes from a subsidiary company of "Torneos y Competencias S.A." ("Torneos") called T&T Sports Marketing ("T&T"), for which Mr Burzaco was shareholder and taking care of the daily management, in the amount of USD 600,000 each year in connection with the Copa Libertadores.
      - Mr Hawilla, the owner of sports marketing company named Traffic ("Traffic"), testified under oath that he agreed to pay bribes to the Appellant in connection with

the contract that Traffic and Torneos had with CONMEBOL regarding the assignment of broadcasting rights relating to the Copa Libertadores.

- The recording of a phone conversation between Mr Hawilla and Mr Marguiles confirmed the payment of said bribes in favour of the Appellant.

✓ With respect to CONMEBOL/CONCACAF Copa America: the Appellant accepted payments of USD 3 million from Mr Hawilla in exchange of maintaining the initial agreement with Traffic and later on of USD 1 million in exchange for signing the contract between CONMEBOL and Full Play in 2010:

- Mr Burzaco testified under oath that in 2010 Mr Hugo Jinkis requested him to obtain the Appellant's support in order to terminate an existing contract between Traffic and CONMEBOL regarding the broadcasting rights of the Copa America up to the 2015 edition, and to get a long-term contract with a company named Full Play Group, owned and controlled by two brothers, Mr Hugo Jinkis and Mr Mariano Jinkis ("Full Play"). The proposal to CONMEBOL involved the payment of a bribe by Full Play to the Appellant in the amount of USD 3 million per Copa America edition, being USD 1 million at the signature of the contract with Full Play and USD 2 million before the first edition of the Copa America. The first payment was delayed until 2011 and eventually paid to Mr Grondona in lieu of the Appellant following the Appellant's instructions. Following a meeting in 2012 including several football officials, it was agreed that the additional bribe in the amount of USD 2 million would be paid by Full Play to Mr Del Nero and Mr Marin in 2015.
- In a recorded meeting between Mr Burzaco, Mr Hawilla and the Jinkis brothers on 1 May 2014, several references were made to the Appellant having received bribes in connection with the 2015 Copa America's broadcasting rights, which had been awarded in June 2010 by CONMEBOL to Full Play.
- The same information can be found in the handwritten notes of Mr Leite which indicate that the Appellant already had received USD 1 million.

✓ With respect to the CBF *Copa do Brasil*: the Appellant accepted to receive yearly bribes for many years prior to 2014 including at a time the Appellant was a football official:

- Mr Hawilla testified under oath having paid bribes to the Appellant in view of the renewal in 2009 of the contract between Traffic and CBF in connection with the broadcasting rights for *Copa do Brasil*. He also confirmed that, in connection with an agreement concluded on 15

August 2012 between Kleber and Traffic on the one side, and CBF on the other side, with respect to the *Copa do Brasil*, editions 2013 to 2022, Mr Leite had agreed to pay bribes to the Appellant in the amount of BRL 1,5 million and that such amount was increased to include more people as a result of the change of directors at the CBF as from 2012.

- Recorded conversations as well as text messages from 24 March 2014 to 2 April 2012 between Mr Hawilla and Mr Leite demonstrate the secrecy of the bribe payments as well as the initial agreement to pay BRL 1,5 million to the Appellant and to increase that amount to BRL 2 million as a result of the change of directors at the CBF;
- An email dated 1 April 2014 from Mr Sergio Campos, employee of Klefer, with the subject "*Important Brazil's Cup payme*nts" included receipts of payments made by Klefer for a total of BRL 2 million;
- In a recorded conversation between Mr Hawilla and Mr Marin dated 30 April 2014, Mr Marin confirmed that the Appellant was receiving bribes in relation to the *Copa do Brasil*.

- The relevant facts occurred in the period between 2006 and 2012. The FCE (2018 edition) is applicable considering that the different editions of the FCE cover the same offenses and that the maximum sanction under the FCE (2018 edition) are equal or less and that as a result none of the provisions would be more beneficial to the Appellant. In addition, between 2006 and 2012, the Appellant clearly qualified as an "official" within the meaning of Article 2 of the FCE and Article 13 of the FIFA Statutes, and therefore subject to the FCE. The scope of jurisdiction of the FIFA EC is defined under Article 30 FCE and is not limited to conduct 'practiced because of the Appellant's position at FIFA at the time of the relevant facts.

56. The Respondent requested the Panel to decide as follows:

"(a) rejecting the reliefs sought by the Appellant;
(b) confirming the Appealed Decision;
(c) ordering the Appellant to bear the full costs of these arbitration proceedings; and
(d) ordering the Appellant to make a contribution to FIFA's legal costs."

V. JURISDICTION OF THE CAS

57. The question whether or not the CAS has jurisdiction to hear the present dispute must be assessed on the basis of the *lex arbitri*. As Switzerland is the seat of the arbitration and not all Parties are domiciled in Switzerland, the provisions of the Swiss Private International Law Act ("PILA") apply, pursuant to its Article 176.1. In accordance with Article 186 of PILA, the CAS has the power to decide upon its own jurisdiction ("*Kompetenz-Kompetenz*").

58. Article R47 of the CAS Code provides as follows:

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

59. The jurisdiction of the CAS in the present matter derives from Article 58 (1) of the FIFA Statutes, which provide as follows:

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

60. The Panel also notes that the jurisdiction of the CAS to hear the appeal filed by the Appellant against the Appealed Decision is confirmed by the signature of the Order of Procedure.

61. The Panel decides that it has jurisdiction to decide on the present appeals proceedings.

VI. ADMISSIBILITY

62. Pursuant to Article R48 of the CAS Code:

"*The Appellant shall submit to CAS a statement of appeal containing:*

- *the name and full address of the Respondent(s);*
- *a copy of the decision appealed against;*
- *the Appellant's request for relief;*
- *the nomination of the arbitrator chosen by the Appellant from the CAS list, unless the Appellant requests the appointment of a sole arbitrator;*
- *if applicable, an application to stay the execution of the decision appealed against, together with reasons;*
- *a copy of the provisions of the statutes or regulations or the specific agreement providing for appeal to CAS.*

Upon filing the statement, the Appellant shall pay the CAS Court Office fee provided for in Article R64.1 or Article R65.2.

If the above-mentioned requirements are not fulfilled when the statement of appeal is filed, the CAS Court Office may grant a one-time-only short deadline to the Appellant to complete its statement of appeal, failing receipt of which within the deadline, the CAS Court Office shall not proceed."

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

"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its

face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties."

64. The Panel holds that the present appeal is admissible since the statement of appeal was filed within the time limit as provided under Article R49 of the CAS Code and that the other requirements provided under Article R48 of the CAS Code are fulfilled. In addition, the Panel notes that the Respondent does not dispute the admissibility of the present appeal.

VII. APPLICABLE LAW

65. Pursuant to Article R58 of the CAS Code:

"*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.*"

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

"*The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law*."

67. To decide on the present matter, the Panel shall apply primarily the FIFA Statutes and FIFA regulations, in particular the FIFA Code of Ethics. Swiss law shall apply on a subsidiarily basis.

68. The Panel notes that Article 3 of the FIFA Code of Ethics (2018 edition) provides as follows:

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

69. The Panel notes that the FIFA EC found that the Appellant is guilty of infringement of Article 27 of the FCE as a result of facts which occurred between 2006 and 2012, *i.e.* before the entry into force of the FCE. The Panel also notes that previous editions of the FCE contain equivalent provisions to the alleged violation of Article 27 of the FCE, in particular Article 21 of the FIFA Code of Ethics (2012 edition), Article 11 of the FIFA Code of Ethics (2009 edition), Article 12 of the FIFA Code of Ethics (2006 edition), and Article 7 of the FIFA Code of Ethics (2004 edition). As a result, the Panel finds that the different editions of the FIFA Code of Ethics cover the same offence and that the maximum sanctions in the FIFA Code of Ethics (2018 edition) is equal or less.

Consequently, the Panel holds that pursuant to Article 3 of the FIFA Code of Ethics (2018 edition) (the "FCE"), the FCE is applicable to the present case.

VIII. MERITS

70. In light of the Parties' submissions, the Panel shall analyse whether the Appellant committed the alleged violation of Article 27 of the FCE. To this end, the Panel shall decide on the following issues:

- Alleged violation of Article 27 of the FCE; and
- Consequences for the Appellant.

71. However, the Panel shall first examine the following preliminary legal issues:

- Admissibility of new documents filed by the Appellant;
- Scope of review of CAS;
- Evidentiary Issues.

A. Preliminary Issues

a.) Admissibility of the documents filed by the Appellant on 4 February 2021

72. The first issue concerns the admissibility of new documents, which were filed by the Appellant on 4 February 2021. The documents at stake concern (i) a judicial petition for an action of indemnity for moral damages from the Appellant against several persons and entities including Mr Burzaco; and (ii) an international cooperation procedural act for the citation of the respondents including Mr Burzaco. FIFA submits that said documents are not admissible as they were filed belatedly.

73. Pursuant to Article R56 of the CAS Code:

"Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer. […]"

74. The Panel notes that the Appellant did not file the said documents with his Appeal Brief, despite them being already available. Indeed, the judicial petition was made on 29 November 2019, *i.e.* before the commencement of the present appeal proceedings and thus well before the Appellant filed his Appeal Brief. Moreover, the Appellant failed to put forward any exceptional circumstance justifying the late submission of the said documents. As a result, the Panel finds that the 'new' documents submitted by the Appellant on 4 February 2021 are inadmissible.

b.) Scope of review of CAS

75. It is a well-established principle (and uncontested by the Parties) that all appeals to CAS are heard *de novo*, as enshrined in Article R57 of the CAS Code. The Panel has indeed

the full power to review the facts and the law of the present matter.

76. However, the Panel also acknowledges the margin of discretion afforded to the FIFA Adjudicatory Chamber through the principle of autonomy of association as a judicial body established under Swiss law, with the consequence that CAS shall demonstrate a certain degree of deference to the decision-making bodies of FIFA, especially in the determination of the appropriate sanction.

77. Such deference may however not contradict the power of CAS to hear the case *de novo* as expressly provided under Article R57 of the CAS Code. The present Panel therefore does not find itself restricted in its power of review beyond the clear and concise wording of Article 57 of the CAS Code.

c.) Evidentiary Issues

(i) Burden of Proof

78. The principle of burden of proof applies if the requisite degree of conviction that an alleged fact is fulfilled is not reached. In such a case, the principle of burden of proof defines which party has to bear the consequences of such a state of non-conviction on the part of the arbitral tribunal with respect to the establishment of an alleged fact (SFT BGE 132 III 626).

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

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

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

82. Consequently, the Panel finds that the burden of proof lies with FIFA.

83. That said, in accordance with Swiss law, each party shall bear the burden of proving the specific facts and allegations on which it relies. This is even more relevant in cases where difficulties of proving arise (*Beweisnotstand*). In such situation, as was acknowledged by the Swiss Federal Tribunal, "*Swiss law knows a number of tools in order to ease the – sometimes difficult – burden put on a party to prove certain facts. These tools range from a duty of the other party to cooperate in the process of fact finding, to a shifting of the burden of proof or to a reduction of the applicable standard of proof. The latter is the case, if – from an objective standpoint – a party has no access to direct evidence (but only to circumstantial evidence) in order to prove a specific fact* (SFT 132 III 715, E. 3.1; BK-ZPO/BRÖNNIMANN, 2012, Art. 157 no. 41; BSK-ZPO/GUYAN, 2nd ed. 2013, Art. 157 no. 11; CAS 2013/A/3256, para. 281).

84. As stressed in several CAS precedents, while assessing the evidence, this Panel has to bear in mind that "*corruption is, by nature, concealed as the parties involved will seek*

to use evasive means to ensure that they leave no trail of their wrongdoing" (CAS 2010/A/2172, para. 54; 2014/A/3537, para. 82). In addition, as was stated in the matter CAS 2014/A/3537, "*[t]he more detailed are the factual allegations, the more substantiated must be their rebuttal*". The documents relied on for the charges are, FIFA submits, very detailed, and it therefore falls to the Appellant to contest the facts and to rebut any inferences which might otherwise be drawn. Hence, the onus of proof remains on FIFA, but the evidential burden of contesting the facts submitted by FIFA and adducing evidence shifts to the Appellant. The Panel in the present case adheres to such conclusion: the Appellant has therefore a certain duty to contribute to the administration of proof in the present matter, by bringing forward evidence in support of his line of defence.

(ii) Standard of Proof

85. The standard of proof is defined as the level of conviction that is necessary for the Panel to conclude in the arbitral award that a certain fact happened (BGer 5C_37/2004, 3.2.3) and is a question of Swiss substantive law (HASENBÖHLER, Kommentar zur Schweizerischen Zivilprozessordnung, 2016, No. 20 to Art. 147 SPC).

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

87. Article 48 of the FCE provides that "*[t]he members of the Ethics Committee shall judge and decide on the basis of their comfortable satisfaction*."

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

(iii) Admissibility of Evidence

89. Pursuant to Article 46 of the FCE, *"[p]roof that has been obtained by means or ways involving violations of human dignity or that obviously does not serve to establish relevant facts"* shall be inadmissible.

90. The Appellant submits that the interviews given by Mr Burzaco, Mr Hawilla and Mr Rodriguez during the Trial could not be relied upon by the FIFA EC and shall be deemed inadmissible by the Panel since the Appellant was not able to cross-examine the witnesses. FIFA objects to the Appellant's position, stating that such testimonies shall be considered as documentary evidence instead of witness statements and that the Appellant had ample opportunity to comment on such written evidence during the present proceedings.

91. The Panel notes that FIFA relies indeed extensively on minutes of examinations of various individuals given in the framework of the Trial, in particular the examination of Mr Burzaco, of Mr Hawilla, of Mr Peña and Mr Rodriguez. The Panel further notes that these individuals – some of which died in the meantime – are not witnesses in the present proceedings and as a result could not be cross-examined by the Appellant.

92. The Panel however notes that, according to CAS practice, a panel is not prevented from considering transcripts of examination of witnesses in a criminal proceeding abroad, even if the individuals concerned are not witnesses in the CAS proceedings. For instance, in CAS 2010/A/2266, the CAS panel decided to accept on file "*documents containing the minutes of examinations of people accused of corruption by the German prosecutors*" stating that those documents "*would not be considered as 'witnesses' statements"*" (CAS 2010/A/2266, para. 9 and 20.i). In CAS 2016/A/4501, the CAS panel followed the same reasoning when it decided to admit on file the witness statement of a witness who was unavailable to attend the hearing, based on the fact that the same witness' transcript of interrogation before the previous instance was already part of the file (CAS 2016/A/4501, para. 97).

93. The Panel sees no reason not to follow the same approach in the present matter, in particular considering that the Parties had ample opportunity to discuss the transcripts of these individuals' interviews given at the Trial during the written and oral phase of the present proceedings. The Panel therefore finds that there is no evidence whatsoever of any violation of human dignity at stake. As a result, the transcripts of interviews given during the Trial are admitted as documentary evidence. The evidentiary weight that shall be given to the content of each of such documentary evidence shall be discussed as part of the assessment of the existence of a breach of Article 27 of the FCE.

94. The Appellant further submits that another piece of evidence relied upon by FIFA, *i.e.* Mr Leite's note, which contains indication of the amount of the bribes paid and to whom, "*cannot be substantiated*", since "*a Brazilian judicial decision ordered the return of seized material in the only search and seizure operation suffered by Mr Leite*". The Panel notes that pursuant to Article 8 of the Swiss Civil Code and the principle *actori incumbit probatio*, the Appellant shall bring evidence of the existence of the fact from which he is deriving a right. In the present matter, there is no evidence on file in support of the Appellant's allegation that the seizure of Mr Leite's note was illegal or that is was obtained by means or ways involving violations of human dignity or that it does not serve to establish the relevant facts.

95. Moreover, even if the Panel was to accept that Mr Leite's note was illicit evidence – a fact that remains unproven – the Panel notes that according to the Swiss Federal Tribunal, a decision by an arbitral tribunal regarding the admissibility or non-admissibility of illicit evidence must be the result of a balancing of various juridical interests. Matters considered pertinent, for example, are the nature of the violation, the interest in discerning the truth, the difficulty of adducing evidence for the concerned party, the conduct of the victim, the legitimate interests of the parties, and the possibility of acquiring the (same) evidence in a legitimate manner (CAS 2009/A/1879; SFT, 4A_448/2013). Considering the difficulty in adducing evidence in the present matter and the interest in discerning the truth and the fact that the document at stake was admitted as evidence at the Trial, the Panel finds that the document at stake, *i.e.* Mr Leite's note, shall be considered as admissible in the present proceedings. The weight of such piece of evidence shall be assessed when examining the alleged violation of Article 27 of the FCE by the Appellant.

(iv) Evaluation of Evidence

96. The Panel shall revert to the evidentiary weight of each piece of evidence when examining the alleged commission of an offence under the FCE by the Appellant. The

Panel however wishes to clarify few general principles as to evaluation of evidence in a case like this one and to make a few remarks of a more general nature.

97. The CAS Code does not contain any provision as to the assessment of evidence in CAS proceedings. According to scholars, the principle of free evaluation of evidence ("*libre appréciation des preuves*") is applicable in international arbitration in general, and in CAS proceedings particularly (NOTH/HAAS, Arbitration in Switzerland: the Practitioner's Guide, 2nd edition, Article 44, para. 27). Article 47 FCE similarly provides that *"[t]he Ethics Committee shall have absolute discretion regarding proof*". The Panel therefore notes that it shall freely evaluate the evidence brought forward by the Parties.

98. In the present matter, the Panel shall consider both direct evidence and circumstantial evidence. Direct evidence is evidence that, if believed, directly proves a fact. Circumstantial evidence differs since it requires a trier of fact to draw an inference to connect it with a conclusion of fact. (CAS 2019/A/6443 and CAS 2019/A/6593, para. 145). Put otherwise, "*Circumstantial evidence might be compared to a rope comprised of several cords: one strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength*." (CAS 2018/O/5713, para. 61). In a case involving alleged acts of corruption like the present one, circumstantial evidence may especially be relevant since, as already stated above, "*corruption is, by nature, concealed as the parties involved will seek to use evasive means to ensure that they leave no trail of their wrongdoing*" (CAS 2010/A/2172, para. 54; 2014/A/3537, para. 82).

99. Moreover, the Panel has noted that the Appellant challenges the credibility of the testimonies given by Mr Alejandro Burzaco, Mr Eladio Rodriguez and Mr José Hawilla at the Trial. The above individuals were acting as cooperating witnesses of the DOJ in the framework of the Trial. As such they contributed to the collection of evidence by the DOJ and thereafter, at the Trial, were subject to an inquisitive examination by the DOJ. Such examination was given under oath and these individuals were expressly questioned about - and made aware of - the consequences of them lying during their examination at the Trial. In addition, the Panel notes that these testimonies led to the conviction of Mr Marin and Mr Napout beyond reasonable doubt at the end of the Trial. Considering the above elements, the Panel sees no reason to question the credibility of the testimonies given by Mr Alejandro Burzaco, Mr Eladio Rodriguez, Mr Santiago Peña and Mr José Hawilla at the Trial. This is all the more so that, as will be explained below, the content of such testimonies matches the rest of the evidence on file.

100. Having stated the above legal considerations of a general character, the Panel now turns to the analysis of the alleged violation by the Appellant of Article 27 of the FCE.

B. The Alleged Violation of Article 27 of the FCE by the Appellant

101. Article 27 (1) of the FCE provides as follows:

"*Persons bound by this Code shall not accept, give, offer, promise, receive, request or solicit any personal or undue pecuniary or other advantage in order to obtain or retain business or any other improper advantage to or from anyone within or outside FIFA. Such acts are prohibited regardless of whether carried out directly or indirectly through, or in conjunction with, third parties. In particular, persons bound by this Code shall not accept, give, offer, promise, receive, request or solicit any personal or undue*

pecuniary or other advantage for the execution or omission of an act that is related to their official activities and is contrary to their duties or falls within their discretion."

102. Pursuant to above provision, several conditions need to be cumulatively fulfilled for an offence of bribery to occur:

(a) the person acting must be bound by the FCE and the counterpart must be a person within or outside FIFA;

(b) the person involved must accept, give, offer, promise, receive, request or solicit an advantage;

(c) a personal or undue pecuniary or other advantage must be at stake;

(d) there must be a ratio of equivalence between the undue advantage and the specific action by the official obtaining such advantage.

103. The Panel shall examine each of the above-mentioned conditions to verify whether the Appellant infringed Article 27 of the FCE.

a.) The Persons Involved

104. In order for a violation of Article 27 of the FCE to occur, the facts shall involve a person who is bound by the FCE. According to Article 2 of the FCE, the FCE shall apply *inter alia* to "officials". The definitions section of the FCE does not contain a definition of the term "official" but refers to the definitions section in the FCE Statutes.

105. According to No. 13 of the definitions section of the FIFA Statutes, "official" means "*any board member (including the members of the Council), committee member, referee and assistant referee, coach, trainer and any other person responsible for technical, medical and administrative matters in FIFA, a confederation, a member association, a league or a club as well as all other persons obliged to comply with the FIFA Statutes (except players and intermediaries).*"

106. Based on the various positions held by the Appellant within FIFA and CBF mentioned above (see para. 1 above), the Panel finds that there is no doubt that the Appellant was an official within the meaning of the definition given in No. 13 of the definitions section in the FIFA Statutes during the relevant period, *i.e.* from 2006 until 2012.

b.) Accepting, giving, offering, promising, receiving, requesting or soliciting an advantage

107. For a violation of Article 27 (1) of the FCE to occur, an advantage must be accepted, given, promised, received, requested or solicited by the person bound by the FCE. The Panel notes that as the wording of the above provision reveals, the issue of whether the advantage was actually given or received is not relevant to determine whether the offence of bribery occurred.

108. In light of the above considerations, the Panel shall now turn to the establishment of the facts for each of the alleged bribery schemes involving the Appellant.

(i) CONMEBOL Copa Libertadores

109. The facts are disputed among the Parties. The Appellant submits that the FIFA EC did not have sufficient reliable evidence in order to conclude that the Appellant received and accepted bribe payments of USD 600,000 between 2006 and 2012 in exchange of his support for the contracts between CONMEBOL and T&T, a subsidiary company of Torneos, regarding the assignment of broadcasting rights to T&T: in particular, the Appellant argues that the veracity and credibility of the testimonies of the witnesses at the Trial, in particular Mr Alejandro Burzaco, Mr Eladio Rodriguez and Mr José Hawilla should be called into question, since they were not cross-examined by the Appellant; moreover, as cooperating witnesses, Mr Alejandro Burzaco, Mr Eladio Rodriguez and Mr José Hawilla had every motivation for not saying the truth at the Trial; in addition, these persons could not confirm their allegations with any bank account details on which the bribe payments were allegedly made. The Appellant further argues that the FIFA EC did not consider the testimony of Mr Silveira before the FIFA EC. FIFA in turn contends that in their testimony, given under oath at the Trial and subject to sanctions of perjury, Mr Alejandro Burzaco and Mr Eladio Rodriguez clearly confirmed the existence, the amounts and the frequency of the bribe payments made to the benefit of the Appellant. The bribe payments are also confirmed by Mr José Hawilla, founder and owner of the sports marketing company Traffic, in his testimony at the Trial as well as by a recording of a telephone conversation of the latter with Mr Margulies, an intermediary who rendered payment services to companies such as T&T.

110. The Panel has already explained in the previous section why the testimonies of the witnesses at the Trial, in particular Mr Alejandro Burzaco, Mr Eladio Rodriguez and Mr José Hawilla, which were given under oath, are reliable despite these persons being cooperating witnesses of the DOJ at the Trial. The Panel shall now examine the content of the evidence on file. In his testimony given at the Trial, Mr Alejandro Burzaco stated as follows:

"Q So focusing now on 2006 again, the period after you became the CEO of Torneos. Who at CONMEBOL, besides Julio Grondona, was receiving bribes from Torneos and its partners in connection with the Copa Libertadores?

A As of 2006, the president, Nicolás Leoz; Riccardo Teixeira, president of the Brazilian Soccer Federation, a member of FIFA; […]

Q How much were you paying Riccardo Teixeira in bribes in 2006 in connection with the Copa Libertadores?

A Riccardo Teixeira was paid $600,000 per year.

Q And in the case of Riccardo Teixeira, how did you get the money to him?

A Riccardo Teixeira had very unusual and weird banking, or financial houses instructions.

Q When you say weird or unusual, what do you mean by that?

A Weird that I've never seen and other people in Torneos were not aware; like destinations in Middle East, in far Asia, in Andorra, in Europe, and always with beneficial owners that were very common names in Chinese or in each region, which was impossible to know who it was. We bump and had many problems with the banks that didn't want to send money from time to time to these exotics destinations.

Q Who would give you the wire instructions for Riccardo Teixeira?

A For the case of Riccardo Teixeira, we would receive the wire instructions from different sources.

Q For example?

A By Riccardo Teixeira himself; by his long-time private secretary and attaché, Alexandré. We also received instructions from family of him, Marco Antonio Teixeira; that was at the mid-2000s.

Q What relation did Marco Antonio Teixeira have to Riccardo?

A I think -- I think Marco Antonio was the uncle of Riccardo […].

[…]

Q At the time of Riccardo Teixeira's resignation from his positions in soccer, how much money -- how much bribe money was he receiving in connection with the Copa Libertadores' contract.

A He was receiving $600,000 per year for the -- he was receiving $600,000 per year for Copa Libertadores and Sudamericana contracts."

111. In his testimony, Mr Eladio Rodriguez, a long-time employee of Torneos responsible for transfer payments and keeping track of such, by means of ledgers, also confirmed that he made bribe payments on behalf of Mr Alejandro Burzaco from Torneos to CONMEBOL officials in connection with the contracts for Copa Libertadores. Morevoer, he stated that:

"Q […] this is an e-mail from you to Mr. Burzaco. What significance did the word "Brasilero" have to you? What use of that word were you making?

A Brasilero, the way we interpret it, was that we were using it to talk about Jose Maria Marin and Marco Polo Del Nero.

Q Did you start using that word at the time you were paying Ricardo Teixeira?

A Yes, sir."

112. In his testimony, Mr José Hawilla stated as follows:

"[DOJ]: Through its legal representatives submitted for CONMEBOL's consideration a proposal to acquire the respective broadcasting rights for the next four editions of the Copa Libertadores de America, to wit, 2004, 2005, 2006, and 2007 editions.

And the next line says: Whereas CONMEBOL after consulting with its executive committee and affiliated Federations has approved the proposal that was submitted.

Q Now what, if anything, did Luis Nofal tell you about financial obligations imposed outside of the terms of the contract?

A Outside the terms of the contract Torneos would be in charge of making the payments of bribes to the directors.

Q Based on your conversations with Mr. Nofal, who was receiving bribe payments in connection with this contract?

A To my knowledge, all three who were the bosses of everything Grondona, Leoz and Teixeira."

113. In his testimony to the Investigatory Chamber of the FIFA Ethics Committee, Mr Alexandre Silveira, former secretary to the Appellant at CBF, stated as follows:

Luis Villas-Boas Pires	*[…] As you know, Mr Burzaco was one of the witnesses in the law-suit in the U.S. You are aware, right? And he says in his, in his statement as a witness, he says that Mr Silveira would always travel with Mr Teixeira, and that you would always bring his papers and his suitcases, etc., that you were always behind him. I'm doing kind of a literal translation here of what was said by him. Is that correct?*
Alexandre Silveira	*Yes, that's correct.*
Luis Villas-Boas Pires	*So if Mr Burzaco was always present in the meetings, it's normal that he would see Mr Silveira in the meetings.*
Alexandre Silveira	*Not in the meetings, in the antechambers.*
Luis Villas-Boas Pires	*Oh, you would travel with him but wouldn't be in the meetings. […]*
Luis Villas-Boas Pires	*During the trial in the U.S., Mr Burzaco says that Mr Silveira sent information to, to make bank transfers in relation to payments to be made to Mr Teixeira. Can you explain that statement?*
Alexandre Silveira	*I never handed any kind of documents to Mr Burzaco. My relationship with him was to see him in the antechamber to the meeting.*
Luis Villas-Boas Pires	*So that means you never contacted him?*
Alexandre Silveira	*I never delivered anything, and I never had any access to Mr Burzaco unless „good morning", „good evening".*
Luis Villas-Boas Pires	*No bank instructions on behalf of Mr Teixeira or anybody else?*
Alexandre Silveira	*Correct.*

[…]"

114. The Panel notes that Mr Alexandre Silveira stated that he never sent any information to Mr Alejandro Burzaco on behalf of the Appellant, whereas Mr Alejandro Burzaco stated that he was receiving instructions from Mr Alexandre Silveira as secretary to the Appellant. The Panel notes that although Mr Silveira, according to his own statement, never formally sent any payment instruction to Mr Burzaco, his function as personal secretary involved being present behind the Appellant in case the latter would need anything from his 'papers' or 'suitcase'. Anyway, in the Panel's view, whether or not Mr Silveira, personal secretary to the Appellant, indeed transferred payment instructions to Mr Alejandro Burzaco on behalf of the Appellant is not decisive for the Panel's assessment, since, in particular, Mr Burzaco also stated that he used to receive payment instructions also from the Appellant directly and from Mr Marco Antonio Teixeira, a relative of the Appellant.

115. The Panel also notes that in a telephone conversation between Mr José Hawilla and Mr

Margulies, the latter confirmed having operated several bribe payments to the benefit of the Appellant through offshore companies or black-market brokers:

"[…]

HAWILLA:	*Zé, let me-- get something straight. Was there only one payment to--to-- to-- to Ricardo?*
MARGULIES:	*No. Three or four.*
HAWILLA:	*Where to?*
MARGULIES:	*Uhm, those I've told you about.*
HAWILLA:	*It was Hong Kong?*
MARGULIES:	*In--*
HAWILLA:	*Huh?*
MARGULIES:	*Hong Kong and now one in Jerusalem.*
HAWILLA:	*One in Jerusalem?*
MARGULIES:	*And there were some sent via black market broker, right?*
HAWILLA:	*I didn't understand it.*
MARGULIES:	*There were some made via black market brokers.*
HAWILLA:	*Via black market brokers, right?*
MARGULIES:	*Yeah. […]"*

116. The Panel finds that the above pieces of evidence are credible and that they match each other. Even if each of these elements considered individually would not be sufficient to reach the standard of proof required in the present matter, considered altogether, the Panel finds that they constitute sufficient evidence that the Appellant was receiving, as from 2006, bribe payments from Torneos in connection with broadcasting rights of the Copa Libertadores in the amount of USD 600,000 per year until his resignation in 2012 at least; hence, a total amount of USD 4,200,000.

(ii) CONMEBOL/CONCACAF Copa America

117. The following facts are disputed among the Parties. The Appellant submits that there is no sufficient reliable evidence that the Appellant accepted a payment of USD 1,000,000 for the signature in 2010 of a contract between CONMEBOL and a company called Full Play Group ("Full Play") – owned and controlled by Mr Hugo Jinkis and Mr Mariano Jinkis. According to this agreement, Full Play became the exclusive agent to commercialise the media and marketing rights for the 2015, 2019 and 2023 editions of the Copa America. The Appellant contends that at the time of the recorded conversation between Mr José Hawilla, Mr Alejandro Burzaco and Mr Hugo Jinkis confirming that the Appellant received bribes in the context of the Copa America, the Appellant was no longer active in football so that the evidence is false and lacks sense. Moreover, the Appellant argues that Mr Leite's notes require a forced interpretation in order to accuse the Appellant. FIFA in turn submits that there is sufficient coinciding evidence that the Appellant received a bribe payment in the amount of USD 1,000,000 in exchange of the signature of the above-mentioned contract with Full Play and agreed for the payment of an amount of USD 2,000,000 before each Copa America edition: the coinciding evidence on file entails a recorded conversation between Mr José Hawilla, Mr Alejandro

Burzaco and Mr Hugo Jinkis, Mr Leite's notes, as well as testimonies of Mr José Hawilla, Mr Alejandro Burzaco and Mr Santiago Peña, financial manager of Full Play.

118. Before analysing the evidence regarding the alleged payments agreed upon and/or paid to the Appellant, the Panel shall clarify the factual background around the alleged bribery scheme regarding Copa America.

❖ *Factual Background*

119. The following facts are undisputed: in or around June 2010, Full Play entered into an agreement with CONMEBOL. With this contract, Full Play became the exclusive agent to commercialize the media and marketing rights as from the 2015, 2019, and 2023 editions of the Copa America. Mr Teixeira signed this agency agreement.

120. Once Traffic became aware of the above agreement between CONMEBOL and Full Play, it filed a lawsuit in front of the courts of Florida against CONMEBOL (including CONMEBOL officials) and Full Play. This because in a contract dated 2001 CONMEBOL had already assigned the broadcasting rights for the 2015 edition of the Copa America to Traffic.

121. In order to end the legal dispute, Traffic, Full Play and Torneos discussed the possibility of jointly acquiring the commercial rights to the Copa America, and that in exchange, Traffic would withdraw its lawsuit. As a result of said discussions, the parties agreed to create Datisa to formally engage with CONMEBOL.

122. In or about March 2013 (shortly before the establishment of Datisa), Mr Burzaco (Torneos), Mr Hugo Jinkis and Mr Mariano Jinkis (Full Play), Mr Hawilla (Traffic) met in Buenos Aires, Argentina. The company Datisa was formally established on 21 May 2013. Traffic, Torneos, and Full Play each held a one-third interest in the company. On 25 May 2013, CONMEBOL entered into an agreement with Datisa, awarding the latter the media and marketing rights for the 2015, 2019 and 2023 editions of the Copa America ("Datisa Agreement").

❖ *The evidence on file*

123. The Panel shall now analyse the evidence on file relating to the alleged bribe payments in relation to the Copa America.

124. In his testimony, Mr Alejandro Burzaco stated as follows:

"A By April, May of 2010 the Jinkies, Hugo Jinkis, to be more precise, asked me to obtain Nicholas Leoz, Julio Grondona and Riccardo Teixeira's support to terminate the Traffic contract and to get the long-term contract with Full Play.

Q And to what extent, if at all, was the payment of bribes to be a part of that discussion with them?

A To a full extent. The proposal was, and it was pretty widely spoken, 60 plus 15. And in the case of Nicolás Leoz, Julio Grondona, Riccardo Teixeira, the proposal was to get each one of them paid $3 million per Copa America edition.

Q And at that time, who was going to cover the cost of those bribes?

A The economic cost was going to be covered by Full Play. And the contract was going to be Full Play.

Q And what, if anything, did Hugo Jinkis tell you about the timing of those, the proposed bribe payments?

A He explained me that he projected in the case of the group of six presidents, paying them 50 percent at the moment that his contract got signed and 50 percent before the first Copa America edition in said contract. In the case of the three big decision-makers, Leoz, Teixeira and Grondona, the proposal was to pay them $1 million at signature and the remaining $2 million further before the first Copa America edition took place.

Q Did you agree to the proposal?

A I agreed to extend the proposal to Leoz, Grondona and Teixeira.

[…]

Q And what about Riccardo Teixeira?

A In the case of Riccardo Teixeira we delay until January 2011.

Q And what happened -- did you ultimately pay, make a payment to Riccardo Teixeira?

[…]

A Regarding the money owed to Riccardo Teixeira we received instructions from Riccardo Teixeira and from Julio Grondona to get that $1 million paid to Julio Grondona instead of to Riccardo Teixeira.

Q And what reason, if any, were you given by Julio Grondona for paying the $1 million for Teixeira instead of Grondona?

A I was called to Grondona's apartment in the City of Buenos Aires in January 2011 and he had a telephone conversation with Riccardo Teixeira. And when he got off he told me that the $1 million owed to Riccardo Teixeira should be paid to him.

Q And what reason, if any, did he give you for that?

A He told me, he explained me that Riccardo Teixeira owe him $1 million because Julio Grondona voted for Qatar 2022 as the hosting nation of the World Cup.

Q And based on your conversations with Julio Grondona,"

125. According to the above testimony, the Appellant was supposed to receive USD 1 million at the signature of the contract between Full Play and CONMEBOL in relation to Copa America 2015-2023. Such amount was eventually paid in 2011 by Full Play to another person following instructions from the Appellant.

126. Moreover, Mr Santiago Peña, financial manager of Full Play, also confirms the existence of payments in relation to the Datisa Agreement. His testimony states as follows:

"[…]

Q With regard to the true amounts agreed with Burzaco, what was the breakdown for how the $15.3 million for Copa America 2015 would be paid?

A The breakdown?

Q The breakdown, how was it to be distributed?

A They mentioned to me that it could be distributed three million for the president of the Argentine Federation. Three million for the president of the Brazilian Federation. Three million for the president of CONMEBOL. And then six million for the Group of Six.

Q Who was the president of the Argentine Federation at the time?

A Julio Grondona.

Q Who was the president of the Brazilian Federation?

A I really don't remember because I knew that there were three different presidents, but I believe it was Ricardo Teixera. […]"

127. Mr José Hawilla also confirmed the existence of payments to the Appellant in relation to the Copa America. He testified as follows:

"[…]

Q Did you agree to make payments to Ricardo Teixeira?

A Yes.

Q And, in connection with the Copa America?

A Yes. […]

Q So what mechanism did you use to get money to Ricardo Teixeira?

A You should make payments to a Dollaro or several Dollaros.

Q What is a Dollaro?

A Dollaro is an exchange operator of dollars. […]

Q What amounts were you paying to Ricardo Teixeira in connection with the Copa America, if you remember?

A I think it started at $1 million, then went up to 1.2-- no, 1.5, then two million and then 2.5 and then three. […]"

128. On 1 May 2014, a meeting was held in Miami between Mr Hawilla, Mr Hugo Jinkis, Mr Mariano Jinkis and Mr Alejandro Burzaco. The recording of such meeting confirms that payments were made to the Appellant in relation to Copa America, as follows:

"[…]

HAWILLA: Why did you pay Ricardo?

BURZACO: Because Ricardo [UI]--

HAWILLA: [OV] Why did you pay Ricardo? No, Ricardo wasn't there.

H JINKIS: [OV] Ricardo was there.

BURZACO: [OV] Ricardo was already there.

H JINKIS: Ricardo was already there. When we signed the agency contract, Ricardo was there.

HAWILLA: I told you over the phone-- I don't know if it was you or Mariano: Let's sign this contract with the new management of CON-- CONMEBOL.

BURZACO: Yes, but the--

HAWILLA: *[OV] Because if you sign with Leoz, you would have problems. right? Remember?*

H JINKIS: *[OV] No. but. we already-- we already analyzed that and--*

HAWILLA: *[OV] You said: Good idea-- uh, let's sign it. let's do it—*

BURZACO: *[OV] Yes. but- but. uh--*

H JINKIS: *[OV] That was the contract for the sale of rights.*

BURZACO: *[OV] You are-- you are mixing two different concepts.*

H JINKIS: *[OV] Yes. yes.*

BURZACO: *[OV] When you signed with us, what we had to pay to them was for the signature of the new contract, which Marin received money for. But when you came in, in some cases and through me he-- they had already paid for Copa America 2015. They had already paid a year prior before La Paz was signed.*

HAWILLA: *Paid to whom? Ricardo?*

BURZACO: *[OV] Arturo, to Ricardo, Nicolas uh--*

H JINKIS: *[OV] To all of them that were there!*

HAWILLA: *[OV] Huh?*

BURZACO: *-- uh, Julio--.*

M JINKIS: *[OV] Before Copa America in Argentina.*

H JINKIS: *Nicolas also got a share.*

BURZACO: *All of them!*

HAWILLA: *Who? Nicolas, too?*

BURZACO: *Yes.*

HAWILLA: *How much did Nicolas get?*

BURZACO: *Three.*

HAWILLA: *Fuck! [pause] And Ricardo, too?*

BURZACO: *Three-- three. Three for Julio, 1.5 for seven and-- the same, the same. What happens is that the participants changed. Ricardo [UI].*

H JINKIS: *Ricardo is trying now to get paid this way. [laughs] […]"*

129. Finally, Mr Leite's notes summarize the payment made by Full Play, Traffic and Torneos, as follows:

"[…]

6.) Copa América

Partes: Full Play – Traffic – Torneos

Período: 2015-2023

MPM: us$3M por cada CA jugada + us$3M port firma contrato. Ya pagado us$4M (us$3M a MPM y us$1M a Miami). Restan us$2M + us$6M […]"

<u>Free Translation</u>:

"[…]

6) Copa America

Parties: Full Play – Traffic – Torneos

Period: 2015-2023

MPM: us$3M for each CA played + us$3M for contract signing. Already paid us$4M (us$3M to MPM and us$1M to Miami). Remaining us$2M + us$6M […]"

130. The Panel already found that Mr Leite's notes constitute an admissible piece of evidence. According to these notes, there was an agreement to make bribe payments in relation to Copa America editions 2015-2023 among Full Play, Traffic and Torneos; according to such deal, Full Play, Traffic and Torneos had already paid the Appellant (referred to as "Miami") an amount of USD 1 million. Even if the reference to "Miami" is not deprived of any ambiguity, it appears clearly to the Panel that these notes corroborate the rest of the evidence on file, in particular the testimony of Mr Alejandro Burzaco. Finally, the existence of these notes and their location was mentioned by Mr Leite in the course of a recorded telephone conversation with Mr Hawilla on 28 March 2014.

131. Based on the above considerations, the Panel finds that there is credible and corroborating evidence that the Appellant accepted to receive a payment in the amount of USD 1 million in exchange of his signature in 2010 of a contract between CONMEBOL and Full Play attributing to the latter the exclusive broadcasting rights for the Copa America 2015, 2019 and 2023 editions. Each and every piece of evidence mentioned above – which arise from different sources – indeed confirm that the Appellant agreed to receive an amount of money in relation to the Copa America. If some of the above evidence arose after the Appellant resigned from any professional football activity, the Panel notes that such evidence clearly refers to a period of time that is prior to the Appellant's resignation – *i.e.*, 2010 and 2011. Moreover, as already stated above, the fact that the amount of USD 1 million was eventually paid to another person on the Appellant's behalf is not relevant to determine whether or not an offence based on Article 27 of the FCE occurred.

(iii) CBF Copa do Brasil

132. The facts are disputed among the Parties. The Appellant submits that the evidence on file relates exclusively to 2014, *i.e.* a period of time when the Appellant was no longer a football official, and that the alleged bribes are not demonstrated; this is the case with respect to the telephone conversation between Mr Leite and Mr Hawilla as well as the evidence referring to payments made between Mr Leite and Mr Hawilla with respect to the joint exploitation of the rights in the Copa do Brasil as agreed for the period between 2013 and 2022. Moreover, the evidence on file does not refer to the Appellant, which makes sense, since at the time of this evidence the Appellant was no longer active in football, so that it would make no sense for third parties to pay bribes to him. FIFA, in turn, contends that the evidence on file refers to the Appellant receiving bribe payments prior to 2014, at a period of time when he was an official within the meaning of the FCE. The evidence on file unambiguously confirms that the Appellant solicited and received bribes (i) from Mr Hawilla in connection with the assignment of the commercial rights of the Copa do Brasil to Traffic from 1990 to 2009 and reaffirmed in 2009, and (ii) from Mr Leite, when the same commercial rights were assigned to Klefer in 2011.

133. The Panel shall now review the evidence on file relating to the CBF Copa do Brasil.

Before delving into the evidence on file, the Panel shall first recall the uncontested factual background around the Copa Do Brasil alleged bribery scheme.

❖ *Factual Background*

134. The following facts are undisputed. From around 1990 to 2009, CBF contractually assigned the commercial rights of the Copa do Brasil to Mr Hawilla's company Traffic, a contract which was renewed in January 2009 for the period 2009-2014. On 8 December 2011, a competitor of Traffic, named "Klefer Produções Ltda." ("Klefer"), owned by Mr Kleber Leite, concluded a contract with CBF to purchase the commercial rights for the editions of the CBF Copa do Brasil from 2015 to 2022.

135. The contract between CBF and Klefer led to a dispute between Mr Leite (Klefer) and Mr Hawilla (Traffic). In order to settle this dispute, Traffic and Klefer entered, in August 2012, into an agreement to pool their marketing rights for future editions of the Copa do Brasil (*i.e.* from 2013 to 2022) and to share the profits equally.

❖ *The evidence on file*

136. The Panel first notes that during a recorded telephone conversation between Mr Hawilla and Mr Leite on 24 March 2014, the latter confirmed to Mr Hawilla that payments were being made to the Appellant by Klefer:

"[…]

LEITE: *We've already paid – I'm absolutely sure.*

HAWILLA: *Paid to Ricardo, Marco Polo, and Marin?*

LEITE: *[UI, breaking up] uh, I don't know-- let's not talk about this over the phone, because it is very dangerous, man, that last thing that happened with that guy was enough. To talk about that shit is complicated. We'll talk about this in person. I am not in Brazil and the telephone is a fuck-- the phone is a shitty problem. […]"*

137. On the same day, following up on the above conversation, Mr Flavio Grecco Guimarães, the financial director of Traffic confirmed the amount that Traffic and Klefer had agreed to pay to the Appellant, as follows:

"[…]

GUIMARÃES: *So, here's the thing, right-- uh-- uh-- the amount-- I have here an e-mail from Serginho, explaining it-- The amount of that commission paid by them was 2 million reais.*

HAWILLA: *Hum. Why?*

GUIMARÃES: *Two million. So, he-- Well, he says that it was the agreement reached during the trip-- a payment of two million reais-- that's what he wrote.*

HAWILLA: *Hum.*

GUIMARÃES: *And he said that Traffic pays one and Klefer pays one. […]"*

138. During a recorded telephone conversation on 28 March 2014, Mr Leite confirmed to Mr Hawilla that he had a moral commitment of paying an amount to the Appellant and that "*an equation was created to include more people*".

139. On 31 March 2014, Mr Leite sent a text message to Mr Hawilla confirming the amount of the payments made to the Appellant, as follows:

"*Regarding the subject we discussed on the phone, the past was with 1.5. Now combining the past and future, added, 2.0 as a matter of fact payments. Kiss Kleber*".

140. On 2 April 2014, during a recorded telephone conversation between Mr Leite and Mr Hawilla, Mr Leite confirmed that the Appellant received part of the BRL 2 million as follows:

"*HAWILLA: Uh- uh- uh Klebinho—Marin and Marco Polo—do they know you're paying Ricardo more?*

LEITE: Nuh—Of course they know!

HAWILLA: That you pay more?

LEITE: They know! The same-- Of course!

[…]

LEITE: One to each side…

HAWILLA: Yes, but they don't know—

LEITE: [OV] That's it!

HAWILLA: -- but they don't know that Ricardo gets more than they do…

LEITE: He does not get more, he gets the same thing—

[…]

LEITE: […] *To me, there is past and present. You have to respect the past because that's when the decision was made. And it has been agreed to—in the past, they decided to agree. And so they agreed! And we settled it—present and future*."

141. In his testimony rendered during the Trial, Mr Hawilla clarified the content of the above-mentioned evidence, as follows:

"[…]

Q And what involvement, if any, did Traffic have with the Copa do Brasil?

A He had a while back the rights to it.

Q Do you remember when the company first acquired the rights to the tournament?

A No, I don't remember. Many years ago.

Q From what organization did Traffic acquire the rights from?

A From CBF. […]

Q Did there come a time that you had to make bribe payments in connection with that tournament?

A Not at first, but later on, yes.

Q Later on, who did you pay?

A To himself, Riccardo Teixeira. […]

Q So what did Traffic acquire through this contract?

A What's written in here, all the rights to television outside of the Brazilian territory.

Q Now, did there come a time when -- well, did you pay Riccardo Teixeira a bribe in connection with this contract, if you remember?

A Yes.

Q Now, did there come a time when Riccardo Teixeira left the presidency of the CBF?

A Yes, but this contract is from 2009. […]

Q Now, before Ricardo Teixeira left CBF, what steps if any did you take to try to extend your contract?

A Ricardo had sold the extension of the contract to another company.

Q What company was that?

A Klefer, in Rio de Janeiro. […] When we stopped paying bribes they sold to another company, the same thing happened to Teixeira.

Q Who was the owner of Klefer at that time?

A Kleber Leite. […] he signed it in 2012, a contract with Klefer for the Copa Brazil, valid from 2015 because our company had the rights-- still had the rights for 2013-- no, '11, '12, '13, '14.

Q So, to what extent did you-- did you speak with Mr. Leite about that?

A I did.

Q What agreement, if any, did you reach with him?

A On that making an agreement, that would-- fifty percent would go to each side. […]"

[Enclosure 30 of the Final Report]

142. Mr Hawilla's testimony continued as follows:

"[…]

Q Now, during the period after this contract was signed, what if anything did Kleber Leite say to you about payment of bribes in connection with this contract?

A He called me a month or so later, he told me he made an agreement to pay bribes.

Q What was the nature of that agreement?

A Initially he told me that every year we had to pay 1.5 million Reals.

Q Reals, is that the Brazilian currency?

A Yes.

Q And how, if it all, did he tell you the 1.5 million Reals were to be divided?

A He said, it was five hundred thousand for each one.

Q And when you say, each one, who you are referring to?

A He was referring to Teixeira, Marco Polo, and Marin. […]

[Referring to the telephone conversation dated 24 March 2014 mentioned above].

Q So you refer to the Brazilian cup and the payoff for those guys and you ask about the disbursement of this money. What are you referring to when you talk about the payoff for those guys?

A How was that going to be paid, who was going to conduct the payments.

Q Are these the payments that you testified about earlier, the 1.5 million reais?

A Yes. […]

Q When Kleber Leite says we've already paid, I'm absolutely sure, what is he referring to there?

A He is referring to these three people that I just mentioned. […]

[Referring to recorded telephone conversation between Mr Hawilla and Mr Leite on 28 March 2014]

Q When Mr. Leite says I remember an equation was created to include more people, to include more people, who are the more people you understood him to be referring to?

A He is referring to three people because before it used to be two.

Q Which are the three?

A The same three we spoke about in the beginning, Marin, Marco Polo, and Teixeira."

[Enclosure 38 of the Final Report]

143. Moreover, on 1 April 2014, Mr Sergio Campos, an employee of Klefer, sent an email to Mr Flavio Grecco Guimarães, the financial director of Traffic, entitled "*Importante – pagamentos Copa do Brasil*" ["important – payments Brazil Cup"] containing proof of various payments from Klefer to various beneficiaries concerning Copa do Brazil for a total amount of BRL 2 million. In accordance with this email, three payments were made:

- in cash in the amount of BRL 200,000;
- to a luxury yacht manufacturer called Sunseeker International Ltd, in the amount of USD 500,000 (approximately BRL 1,000,000); and
- to a company called Pallas Operação Turisticas, in the amount of BRL 800,000.

144. In the Panel's view, there is no doubt that the payments made to the above companies are suspicious, since (i) it makes no sense that Klefer, which holds the TV rights for Copa do Brasil, would make a payment in relation to the contract it holds with CBF in the amount of BRL 1,000,000 to the benefit of a luxury yacht manufacturer; and (ii) the reason for receiving the payment made to the benefit of Pallas Operação Turisticas in the amount of BRL 800,000, *i.e.* an advance payment on events in host cities during the 2014 FIFA World Cup, does not match the motive that is mentioned on the receipt issued by Klefer, according to which the said payment was made in relation to the 2013 edition of Copa do Brasil.

145. The Panel finds that, considered altogether, the evidence on file sufficiently demonstrates that the Appellant accepted to receive the payments of BRL 2 million per year, shared with two other officials (Mr Marin and Mr Del Nero), of which his share was BRL 1 million per year, for the period 2012-2022, for a total amount of BRL 10 million (approximately USD 2,5 million).

(iv) Conclusion

146. Based on the above considerations, the Panel is comfortably satisfied that the Appellant accepted to receive pecuniary advantages in the total amount of USD 7,7 million in relation to CONMEBOL Copa Libertadores, CONMEBOL/CONCACAF Copa America and CBF Copa do Brasil.

c.) Personal or Undue Pecuniary or Other Advantage

147. For a violation of Article 27 (1) of the FCE to occur, there must be a personal or undue pecuniary or other advantage at stake. The Panel first notes that it is established that the Appellant accepted to receive payments in the total amount of USD 7,7 million. In the Panel's view, it is beyond doubt that by accepting to receive such payments, the Appellant accepted to receive a pecuniary advantage. The Panel further notes that since it was made to the benefit of the Appellant personally, such pecuniary advantage is personal.

148. Finally, said advantage shall be "undue", *i.e.* an advantage for which there is no proper basis. The Appellant did not argue nor brought forward any legal or contractual basis for the above-mentioned payments, and offers and promises of payments, to the Appellant. To the contrary, the witnesses during the Trial confirmed expressly that those payments were bribes. As a result, the payments, and offers and promises of payments, to the Appellant, constitute personal or undue pecuniary advantages in the meaning of Article 27 (1) of the FCE.

d.) Ratio of Equivalence

149. In order for a violation of Article 27 (1) of the FCE to occur, there must be a *quid pro quo* or ratio of equivalence between the undue advantage and the specific action by the official obtaining it. Based on the wording of Article 27 (1) of the FCE, in order to assess the existence of such ratio of equivalence, the Panel shall address the following requisites:

(1) the payment involves an act which is related to official activities of the recipient or offeree;

(2) the act of the official is contrary to his duties as official or based on illegitimate motives or flawed conduct on his part;

(3) the undue advantage must be given in exchange for the execution or omission of the act; and

(4) the undue advantage must be given in order to obtain or retain business or any other improper advantage.

150. As to the first requisite, the Panel notes that, in his capacity of President of the CBF and member of the CONMEBOL Executive Committee, the Appellant signed most of the contracts relating to Copa Libertadores, the agency contract with Full Play in connection with the Copa America and the contract with Klefer in relation to the Copa do Brasil. All of these acts are – without any doubt – acts relating to official activities of the Appellant. The first requisite is therefore met.

151. As to the second requisite, the Panel notes that it is widely recognised that in cases where payments are accepted by an official without a legitimate reason, no further proof is required with regards to the occurrence of an improper influence on the decision-shaping and making: any kind of reward renders the relevant advantage unlawful or improper. As already demonstrated, the Appellant accepted several payments from Mr Burzaco and/or T&T, from Mr Hawilla and/or Traffic, from the Jinkis brothers and/or Full Play, and from Mr Leite and/or Klefer, without any proper legal or contractual basis justifying those payments. As a result, the Panel finds that the Appellant's acts must be considered as being based on illegitimate motives and therefore contrary to his duties, so that the second requisite is also met.

152. As to the third requisite, the Panel is comfortably satisfied that the payments and promises were made to the Appellant in exchange of the latter's support for the signature and/or renewal of specific broadcasting contracts with CONMEBOL and CBF. First, there is on file no evidence or indication whatsoever as to the existence of a clear and proper legal or contractual basis for the relevant payments, which is – to say the least - odd when one considers the extraordinarily high amounts of the payments and promises at stake. Secondly, the witnesses during the Trial, in particular Mr Hawilla, Mr Peña, Mr Burzaco and Mr Rodriguez, consistently testified under oath that the payments made or offered to the Appellant were bribes in exchange of his support for the signature and/or renewal of specific broadcasting contracts with CONMEBOL and CBF. This requisite is therefore also met.

153. Finally, as to the fourth requisite, the Panel notes that "any other advantage" must be interpreted in broad sense, thus including any sort of betterment or advancement of economic, legal or personal, material or non-material nature. It is therefore clear, in the Panel's view, that the signature and/or renewal of the broadcasting rights contracts in favour of Klefer, Traffic, T&T or Full Play by CBF and CONMEBOL constitutes an advantage within the meaning of Article 27 (1) of the FCE. Moreover, considering that such advantage was obtained through the use of illegitimate means, *i.e.* through payments from Mr Burzaco and/or T&T, from Mr Hawilla and/or Traffic, from the Jinkis' brothers and/or Full Play, and from Mr Leite and/or Klefer to the Appellant in exchange of the latter's support, the advantage at stake qualifies as improper. The Panel therefore finds that the undue advantage was given to the Appellant by Mr Burzaco and/or T&T, Mr Hawilla and/or Traffic, the Jinkis' brothers and/or Full Play, and Mr Leite and/or Klefer in order for these third parties to obtain an improper advantage. Again, this requisite is met as well.

154. Considering the above elements altogether, the Panel concludes that there is a clear connection – *i.e.*, ratio of equivalence – between the payments made or promised to the Appellant by Mr Burzaco and/or T&T, Mr Hawilla and/or Traffic, the Jinkis brothers and/or Full Play, and Mr Leite and/or Klefer on the one hand and the signature and/or renewal of the broadcasting rights contracts by CBF and CONMEBOL in favour of those companies on the other.

e.) Conclusion

155. The Panel concludes that all the conditions for a violation of Article 27 (1) of the FCE are fulfilled. The Panel therefore finds that the Appellant breached Article 27 (1) of the

FCE in relation to each of the above-mentioned schemes, *i.e.* CONMEBOL Copa Libertadores, CONMEBOL/CONCACAF Copa America and CBF Copa do Brasil.

156. The Panel shall now turn to the examination of the consequences of the violation of Article 27 (1) of the FCE by the Appellant.

C. Consequences of the violation of Article 27 (1) of the FCE by the Appellant

157. The Panel first notes that it is well recognised that whenever an association uses its discretion to impose a sanction, CAS shall have regard to that association's expertise, by demonstrating a certain degree of deference to the decision-making bodies of such association, especially in the determination of the appropriate sanction. Hence, it was held that "*the measure of the sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rules can be reviewed only when the sanction is evidently and grossly disproportionate to the offence (see TAS 2004/A/547, FC Zürich v/ Olympique Club de Khourigba, §§ 66, 124; CAS 2004/A/690, Hipperdinger v/ ATP Tour, Inc., § 86; CAS 2005/A/830, Squizzato v/ FINA, § 10.26; CAS 2005/C/976 & 986, FIFA & WADA, § 143; 2006/A/1175, Daniute v/ IDSF, § 90; CAS 2007/A/1217, Feyenoord v/ UEFA, § 12.4)*" (CAS 2009/A/1870, para. 125). It is only when, having had regard to the association's expertise, the CAS panel is nonetheless of the view that the sanction is disproportionate that it must be free to say so and apply the appropriate sanction (CAS 2015/A/4338, para. 51; CAS 2017/A/5003, para. 274).

158. In the present matter, the Appellant submitted during the hearing that, in the event the Panel were to find that the Appellant breached Article 27 (1) of the FCE, the sanction imposed upon the Appellant in the Appealed Decision was not disproportionate. For the sake of completeness, the Panel is of the view that the sanction imposed upon the Appellant is proportionate considering in particular the extraordinarily high amounts of the bribes at stake, the Appellant's intentional behaviour as well as his responsibility to serve as role model as a result of the very prominent and senior positions he held in association football both at national and international level.

159. In light of the above considerations, the Panel finds that the sanction imposed upon the Appellant in the Appealed Decision shall be confirmed. As a result, the Appellant is banned for life from taking part in any kind of football-related activity at national and international level and is ordered to pay a fine in the amount of CHF 1,000,000.

IX. COSTS

(…).

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ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 20 December 2019 by Ricardo Terra Teixeira against the *Fédération international de Football Association* with respect to the Decision rendered by the Adjudicatory Chamber of the FIFA Ethics Committee on 26 July 2019 is dismissed.

2. The Decision rendered by the Adjudicatory Chamber of the FIFA Ethics Committee on 26 July 2019 is confirmed.

3. (…).

4. (…).

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

Seat of arbitration: Lausanne, Switzerland
Date: 14 September 2021

THE COURT OF ARBITRATION FOR SPORT

Hendrik Willem Kesler
President of the Panel

Rauf Soulio
Arbitrator

Luigi Fumagalli
Arbitrator

Stéphanie De Dycker
Clerk