# Decision of the FIFA Appeal Committee

passed on 15 September 2022

**DECISION BY:**

**Mr. Neil EGGLESTON, USA (Chairperson)**
**Mr. Christian ANDREASEN, Faroe Islands (Member)**
**Mr. Jahangir BAGLARI, IR Iran (Member)**

**ON THE APPEALS LODGED BY:**

**Chilean Football Association & Peruvian Football Association**

**(Ref. FDD-11556)**

**AGAINST:**

the decision passed by the Disciplinary Committee on 10 June 2022 (ref. FDD-11073)

# I. FACTS OF THE CASE

1. The following summary of the facts does not purport to include every single contention put forth by the actors at these proceedings. However, the FIFA Appeal Committee (**the Committee**) has thoroughly considered in its discussion and deliberations any and all evidence and arguments submitted, even if no specific or detailed reference has been made to those arguments in the following outline of its position and in the ensuing discussion on the merits.

## A. INTRODUCTION

2. The case at stake relates to the potential ineligibility of the player Byron David Castillo Segura (**the Player**) with regard to his participation in eight qualifying matches of the national team of the Ecuadorian Football Association (**FEF**) in the preliminary competition of the FIFA World Cup Qatar 2022™ (**the Preliminary Competition**), as follows:

| No | Date | Home Team | Away Team | Result |
|---|---|---|---|---|
| 1 | 2 September 2021 | Ecuador | Chile | 2-0 |
| 2 | 5 September 2021 | Ecuador | Paraguay | 0-0 |
| 3 | 9 September 2021 | Uruguay | Ecuador | 1-0 |
| 4 | 7 October 2021 | Ecuador | Bolivia | 3-0 |
| 5 | 11 November 2021 | Ecuador | Venezuela | 1-0 |
| 6 | 16 November 2021 | Chile | Ecuador | 0-2 |
| 7 | 24 March 2022 | Paraguay | Ecuador | 3-1 |
| 8 | 29 March 2022 | Ecuador | Argentina | 1-1 |

3. The parties involved in the present proceedings are as follows:

- the Chilean Football Association (**FFCH** or **the Chilean FA**);
- the Peruvian Football Association (**FPF** or **the Peruvian FA**);
- the Ecuadorian Football Association (**FEF** or **the Ecuadorian FA**).

## B. PROCEEDINGS BEFORE THE FIFA DISCIPLINARY COMMITTEE

4. On 5 May 2022, the FFCH requested the Disciplinary Committee to initiate disciplinary proceedings based on a series of allegations concerning potential forgery of the documents establishing the Player's Ecuadorian nationality, as well as the Player's potential ineligibility with respect to his participation in the aforementioned matches.

5. On 11 May 2022, disciplinary proceedings were opened against the FEF concerning the potential violation of articles 11 (Offensive behaviour and violations of the principles of fair play), 21 (Forgery and falsification) and 22 (Forfeit) of the FIFA Disciplinary Code (**FDC**). In addition, the Secretariat informed the FPF that it was also invited to submit its position.

6. On 10 June 2022, the FIFA Disciplinary Committee rendered its decisions in relation to the present matter (**the Appealed Decision**). The findings of said decision read as follows (free translation from Spanish):

> 1. *The FIFA Disciplinary Committee dismisses all charges against the Ecuadorian Football Association.*
>
> 2. *The disciplinary proceedings initiated against the Ecuadorian Football Association are hereby closed.*

7. The terms of the Appealed Decision were notified to the FFCH, the FPF and the FEF on 10 June 2022, and upon their request, the grounds were communicated on 24 June 2022.

## C. PROCEEDINGS BEFORE THE FIFA APPEAL COMMITTEE

8. On 24 June 2022, the FFCH notified FIFA about its intention to appeal.

9. On 24 June 2022, the FPF notified FIFA about its intention to appeal.

10. On 2 July 2022, the FFCH submitted its appeal brief along with a copy of the proof of payment of the appeal fee.

11. On the same day, the FFCH presented a "*request for provisional measure*", namely to notify the Player and request him to provide a series of information and documentation, as follows:

> "*Based on the arguments filed, we kindly request the President of the Appeal Committee to notify Byron David Castillo Segura and to request him, in 48 hours, to:*
>
> *a) provide more information about the existence of a brother called "Bayron Javier Castillo Segura".*
> *b) inform where his brother lives and what he does in his life.*
> *c) provide an address, telephone number, e-mail or social media page of Bayron Javier.*
> *d) inform until what age they lived together, including sister Maria Eugenia and the parents.*
> *e) inform if Bayron Javier grew up in Tumaco (Colombia) or Playas (Ecuador).*
> *f) explain why his brother was born in Colombia and the Player was born in Ecuador.*
> *g) provide evidence that Bayron Javier is alive.*
> *h) provide a recent picture of Bayron Javier.*
>
> *In addition to the information about the existence of a brother, the Player shall also:*
>
> *i) inform and submit evidence about the hospital where he was born in Playas, Ecuador.*
> *j) inform and submit evidence about his baptism in Ecuador.*
> *k) inform and submit evidence about the school frequented by him in Ecuador.*

*l) inform and submit evidence about the address of residence until 2012 (the date in which he was registered by the first time with the FEF).*
*m) inform and submit evidence about the reason why his fathers were in the city of Playas (Ecuador) on 10 November 1998, the date he was born.*"

12. On 4 July 2022, the FPF submitted its appeal brief along with a copy of the proof of payment of the appeal fee.

13. On 11 July 2022, the FFCH requested an update on its "*request for provisional measure*".

14. On 13 July 2022, the Secretariat to the FIFA Appeal Committee (**the Secretariat**) invited the FEF to provide "*its position and/or its comments in relation to (i) the appeals lodged by the Chilean and the Peruvian Football Associations, and (ii) the "request for provisional measure" submitted by the Chilean Football Association on 2 July 2022*".

15. On 15 July 2022, the FEF requested an extension of the aforementioned deadline.

16. On the same day, the FFCH informed the Secretariat that one of the exhibits submitted with its appeal brief was incomplete and provided an updated version of the related document.

17. On 18 July 2022, the Secretariat *inter alia* informed the FEF that its request for a 10-day extension of its deadline had been granted.

18. On 25 July 2022, the FFCH submitted a correspondence to the Secretariat in which it (i) "*strongly oppose[d] the mentioned 10-days extension*" given that "*this case demands a very quick solution and [that] the 6-days deadline initially granted to FEF was more than enough to provide its complete position regarding the appeal and the provisional measure*" and (ii) requested the "*Appeal Committee to reach a decision on the case using the file in its possession, in accordance with article 20, paragraph 5*" FDC.

19. On 28 July 2022, the FEF provided its comments and position with regard to the present matter.

20. On 10 August 2022, the FFCH requested the FIFA Appeal Committee "*to decide the provisional measures urgently and to schedule a date to decide the merits within 2 weeks*".

21. On 15 August 2022, the Secretariat informed the FFCH that "*further details regarding the present appeal procedure will be provided in due course*".

22. On 31 August 2022, the Secretariat *inter alia* informed the parties that:
    - the present appeal procedure would be "*heard by the FIFA Appeal Committee on the occasion of its next meeting on 15 September 2022*";
    - the Committee would be composed by Mr Neil Eggleston (Chairperson), Mr Christian Andreasen (Member) and Mr Salman Al Ansari (Member);

- "*all parties to the present proceedings (i.e. the Chilean Football Association, the Peruvian Football Association, and the Ecuadorian Football Association) are summoned to attend said hearing*".

Finally, the FEF was requested to "*ensure, in the best extend possible, that the player Byron David Castillo Segura is made available for the hearing*".

23. On the same date, the FFCH requested an update on its request for "*provisional measures*".

24. On 1 September 2022, the Secretariat *inter alia* clarified "*on behalf of the Chairman of the FIFA Appeal Committee, (…) that the request submitted by the Chilean Football Association on 2 July 2022 may not qualify as a request for provisional measures in the sense of art. 48 of the FIFA Disciplinary Code (FDC), but is rather to be considered as a request for evidence*".

25. On the same date, the FFCH objected to the nomination of Mr Salman Al Ansari and requested the latter to be replaced "*[c]onsidering that the present case has direct impact in the organization and participation of a National Team in the FIFA World Cup Qatar 2022 and also considering that Qatar plays the opening match exactly against Ecuador (or Chile)*".

26. In a separate communication sent on the same day, the FFCH stressed that the Player "*is a person subject to terms of the Disciplinary Code and shall attend to the hearing due to the call made by the Appeal Committee, regardless any effort from the FEF*" and requested the FIFA Appeal Committee to:

    - "*Provide a translator, independent from the parties, to translate the player's communications from Spanish to English and vice-versa*";
    - "*Directly notify the Player, stressing his duty to collaborate, through his current club (Leon) TMS e-mails*".

27. On 2 September 2022, the Secretariat *inter alia* informed the parties that "*Mr Salman Al Ansari declined to participate in the meeting scheduled on 15 September 2022*" and "*reiterate[d] that, consistently with art. 20 of the FIFA Disciplinary Code, the Ecuadorian Football Association is requested to ensure that the player Byron David Castillo Segura is made available and attends the hearing*". In particular, the FEF was reminded of its "*duty of collaboration in the scope of these proceedings with regard to the clarification of facts, for instance by providing relevant evidence or information and ensuring the assistance of the relevant persons in this process*".

28. On 5 September 2022, the Secretariat informed the parties that "*Mr Jahangir Baglari will replace Mr Salman Al Ansari*" with respect to the appeal proceedings at hand.

29. On 7 September 2022, the FFCH, the FPF and the FEF informed the Secretariat about the persons who would attend the hearing on their behalf. In its correspondence, the FEF further clarified that (i) it formally notified the Player that it was summoned for the hearing and (ii) it will proceed in Spanish during the hearing. The FFCH attached to its correspondence a media article corresponding to "*declarations given on 6 September by the Byron Castillo's lawyer widely reported by the press, in which the player shows to be fully informed about the hearing on 15 September*".

30. On 9 September 2022, the Secretariat informed the parties about the necessary details for the hearing, *inter alia* inviting the FEF to communicate those details to the Player.

31. In an unsolicited correspondence dated 12 September 2022, the FFCH referred to and provided a copy of an "*undisclosed audio containing an interview made in 2018 by Jaime Jara, the FEF's Head of Investigate Commission, with Byron Castillo, that was included in the report sent to the FEF's President and Disciplinary Commission on 26 December 2018*" published by the Daily Mail[1].

32. On 13 September 2022, the following communications were exchanged (in a chronological order):

    - the Player's legal representative *inter alia* informed the Secretariat that the Player "*will exercise his right to silence and will not appear at the (...) hearing*" (free translation from Spanish);

    - the FEF provided the Secretariat with the contact details of the Player and his legal representative;

    - the Secretariat *inter alia* reminded "*the parties to the present proceedings that they are requested to refrain from submitting any unsolicited communication*", informing the FEF that it "*will be entitled to provide any comment deemed necessary in relation to the aforementioned correspondence [of the FFCH] during the hearing scheduled on 15 September 2022*";

    - the FPF provided a copy of the same audio that was previously communicated by the FFCH (see para. 31 *supra*);

    - the FFCH informed the Secretariat that it "*might have a key witness that would be willing to testify based on art 38, Anonymous participants in proceedings*".

33. On 14 September 2022, the following communications were exchanged (in a chronological order):

    - the Secretariat (i) reiterated that "*the parties to the present proceedings are requested to refrain from submitting any unsolicited communication*" and (ii) invited the FFCH to provide "*a (brief) summary of the testimony that the (anonymous) witness intends to submit, including an explanation as to why such testimony "could lead to threats on his person or put him or any person particularly close to him in physical danger" (cf. art. 38 of the FIFA Disciplinary Code)*". The FFCH was also informed that the "*FIFA Appeal Committee will – after its meeting scheduled on 15 September 2022 – decide on the relevance of the witness testimony and participation in the proceedings*";

[1] https://www.dailymail.co.uk/sport/sportsnews/article-11203773/Ecuador-face-kicked-World-Cup-new-evidence-Byron-Castillo-Colombian.html

- the FFCH informed the secretariat that (i) it cannot "*give all details because it would potentially identify the witness*", (ii) "*this person had or has a role in the Ecuadorian Football Federation, having knowledge about the matter under debate", (iii) "This person may bring unknown information so far by the parties and the Appeal Committee*", (iv) "*[a]ny person willing to disclose information that would potentially not be in the interest of Ecuador could be a target, specially if Ecuador is removed from the World Cup*" and (v) "*[t]his person is committed to speak in a private session with the sole presence of the members of the Appeal Committee*";

- the Secretariat reiterated that "*the FIFA Appeal Committee will decide on the relevance of the witness testimony and participation in the proceedings after the hearing scheduled on 15 September 2022*" and provided the parties with further information regarding the hearing.

34. On 15 September 2022, a hearing was held by video-conference (**the Hearing**) in the presence of the following persons:

- For the Committee:
  - Mr Neil EGGLESTON, Chairperson
  - Mr Christian ANDREASEN, Member
  - Mr Jahangir BAGLARI, Member

- For the FFCH:
  - Mr Pablo MILAD, President of the FFCH
  - Mr Jorge YUNGE WILLIAMS, Secretary General of the FFCH
  - Mrs Sandra KEMP, Executive Secretary of the FFCH
  - Mr Eduardo CARLEZZO, External Counsel
  - Mr Rodrigo MARRUBIA, External Counsel
  - Mr Eduardo DIAMANTE DE SOUZA, External Counsel

- For the FPF:
  - Mrs, Sabrina MARTÍN, Deputy Secretary General of the FPF
  - Mr Lucas FERRER, External Counsel
  - Mr Nicole SANTIAGO, External Counsel
  - Mr Luis TORRES, External Counsel

- For the FEF:
  - Mr Nicolás SOLINES, Secretary General of the FEF
  - Mr Javier FERRERO MUÑOZ, External Counsel
  - Mr Gonzalo MAYO NADER, External Counsel
  - Mr Íñigo DE LACALLE BAIGORRI, External Counsel
  - Mr Juan Alfonso PRIETO HUANG, External Counsel

- Representatives of the Secretariat

35. During the Hearing, the FFCH, the FPF as well as the FEF received the opportunity to provide their position and answer questions from the members of the Committee.

36. On the same day, during the Hearing, the FFCH sent a communication to the Secretariat, *inter alia* providing the name of its witness.

# II. POSITION OF THE PARTIES

37. The position of the parties is summarized hereafter. However and for the sake of clarity, the Committee reiterated that this summary does not purport to include every single contention put forth by the parties. Nevertheless, the Committee has thoroughly considered in its discussion and deliberations any and all evidence and arguments submitted, even if no specific or detailed reference has been made to these arguments in the following outline of their positions and in their ensuing discussion on the merits.

## A. THE POSITION OF THE FFCH

38. The submission of the FFCH can be summarised in the following items:
    - Procedural issues;
    - The falsification of the Player's documents;
    - The inexistence of factual arguments presented by the FEF in its answer;
    - The National Court Decisions.

39. The following sections should summarize the main allegations and arguments submitted by the FFCH in its position.

### 1. Procedural issues

40. The absence of the Player in the present proceedings shall be taken into account in so far that:

    - The latter who is the main accused party was never heard from, nor summoned to a hearing, despite the request of the FFCH;
    - The entire argumentation of the FFCH goes around the affirmation that Byron David and Bayron Javier are the same person. If the Player is not asked to explain it, what else can be done in this case?

41. The interpretation of the burden of proof and the standard of proof made by the Disciplinary Committee for this case create a real and direct impossibility for the FFCH to prove anything given that the standards set by the Appealed Decision are so high that, virtually, they are impossible to be reached.

### 2. The falsification of the Player's documents

42. The irregularities in the Player's documentation were recognised by the first instance, as follows:

    - In para. 48 of the Appealed Decision, the first instance referred to the existence of two birth certificates and "*recognized that, at least, the documentation of the Player is suspicious.*";

- The Appealed Decision also recognised that there are (or were) irregularities regarding the Player's ID (cf. para. 68 of the Appealed Decision);
- "*Having in mind that the Disciplinary Committee asserted, for one hand, that the existence of 2 birth certificates is suspicious, and, on the other hand, confirm[ed] the existence of irregularities in the Player's ID, how could [the] claim [of the FFCH] be dismissed?*".

43. The irregularities in the Player's documentation have even been recognised by the Player himself:

- "*On 24 December 2016 the Player filed a criminal claim against the president of Club Norteamerica and Marcos Zambrano (Exhibit 27) due to have registered falsified documents in his name with the FEF. It was made through a denounce to the Public Prosecutor office in Ecuador*";
- In this context, it needs to be emphasised that Norteamerica is "*the first club that registered the Player in 2012, the club considered to be the epicenter of the scandal of player's falsified documentation in Ecuador and the one suspended in 2018 by the FEF exactly because the massive adulteration/falsification in player's documents*";
- In other words, there is no doubt that the Player declared and confessed that "*his personal documents were falsified*".

44. The documents related to the real identity of the Player have not been duly assessed by the first instance, in so far that:

- The "Ecuadorian" Byron David Castillo Segura is, in reality, the Colombian Bayron Javier Castillo Segura;
- There was an incorrect and partial assessment of evidence made by the Disciplinary Committee when it declared that it was not proved that the Player was born in Colombia. Too much power has been given to the words of FEF and almost zero importance to the Appellant's evidence;
- Therefore, the standards of proof to be taken into consideration by FIFA in this case are not the same as the ones called in criminal procedures. The comfortable satisfaction takes a smoother path and the reversal of the burden of proof shall be imposed to FEF because the Appellant has done whatever is demanded by the FIFA regulations;
- Considering that everything in this Appeal goes around the Player's real place of birth, according to the birth certificate issued by the Republic of Colombia, Bayron Javier Castillo Segura was born on 25 July 1995, in the city of Tumaco, Colombia (Exhibit 03). This is a real and validated birth certificate from Colombian authorities;
- The Player was subsequently baptized in Colombia on 25 December 1996, although the baptism certificate was completely disregarded by the Disciplinary Committee;
- The FFCH has been able to demonstrate, without any reasonable doubt, that:

  a) There are 2 birth certificates connected to the Player, one from Colombia (Bayron Javier Castillo Segura) and the second from Ecuador (Byron David Castillo Segura), with slightly different names;

  b) The Colombian certificate states the Player was born on 25 July 1995 and the Ecuadorian certificate states the Player was born on 10 November 1998;

c) Both certificates declare the name of the same father (Harrinson Javier Castillo) and mother (Olga Eugenia Segura Ortiz);
d) Both father and mother got married in Tumaco, Colombia;
e) The Player was baptized in Tumaco;
f) The signature of the father Harrinson Jose Castillo in the Ecuadorian document does not correspond to the signature in the Colombian document;
g) The Player does not have a brother, he has a sister, Maria Eugenia Castillo Segura, who was born and lives in Tumaco;
h) There is no Death Certificate of Bayron Javier Castillo Segura, so it can be presumed he is alive;
i) The family of the Player has never showed up to clarify who is the Colombian Bayron Javier Castillo Segura;
j) Several members of the Segura's and Castillo's families are based in Tumaco, Colombia, the birthplace of the Colombian Bayron Javier Castillo Segura;
k) There is no indication whatsoever of Player's relatives in the Ecuadorian city of General Villamil Playas, where he claims to have born;
l) There are several links between the Player and residents in Tumaco;
m) The Player remains inexplicably silent and refrains from giving interviews or explanations to the authorities about his past.

- The Appealed Decision appears to suggest that a declaration from his relatives stating the Player was born in Colombia was required although such statements are impossible to get. Therefore, the Disciplinary Committee created a standard of proof impossible to be achieved;
- In fact, according to the FFCH, there is no need to apply the standard of the "beyond any reasonable doubt", but rather it should be applicable the comfortable satisfaction, in accordance with art. 35 (3) FDC. This, without the need of direct evidence as emphasised by CAS (CAS 2018/A/6038 Osiris Guzmán v. FIFA);
- The Player's past in Ecuador is a mystery, even for the FEF;
- Based on the documents submitted by the FEF to the Disciplinary Committee, the immediate perception is: why is there no older ID document from the Player? From the past? From the childhood? There are only updated and new documents from 2017 and 2022. But why not taking a document from the past and once for all demonstrate unequivocally that the Player has a history in Ecuador?

45. The decision of the Disciplinary Committee totally forgot to pay attention about the history and context of falsifications of documents in Ecuadorian football. Indeed, the falsification of the Player's documents appeared in the context of a scheme involving the Player's former club in Ecuador:

- It is clear that the Player was registered in Ecuador to escape from the FIFA transfer regulations that do not allow a minor to be transferred. Since he was born in Colombia, the only way to register the Player in Ecuador was through a fake Ecuadorian nationality;
- Everything started on 8 May 2012, when the club Norteamerica registered the Player for the first time in Ecuador. Said club was so deeply involved in unlawful actions that due to a large number of evidence, on 4 January 2018, the Ecuadorian Football Federation

suspended club Norteamerica for considering this club to have originated all the problems of player's forgery of documents within Ecuadorian territory[2];

- In reality, the fact that the Player was born in Colombia was and is widely known in Ecuador;
- The massive falsification of player's civil registers became a plague in Ecuadorian football and obliged some authorities to act;
- More specifically, according to the official government website, five officials from the Civil Registry of Guayas were prosecuted by the Ecuadorian authorities after being identified as those in charge of issuing birth certificates to foreign citizens without the need of material evidence to support the procedure, or, in other terms, in a fraudulent way;
- Coincidently, but not surprisingly, the Civil Registry of Guayas is precisely the body that issued the Ecuadorian birth certificate of the Player;
- On 31 July 2015 the Ecuadorian club Emelec terminated the loan contract that it had signed with the Player and returned the Player to the club of origin, Norteamerica, alleging that the Player's documentation had not been approved by the "filters" implemented by the club to guarantee the integrity of the squad. The official letter from Emelec was disclosed in the press[3] and there was no doubt that such club was aware of the falsification. The Disciplinary Committee totally disregarded this information;
- On 11 January 2017 the Ecuadorian Council for Citizen Participation and Social Control issued a statement denouncing that there was sufficient evidence to point that there is a player with an adulterated identity in the squad of the Ecuadorian national team for the Sub-20 South American tournament[4];
- On 19 January 2017, as a consequence of the denounce made by the Ecuadorian Council for Citizen Participation and Social Control, few hours before the start of the South American U-20, the FEF removed the players Byron Castillo and John Pereira from the competition due to a suspicion of irregularity in their documentation[5];
- There is a very important moment for the case that will require the attention from the Committee, namely when the national civil register of Ecuador blocked the Player's ID resulting in the Player filing years later a Habeas Data. Interestingly, his ID was blocked in 2018, but the Player only filed the related claim in 2021;
- On 26 December 2018 the Investigative Commission of the FEF, headed by former police colonel Jaime Jara, created to assess the registrations in the FEF and to double-check it with the civil records, issued its conclusions and determined without any doubt that the Player was Colombian.

46. The investigations conducted by the FEF on the Player's identity demonstrate that the Player's documents have been falsified:

- During 18 minutes of a long radio interview available on Youtube[6], the head of the FEF's investigation commission, Mr. Jaime Jara, clarified all related aspects regarding the

[2] https://www.eluniverso.com/deportes/2018/01/04/nota/6549703/club-norte-america-suspendidofef-%20estar-involucrado-casos/
[3] https://diarioladiez.com/campeonato-nacional/emelec-ya-sabia-el-supuesto-caso-de-adulteracion-dedocumentos-de-byron-castillo
[4] https://studiofutbol.com.ec/2017/01/11/documentos-alerta-denuncian-identidad-adulterada-enseleccionado-ecuatoriano-sub20
[5] https://www.eluniverso.com/deportes/2017/01/19/nota/6003991/tri-sub-20-separa-dos-jugadoresantes-torneo/
[6] https://www.youtube.com/watch?v=T-MjYQxkNq4&t=512s

investigations of falsifications in Ecuador and confirmed beyond any reasonable doubt that the Player is Colombian and uses fake documents to justify his Ecuadorian nationality;

- This public confirmation is especially important because Mr. Jaime Jara was the person who investigated the Player within the FEF, occasion in which he collected several documents and evidence that proved that the real nationality of the Player was Colombian instead of Ecuadorian. This, particularly considering that Jaime Jara went to Tumaco in person and confirmed on the ground that the Player was born in that city;
- The first instance however totally disregarded this conversation;
- Notwithstanding the above, on 11 March 2021 a post released on Twitter revealed an audio widely reported by the Ecuadorian media and easily available in several internet channels regarding a conversation (around a minute) between the Player and Jaime Jara[7] (Head of Investigations) in which the Player clearly expresses his concern about his situation;
- The content of the audio is stunning and raises a number of doubts about the behaviour of the parties. What would the parties be possibly hiding? Why would nothing happen to the Player? Would he escape from a sanction?;
- After having conducted investigations, the FEF itself concluded that the Player is Colombian;
- As such, and in accordance with art. 70 of the FEF's Statutes, it is the competence of the Investigation Commission to establish the legitimacy and authenticity of all the documents presented by players willing to be registered before the FEF;
- In other words, for internal and sportive purposes, the issue regarding the Player's Colombian nationality became basically res judicata, once the competent body (in the terms of the Statutes) expressly decided on this regard.

47. The Player has "*never spoken out about his family*" but "*[s]urprisingly, after the decision of the Disciplinary Committee, [the FFCH has] been able to access the entire case of the Habeas Data filed by the Player in Ecuador against the National Civil Register and through the examination of the documentation [it] found a unique and absolutely new declaration: the Player informed that the Colombian Bayron Javier Castillo Segura is his brother!*". By way of consequence, the Player would have to prove that the "*the Colombian "Bayron Javier" is the brother of Ecuadorian "Byron David"";""*". The related burden of proof shall be "*reverted to the Player and [the] FEF to demonstrate who is the son of Harrinson Javier Castillo and Olga Eugenia Segura Ortiz, born in Tumaco, Colombia, with the name of Bayron Javier Castillo Segura*".

48. The analysis of the Player's birth certificate(s) demonstrates the irregularities contained in the Ecuadorian one:

- The same person can only have one birth certificate, which means that only one birth certificate is the original. If the Colombian is original, the Ecuadorian is automatically fake and vice versa. This is the natural and only possible conclusion;
- Notwithstanding the above, the first instance did not reach any conclusion about the evidence submitted and no judgment was made over the existence of two birth certificates belonging to the same person;

[7] https://twitter.com/ADevilWorld/status/1369869091608100865

- In the case at stake, there is a birth certificate of "Bayron Javier Castillo Segura", born in Colombia in 25/07/1995, son of Mr. Harrison Javier Castillo and Mrs. Olga Eugenia Segura (both Colombian by the way), that is, almost the same name currently used by the Player (Byron David Castillo Segura) and son of the exact same parents of the Player;
- The authenticity of the Colombian birth certificate can be dully confirmed by the National Civil Registry of the Colombian Republic;
- By way of consequence, the question remains: who is Bayron Javier Castillo Segura, the son of the same parents of the Player (Byron David Castillo Segura) and born in Colombia? If he is not the Player himself, who is this person?;
- In fact, the Ecuadorian birth certificate is surrounded by several inconsistences and flaws clearly named by the National Civil Register;
- Differently from the Colombian certificate, the Ecuadorian birth certificate does not carry any certainty, but, on the contrary, is totally flawed;
- The Ecuadorian birth certificate presented by the Player is basically a ghost document that only exists in a single copy;
- Another very explicit and easily identifiable element of fraud is the signature of Harrison Javier Castillo in the birth certificate of Ecuador, which is quite different from his signature in the Colombian document.

## 3. The inexistence of factual arguments presented by the FEF in its answer

49. The FEF failed to provide any substantial factual argument in so far that it "*clearly just let to FIFA the work to interpretate as it wants the court decisions because the FEF does not sustain in any moment the veracity of the birth certificate or the assessment of its merits by a court. There are only vague commentaries based on non-related terms of those decisions*". The FFCH is "*dismayed with the position of the Disciplinary Committee to have blindly bought inexistent arguments from FEF and gave zero importance to what was proved by the Appellant*".

## 4. The National Court Decisions

50. The Appellant subsequently provided specific arguments in relation to the decisions rendered by the Ecuadorian Courts that were taken into account in the Appealed Decision.

### a) The absence of binding effect on the FIFA judicial bodies

51. Based on art. 21 FDC, FIFA has "*full power (…) to investigate and sanction anyone who forges a document or uses a forged document*". In this respect, "*[i]t is interesting to note that the decision of the FIFA Disciplinary Committee expressly confirmed that the Ecuadorian court does not have the power to grant eligibility to the Player because this responsibility belongs to the football authorities, such as FIFA*". However, "*there is a contradiction in the decision because, in one hand, declared that FIFA is bound by national judicial decisions and, on the other hand, determined (paragraph 61) that national courts cannot invade the competence of football authorities*".

**b) The *Habeas Data***

52. The *Habeas Data* proceedings solely served at unlocking the Player's ID Card and, as such, have been misinterpreted by the first instance.

53. With regard to the reason behind the *Habeas Data*:

- Said decision was "*neither addressed to qualify the Player as Ecuadorian national nor to annul the legal report from the Civil Register*", but rather aimed at "*unlocking the Player's ID card*";
- In this respect, it needs to be understood that given that the Technical Legal Report "*found irregularities in the Player's birth certificate*", "*the National Civil Register determined the block of the Player's ID card*";
- "*Because of that, with the ID card blocked, the Player was prevented from practicing normal and civil actions before private and public authorities in Ecuador. In order to overturn this problem, he filed a legal action, called Habeas Data*".

54. With regard to the legal basis for the *Habeas Data* in Ecuador:

- "*Habeas data is a constitutional guarantee given to citizens so that, among other things, their fundamental rights are observed, including the updating, rectification, deletion or annulment of their existing data in public records, according to the Constitution of Ecuador*";
- As such, it "*has a limited scope and does not enter into declarations about the nationality of one person or its eligibility to play football for a national team*".

55. With regard to the expert opinions on the *Habeas Data*:

- Based on the legal opinions gathered by the FFCH, "*it is clear that the main issue under debate in that procedure was the declaration of "ID blocked for contravention" inserted in the Player's civil records and nothing else*";
- In other words, the Ecuadorian courts "*did not analyse the Colombian birth certificate*", nor did they "*declare the Player as Ecuadorian national after assessing the terms of the birth certificate*";
- In summary, "*the Habeas Data only served to return to the Player his ID, which was blocked by the civil registry of Ecuador*".

56. The FFCH deems that a wrong assessment of the *Habeas Data* was made by the Disciplinary Committee in so far that:

- The first instance erroneously concluded that the Ecuadorian decisions confirmed the Ecuadorian nationality the Player, given that the fact that the Ecuadorian courts determined the use of the information on the birth certificate for the purposes to give the ID card back to the Player does not mean the information was validated;
- No court in Ecuador has ever analysed in detail the entire and particular information contained in the Ecuadorian or Colombian birth certificates;

- The Ecuadorian decisions do not close any door for future investigation about the veracity of the birth certificate, as can be seem in the last paragraph: *"Until the affected entity reaches certainty about the veracity of the documentation, it must maintain as valid the information that currently recognizes the identity of the plaintiff as the person of …""*.

#### c) The *acción de protección*

57. The *acción de protección* proceedings aimed at guaranteeing the Player's right to be heard and, as such, have been misinterpreted by the first instance.

58. With regard to the scope of the *acción de protección*:

- "*Just like the Habes Data, the "Acción de protección" did not address any merits regarding the nationality of the Player, neither the commitment of any forgery/falsification, nor the eligibility of the Player to play for the Ecuadorian national team*";
- "*The mentioned legal action was filed by the Player against FEF alleging that FEF violated his fundamental rights during the disciplinary procedure that led to the suspension of the Player*", namely for having been suspended for not attending a hearing.

59. Again, the FFCH deems that the Disciplinary Committee wrongly assessed the *acción de protección*:

- The FIFA Disciplinary Committee decided on the basis of a very wrong assumption that the decision of the *acción de protección* lifted a suspension imposed over the Player as a consequence of the forgery of documents, while the truth is that the suspension that was lifted concerned his non-attendance to a hearing;
- In fact, the terms of the FEF's Investigative Commission regarding the Player's Colombian nationality continue to be valid. What is no longer valid is the suspension pronounced due to the non-attendance of a hearing, considered to be a violation of the due process of law.

#### d) The contradictory positions from the FEF before the Ecuadorian courts and during the FIFA proceedings

60. The FFCH further pointed out that it is interesting to note how flexible the position of the FEF is. During the *acción de protección*, the FEF challenged the Player's claim and presented tough arguments to request the dismissal of the case. In the same way FEF conducted the investigations over the Player and strongly concluded that he is Colombian and uses fake documents.

## 5. Requests for relief

61. In view of all the above, the FFCH requests the FIFA Appeal Committee to:
- accept its appeal;
- set aside the Appealed Decision "*and, in the merits, declare:*

*i. the use of false birth certificate, fake age and false nationality by the Player, banning the Player from any football-related activity.*
*ii. the Player as ineligible for the 8 matches played in the Qualifiers, declaring those matches as forfeited, according to the article 22 of the Disciplinary Code and, finally, declaring FFCH in the 4th place in the South America 2022 World Cup Qualifiers.*
*iii. due to the use of false birth certificate, fake age and false nationality, the exclusion of FEF from the 2026 World Cup and the application of a fine of CHF 1,000,000*".

- "*schedule a presential hearing, as preferable, in Zurich in the FIFA headquarters, or by teleconference, for the parties (FFCH, FEF and Player) to present their arguments and specially to hear the explanations from the Player*";
- decide on the appeal in an expedited manner.

## B. THE POSITION OF THE FPF

62. The FPF contests the Appealed Decision and requests that the decision be revised, correcting the errors committed by the Disciplinary Committee in its assessment of the evidence brought forward and carrying out a true assessment of the evidence in consideration of the applicable standard of proof. Its submissions can be summarised as follows (free translation from Spanish):

### 1. Background

63. As shown by the evidence set out at first instance, [the Player]'s past reveals huge irregularities and, in particular, extremely serious and obvious doubts over his supposed Ecuadorian nationality, which, as the FEF is well aware of, is an essential condition for playing in any matches for the Ecuadorian national team. In particular, the FPF refers to the following elements:

- Two clearly conflicting birth certificates have been presented, said certificates matching with regard to the names "Byron Castillo Segura" and the names of the parents, but there are discrepancies as to the second name of the individual registered and the date and place of birth;
- There is direct evidence of ties between the Player and the club Norte América, where he was first registered as a footballer at the age of 13 and which forged documents and certificates for players, resulting in its suspension by the FEF;
- Disciplinary proceedings had been initiated against the Player by the FEF Disciplinary Committee on 26 December 2018;
- The Player's loan to the Ecuadorian club Sport Emelec had been cancelled due to irregularities in the documentation submitted by the Player, after which he immediately returned to the club Norte América;
- The Player was excluded by the FEF from the Ecuadorian U-20 national team due to a complaint filed by the Council for Citizen Participation and Social Oversight over issues with the Player's identity and documentation;
- The Habeas data procedure as well as the subsequent judgement on appeal in April 2021, acknowledge the irregular situation presented by the Civil Registry, but at no point do they

establish the authenticity of the documentation under scrutiny in these proceedings (and which grants the Player Ecuadorian nationality, purportedly by birth right).

64. The FPF is compelled to point out that the person at the centre of these proceedings, the Player, was not called upon to testify as a party to the proceedings at first instance and did not state his position at any time, and it is unknown whether he is embroiled in parallel disciplinary proceedings.

## 2. On the standard and burden of proof

65. In making its decision, the Disciplinary Committee failed in its analysis of the standard of proof applicable to this case and, consequently, in its evaluation of the evidence set forth in these proceedings.

### a) Definition of "comfortable satisfaction"

66. It is up to the Appellant to provide evidence of a fact to the comfortable satisfaction of the Appeal Committee – in this case, on the use of forged documentation allowing the Player to play for the Ecuadorian national team. The Appeal Committee has to be subjective in its decision-making in accordance with the applicable standard of proof and taking into account the factors detailed below:
    - In accordance with the jurisprudence of CAS, the "comfortable satisfaction" standard is greater than the civil standard of "balance of probability" or "preponderance of the evidence" but lesser than the standard of proof "beyond reasonable doubt" applied in criminal cases. In other words, providing evidence in a case like this does not require the elimination of any uncertainty that the decision-making body may have in respect of a fact; instead, there is simply required to be sufficient evidence to conclude that the explanation offered by the Appellant in this case is reasonably convincing;
    - In addition, when applying the standard of proof, the decision-making body has the essential task of evaluating both the objective sought in the proceedings and the investigative and evidence-gathering powers of a sporting body compared with the powers of a public body;
    - In this case, the objective sought by the Appellant is specifically to prevent the integrity of the competition from being seriously undermined by the conduct of the FEF and the Player – specifically, to prevent a national association from benefiting from its use of clearly falsified or forged "official" documentation to influence the sporting outcome of its team by including a player in the squad who does not meet the criteria to participate in official matches with that team.

### b) The investigative powers of the Appellant and the nature of the infringement in light of the applicable standard of proof

67. The investigative powers of another national association such as the FFCH or the FPF, and of FIFA itself, are restricted in a case like this, where there is clear and persuasive evidence of forgery of official documentation, and the use thereof, at different levels in the public and

private sphere in Ecuador, but because of the nature of the infringing conduct, it is virtually impossible to acquire direct evidence of it.

68. In the case at hand, the act of forging a document, falsifying an authentic document and/or using a falsified document is the type of activity carried out with the aim of not leaving any trace of evidence of the wrongdoing, or at least without leaving any trace of direct evidence.

#### c) The realistic requirements of the applicable standard of proof

69. It is crucial to point out that the probatory requirements of the judicial body when determining whether or not the infraction(s) discussed here exist(s) cannot be such that they unjustifiably elevate the applicable standard of proof (comfortable satisfaction) of the Appeal Committee to a level that is impossible to achieve under the very specific circumstances of the case.

70. The judicial body must therefore determine the probative value of the evidence set forth based on the rules of civil procedure; under no circumstances can the requirement to provide sufficient evidence to prove the existence of an infringement be subjected to the rules of criminal procedure, even if it is deemed that the type of conduct may have both civil and criminal ramifications.

#### d) The necessary reduction in the standard of proof or reversal of the burden of proof

71. The various items of evidence set out in this procedure are very detailed, reliable and, despite coming from a number of different sources, all point to the same thing: that the identity documents of Mr Byron Castillo Segura attesting to his supposed Ecuadorian nationality are of dubious origin and that there are clear indications of them being fraudulent. Pursuant to Swiss law, the just and logical conclusion of all this is a reduction in the standard of proof as, just like FIFA in the Teixeira case, we are faced with a situation in which, from an objective standpoint, the party bringing forth the claim does not have access to direct evidence in order to prove the facts.

72. The burden of proof to provide sufficient additional evidence to rebut the allegations and evidence already set out in the case must shift to the FEF.

## 3. On the merits

### a) On the forgery and falsification

#### *i. The evidence on file*

73. There are a number of items of evidence that point to a breach of art. 21 FDC:

- It can be deduced from studying the case file of these proceedings that the registration of birth for the Player is a forged document created to give the appearance of the Player having Ecuadorian nationality by reason of his birth;
- Although two birth certificates – one Colombian and one Ecuadorian – have been submitted, one with the usual objective signs and seals of authenticity and the other without, and both sharing the same key data such as names and surnames of the mother and father of the supposed registree, the FEF has not presented an alternative or coherent explanation for the Colombian birth certificate and its evident and acknowledged contradiction with the Ecuadorian birth certificate. The first instance never explained why there are similarities between the two documents, nor does it satisfactorily rebut the abundant evidence pointing to the Ecuadorian certificate being a forgery, which, as we mentioned above, the FEF should have done and has to do to meet its burden of proof;
- The conclusions of the Legal Technical Report are particularly revealing and confirm the inauthenticity of the Player's registration of birth as an Ecuadorian national given that he was supposedly born in Playas, Guayas (Ecuador), as set out in the following considerations:
    - "*5.3 The National Archive has provided us with a written response, stating that there is no record of the birth of Mr* ***Castillo Segura Byron David****.*"
    - "*5.4 It is presumed that the registration of birth for the user Castillo Segura Byron David is* ***missing from the records****. As regards the deed of closure for the register of births for the year 1998,* ***it is forged***" (emphasis added).
    - "*5.6 …* [The Player] *does not have a document that attests to his identity.*"
    - "*5.7 The Legal and Technical Report is to be submitted to the Ecuadorian Football Association so that it is aware of the measures taken in this case.*"
- Despite the extensive investigation carried out and the detailed analysis contained in the Legal and Technical Report drawn up by the Civil Registry, the Disciplinary Committee seemed to consider that the information contained therein was not convincing and was even irrelevant;
- Another factor worth noting, and which needs to be considered, is that the FEF set up an Investigative Committee to shed light on cases related to falsified birth certificates of football players registered with the FEF. More specifically, Jaime Jara, who analysed the Player's case in the frame of these investigations reached the same conclusions as those in the aforementioned Legal and Technical Report, as follows:
    - "*There are irregularities in relation to the recording of the birth of the player Castillo Segura Byron David […] as his actual name is Castillo Segura Byron Javier; he is the son of Castillo Ortiz Harrison Javier and Segura Ortiz Olga Eugenia, and was born on 25 June (sic) 1995 in Tumaco, Nariño (currently aged 23).*"
    - "*The Colombian Civil Registry confirmed that its IT system had an entry for Castillo Segura Bayron Javier, the son of Castillo Ortiz Harrison Javier and Segura Ortiz Olga Eugenia, of Colombian nationality – the same parents as those of the player Castillo Segura Byron David*."
    - "*The outcome is that we are faced with a series of irregularities, such as dual Identity and falsification of nationality and age.*"

*ii. The questionable analysis of the evidence by the first instance*

74. The Appealed Decision contains a somewhat questionable, even shallow, assessment of these key pieces of evidence. Specifically, the Disciplinary Committee limits this matter to a single paragraph, and discounts the report by the FEF's Investigative Committee, simply stating that it could not "blindly rely on such document". Under no circumstances does the applicable standard of proof require the judicial body to "blindly rely" on a single piece of evidence in order to be convinced to a degree of comfortable satisfaction in regard to the existence (or not) of a fact. Such a conclusion would seem to disregard the mountain of evidence in the case file, which reinforces the conclusions outlined in the aforementioned report.

75. As stated earlier, the FIFA disciplinary body has a duty to correctly evaluate all of the evidence at its disposal and to determine whether it is convinced to its comfortable satisfaction that a falsification of documents has occurred within the meaning of the FIFA regulations. This is due to the fact that it is not true that (i) the Ecuadorian decisions "*validated and confirmed the identity and nationality*" of the Player as concluded by the Appealed Decision, as both proceedings were provisional in nature, nor that (ii) "*the Committee is bound by the assessment made by the Ecuadorian court*".

76. The FIFA disciplinary bodies have full authority to evaluate and determine whether or not there has been a breach of FIFA's own regulations based on their own standards, and this is what they must do.
77. The FPF is of the opinion that if, after performing a due and correct analysis of this case based on the applicable regulations and standards, the Appeal Committee concludes that the FEF breached art. 21 FDC, the disciplinary consequences resulting from this breach must be those detailed in the following subsection.

*iii. The disciplinary consequences of the breach of art. 21 FDC*

78. The only proportionate and appropriate disciplinary measure for the FEF is, at the very least, its "*expulsion from a competition in progress or from future competitions*" as provided for in art. 6 (3) i) FDC:

- Such sanction would be proportionate and appropriate to the circumstances of the case, but also entirely consistent with the principle of integrity and sporting merit, taking into consideration the FEF's repeated serious infringement of art. 21 FDC during a large part of the Preliminary Competition;
- Consequently, based on the discretionary powers granted to FIFA by the Regulations for the FIFA World Cup 2022 Preliminary Competition in the event of an association being expelled from the competition, the only logical consequence that would respect (i) the principles of fair play, loyalty and integrity – among others – enshrined in article 11 of the Disciplinary Code, (ii) the principle of sporting merit and (iii) the quota of CONMEBOL (South American Football Confederation) members qualifying for the FIFA World Cup Qatar 2022 out of all of the CONMEBOL members (the top four associations automatically qualify and the fifth enters the play-offs against a member of the Asian Football Confederation), would

be the FPF's direct qualification for the FIFA World Cup Qatar 2022 as the fourth-placed association, replacing the FEF.

**b) On the ineligibility of the Player**

*i. The Player's (in)eligibility in light of evidence on file*

79. As an alternative disciplinary measure if the Appeal Committee does not accept the legal arguments made in the previous section in relation to the breach of art. 21 FDC, the FPF states that, if the Appeal Committee concludes to its "comfortable satisfaction", based on the documentation and pleadings at its disposal, that the Player's Ecuadorian birth certificate is not authentic, the Player should not have been considered eligible to compete for the Ecuadorian national team during the FIFA World Cup Qatar 2022 preliminary competition, as set forth in art. 5 et seq. of the FIFA Regulations Governing the Application of the Statutes (RGAS).

80. In view of the applicable provisions of the RGAS, should the Appeal Committee conclude to its "comfortable satisfaction" that the evidence presented in these proceedings shows that the Player was not born in Ecuador, the immediate consequence would be for the Player not to be eligible to play for the representative team of Ecuador. This is due to the fact that the document used by the Player and the FEF in an attempt to prove his nationality, i.e. his international passport, would be void ab initio and could not be validated by FIFA, as the Player's place of birth (Playas, Ecuador) and the date of birth (10 November 1998) would be false.

*ii. The disciplinary consequences of the breach of art. 22 FDC*

81. The case at stake involves an ineligible player participating in no fewer than eight matches during the FIFA World Cup Qatar 2022 preliminary competition: this is a repeated, sustained infringement lasting seven months, which could affect the entire competition and which clearly exceeds the – somewhat limited – scope of application of art. 22 (1) FDC. As such, art. 22 (3) FDC should apply as it provides for the measures that may be imposed when ineligible players are fielded in a competition, not just in an official match.

82. This particular case concerns conduct that is so offensive, abhorrent and contrary to the principles of fair play and sporting integrity – the use of falsified documentation to call up a player in an irregular situation and include him in the line-up, with a view to obtaining some kind of competitive advantage – that the appropriate and proportionate sanction is, at the very least, the immediate expulsion of the FEF from the competition affected by the falsification, namely the FIFA World Cup Qatar 2022 preliminary competition, and, as a logical consequence, its elimination from the FIFA World Cup Qatar 2022.

83. Accordingly, the fourth of the automatic qualification slots for the FIFA World Cup Qatar 2022 assigned to CONMEBOL member associations, previously held by the FEF, must pass to the member association that is next in the standings, the FPF, which would thus automatically qualify for the FIFA World Cup Qatar 2022.

**c) On the additional disciplinary infringements committed by the FEF and the Player**

84. In addition to the above, there is a possible breach of art. 11 FDC in so far that the FEF's and Player's improper conduct, if proven to a degree of comfortable satisfaction, must be considered absolutely contrary to the integrity of the competition and to the principle of fair play. As such, the imposition of severe sanctions, such as those requested, is more than justified and is well within the scope of the provisions of the FDC.

## 6. Conclusion

85. Summarising its above arguments, the FPF concluded its appeal shall be accepted on the basis of the following elements:

- When faced with a conduct such as the one at hand, as CAS has established, the judicial body can determine that the probative value and force of the indirect evidence brought forward are more than enough to establish that the alleged infringements have been committed. However, in such extraordinary and specific cases as document forgery, Swiss law provides for the adoption of additional measures such as a reduction in the standard of proof or even a shift in the burden of proof to the respondents. This is simply because it is a matter of attempting to prove certain – essentially illegal – conduct, such as using falsified documentation, for which it is virtually impossible to find direct evidence, but which can be substantiated by a number of pieces of indirect evidence;
- In view of the various evidence constituting the case file, the FPF considers that, should it be determined that the conduct in question in this matter represents a breach of arts. 11, 21 and/or 22 FDC, the FEF should be sanctioned by being excluded from the competition in which it committed the infringement and unlawfully benefited from the results thereof, i.e. the FIFA World Cup Qatar 2022 preliminary competition. This would also mean its elimination from the FIFA World Cup Qatar 2022 final competition;
- Alternatively, and based on the same evidence, if the Appeal Committee determines that the Player was not born in Ecuador, this would mean that art. 22 (3) FDC was breached. In that event, in line with the circumstances surrounding this specific case and to safeguard the integrity of the competition concerned, again, the only appropriate sanction would be to expel the FEF from the Preliminary Competition;
- Lastly, if the Committee considers that the FEF and the Player have breached art. 11 FDC, this infringement should also be sanctioned appropriately given the circumstances of the case concerned;
- If, despite all of the overwhelming evidence brought forward, FIFA allows the FEF and the Player to continue participating in the FIFA World Cup Qatar 2022, and the document falsification discussed here is subsequently confirmed in the Ecuadorian courts, FIFA would have endorsed the use of this falsified documentation and enabled the Preliminary Competition and the FIFA World Cup Qatar 2022 as a whole to be seriously undermined, causing irreparable damage to the competition and its integrity.

### 7. Requests for relief

86. In view of all the above, the FPF requests the following:

- that the appeal is admitted;
- if it is proven to the comfortable satisfaction of the Appeal Committee that the FEF breached art. 21 FDC, that the FEF be expelled from the FIFA World Cup Qatar 2022 preliminary competition, and that consequently, the association next in the standings, i.e. the FPF, moves up to take its place;
- alternatively, if it is proven to the comfortable satisfaction of the Appeal Committee that the FEF breached art. 22 (3) FDC, that the FEF be expelled from the FIFA World Cup Qatar 2022 preliminary competition, and that consequently, the association next in the standings, i.e. the FPF, move up to take its place; and
- if, in any case, it is proven to the comfortable satisfaction of the Appeal Committee that the FEF breached art. 11 FDC, that the above-mentioned disciplinary measures be imposed on the FEF.

## C. THE POSITION OF THE FEF

87. The submission of the FEF can be summarised as follows (free translation from Spanish):

### 1. On the appeal filed by the FFCH

#### a) Preliminary issue – the delineation of the scope of the appeal

88. The position taken by the FFCH lacks any basis in fact or law and its position is ultimately part of its shameful and desperate attempt to gain unduly and in an unsporting manner what it was unable to achieve on the football pitch. In fact, the FFCH has not only proffered a version of events that is entirely unrooted in reality, and which has been flagrantly doctored, but also – needless to say – has engaged in judicial abuse and absurdity of the highest order:

- the bad faith and utter remissness of the FFCH are entirely apparent;
- neither the judicial authorities of the Republic of Ecuador nor any other public body with any competence in this matter (such as the Ecuadorian tax authorities or Civil Registry) have substantiated the extremely serious facts arbitrarily alleged by the FFCH against the Player;
- it cannot be overlooked that (i) the Ecuadorian citizenship of the Player is a matter established as res judicata by virtue of the judgement issued by the Provincial Court of Justice of Guayas, (ii) neither the Appeal Committee nor the Disciplinary Committee has jurisdiction *ratione materiae* to re-examine the Player's origins and (iii) under a hypothetical scenario [of an offence having been committed], the FEF has always acted in good faith and would have the status of an injured party (it should be pointed out that this procedure was launched against the FEF and not against the Player, who, in accordance with the right to a defence and to a fair trial, should hypothetically have been the person to state his position

regarding the – non-existent – personal irregularities which the FFCH seeks to ascribe to him);

- there is no evidence for the appeal, which is based on mere conjecture and self-serving assumptions;
- in addition to not having proven any of its invented claims, the FFCH insists that it is the Player who must prove his Ecuadorian nationality, even though: (i) this has already been duly proven by the submission of official documents that precisely establish the nationality of a natural person; and (ii) the Player is not a party to these disciplinary proceedings;
- the FFCH did not submit its claim in good time and in the proper manner through the legal channels established in accordance with art. 46 FDC;

89. On those grounds, the FEF requests the Appeal Committee to uphold the Appealed Decision in its entirety.

### b) The unquestionable Ecuadorian citizenship of the Player

90. The FEF wishes to resubmit and refer to the various official documents issued by the competent national authorities, which convincingly establishes the unquestionable Ecuadorian citizenship of the Player, namely:

- the Player's Ecuadorian identity card (issued by the General Directorate of Civil Registry of the Republic of Ecuador);
- the Player's voting certificate (establishing that the Player exercises the constitutional rights vested in him under the Ecuadorian legal system);
- the Players Ecuadorian passport;
- a Certificate issued by the General Directorate of Civil Registry, Identification and Identity Cards (confirming that the Player "*is an Ecuadorian citizen for all purposes*");
- paras. 65 and 66 of the Appealed Decision.

### c) The National Court Decisions

91. The judicial authorities of the Republic of Ecuador have confirmed that the Player is an Ecuadorian citizen for all appropriate legal purposes. In fact, the Player was obliged to apply to the administrative and judicial authorities of the Republic of Ecuador in order to resolve an internal problem concerning the Civil Registry, resulting in the national courts accepting the Player's arguments and confirming his Ecuadorian nationality. In particular, the following elements need to be taken into account:

#### *i. Judgement issued by the Northern Criminal Judicial Unit no. 2 based in the canton of Guayaquil*

- Following an action for habeas data brought by the Player against the Civil Registry of Ecuador, the Northern Criminal Judicial Unit no. 2 held on 4 February 2021 that the Player is the "*HOLDER OF IDENTITY CARD NO. 0942437021, BORN ON 10 NOVEMBER 1998 IN THE*

*PROVINCE OF GUAYAS, CANTON OF PLAYAS, PARISH OF GENERAL VILLAMIL, WITH ECUADORIAN NATIONALITY*";

*ii. Judgement issued by the Specialist Division for Criminal, Military Criminal, Police Criminal and Traffic Offences of the Provincial Court of Justice of Guayas*

- On 22 April 2021, the Provincial Court of Justice of Guayas upheld the judgement issued by the first instance;
- Said decision is final and have the effect of *res judicata*;

**d) The compliance with the FIFA Regulations by the FEF**

*i. Art. 11 FDC (Offensive behaviour and violations of the principles of fair play)*

92. The FEF has always acted in good faith and in strict accord with its legal and regulatory obligations. Indeed, when initial doubts were raised concerning the origins of the Player due to the inconsistencies caused by the Civil Registry of Ecuador, the FEF immediately took action and, as a precautionary measure, suspended the Player's call-up for the national squad. Once the judicial authorities had confirmed that the latter is an Ecuadorian citizen for all legal purposes, the FEF started to call up the Player once again.

*ii. Art. 21 FDC (Forgery and falsification)*

93. The FEF did not falsify any authentic documents nor forge any documents. Similarly, the FEF has also not used any forged or falsified documents as it has been duly proven that:

- The Player is an Ecuadorian citizen for all appropriate legal purposes;
- The ordinary courts of the Republic of Ecuador have confirmed that the Player also did not forge any documents.

94. The veracity of the Player's documents has been fully and incontrovertibly established by the competent authorities that issued them and by the judicial authorities, which have endorsed them by final judgements of two different courts.

*iii. Art. 22 FDC (Forfeit)*

95. The Player was at all times eligible to be called up by the FEF. In this respect, it must be stressed in any case that the Association has acted in good faith at all times and that it was only once the administrative and judicial proceedings had been concluded that the FEF decided to call up the Player.

**e) Additional legal questions to be considered**

*i. The lack of jurisdiction ratione materiae of the Appeal Committee and the Disciplinary Committee*

96. The complaint brought by the FFCH is "substantiated" by certain serious allegations that would constitute a criminal offence (i.e. the supposed forgery of public documents concerning the Player), which is associated with a custodial sentence. In this regard, it is not the task of the Appeal Committee, nor is it authorised, to rule on the – non-existent – forgery arbitrarily alleged by the opposing party, as it is a criminal matter the prosecution of which is a question of public order within the Republic of Ecuador.

*ii. The Res judicata effect of the National Court Decisions*

97. The rulings adopted by the judicial authorities of the Republic of Ecuador constitute final rulings and hence the Ecuadorian citizenship of the Player is a matter of *res judicata*. As such, the Appeal Committee must abide by the determination of the Provincial Court of Justice of Guayas (the only competent authority) and must refrain from ruling on the unquestionable Ecuadorian citizenship of the Player, since this matter has already been resolved by a final decision of the national courts in Ecuador.

*iii. The FEF's lack of standing to act as a respondent*

98. Even if the Appeal Committee were to conclude that it has competence (a proposition that the FEF respectfully rejects) and were the Ecuadorian citizenship of the Player not to be a matter of *res judicata* (which it also firmly denies), in any case – having acted at all times in good faith and strictly in accordance with the law and its status as an injured party – the FEF lacks standing to act as a respondent as the investigation would have to be directed against the Player personally in order to maintain his right to a defence and to due process vis-à-vis the serious and unfounded allegations made by the complainant. If one were to hypothetically accept the facts alleged arbitrarily by the FFCH, both the FEF and the Player himself would in any case have the status of injured parties (and not as parties that have violated the applicable law) as the ordinary courts have definitively concluded that the problem was caused by the Civil Registry of Ecuador.

*iv. The applicable burden of proof*

99. In any case, the FFCH has not proven the serious allegations made against the Player. Its complaint is "based" on mere conjecture and self-serving assumptions, which does not fulfil the burden of proof required under art. 36 FDC:

- Although the FFCH states that the Player is a Colombian national, submitting a supposed certificate from the Civil Registry of Colombia, in actual fact, that document only constitutes proof of the absolute temerity and irresponsibility of the FFCH, as the Colombian body expressly declared that "*this certificate is issued for information purposes, and does not*

*constitute evidence of the civil status of the interested party or the legal validity of the registration*";

- In addition to not having proven any of its invented claims, the FFCH insists that it is Mr Castillo who must prove his Ecuadorian nationality even though: (i) this has already been duly proven by the submission of official documents that precisely establish the nationality of a natural person (i.e. the only evidence that convincingly establishes a fact is not sufficient for the FFCH, which is calling for "impossible proof"); and (ii) the Player is not a party to this disciplinary procedure (once again confirming the absolute impropriety on the part of the FFCH).

*v. The lack of compliance with the regulatory requirements of the complaint lodged by the FFCH*

100. The FFCH should have followed the legal procedure foreseen under art. 46 FDC (protests), and as such complied with the mandatory time limit of 24 hours after the end of the match in question:

- It is significant that on 16 November 2021, before the qualifying match between the FFCH and the FEF was played, the technical staff of the FFCH "objected"[8] to the personal circumstances of the Player, but the FFCH did not file a corresponding formal protest in due time and through the legal channel established for that purpose;
- The above convincingly establishes that: (i) the complaint was submitted by the FFCH outside the relevant deadlines; and (ii) the FFCH is proceeding in a manner at odds with its own actions, having raised its ill-judged complaint through the media after the FFCH had been eliminated from the World Cup.

## 2. On the provisional measures requested by the FFCH

101. The provisional measures requested by the FFCH must be rejected for the following reasons:

- it has already been duly proven with the greatest possible certainty that the Player is an Ecuadorian national;
- although the request is dressed up as "precautionary measures", in actual fact it amounts – once again – to the FFCH requesting inquisitorial evidence;
- the request by the FFCH is entirely fruitless and such "documentation and information" would not have any evidentiary value, and in any case it would be up to the FFCH to obtain and submit them in accordance with art. 36 (2) FDC;
- the requests of the FFCH lack any basis;
- the Appellant's request should have been formulated by calling for evidence to be given by the Player in accordance with art. 35 FDC, which it did not do in good time and in the proper manner.

[8] https://www.directvsports.com/noticia/lasarte-sobre-la-situacion-de-castillo-nosotros-hicimos-ehreclamo-en-su-momento

### 3. On the appeal filed by the FPF

102. The rejection in its entirety of the appeal brought by the FFCH would automatically result in the rejection of the appeal brought by the FPF. As such, and in order to avoid unnecessary duplication, the FEF refers to the abovementioned developments and requests the appeal of the FPF to be dismissed in its entirety.

### 4. Conclusion

103. The FEF has strictly complied with its legal and regulatory obligations and has not violated any of the said regulatory provisions in so far that:

- The Player's personal documentation confirms his Ecuadorian citizenship and would be sufficient in order to reject the claims made by the FFCH;
- The judicial authorities of the Republic of Ecuador have established, issuing several rulings that have become final, that the Player is an Ecuadorian citizen for all appropriate legal purposes.

104. The judgments concerned are final and have the effect of *res judicata*. Accordingly, the Appeal Committee must abide by the findings made by the Provincial Court of Justice of Guayas (the only competent authority) and must refrain from ruling on the unquestionable Ecuadorian citizenship of the Player. In addition to this, the Appeal Committee lacks jurisdiction *ratione materiae* to re-examine the Player's origins.

105. The FEF – in its capacity as an injured party – lacks standing to act as a respondent as the investigation would have to be directed against the Player personally in order to maintain his right to a defence and to due process.

106. The FEF has always acted in good faith and expeditiously, suspending the Player's call-up for the national squad until the judicial ruling of the Provincial Court of Justice had become final.

### 5. Petition

107. In view of all the above, the FEF requests the Appeal Committee to:

- uphold in its entirety the Appealed Decision;
- dismiss the disciplinary proceedings and close the case without imposing any sanctions on the FEF in accordance with art. 55 d) FDC;
- in the alternative, dismiss the disciplinary proceedings and close the case without imposing any sanctions on the FEF in view of:
    - the FEF's lack of standing to act as a respondent;
    - and/or the Committee's lack of jurisdiction *ratione materiae*;
    - and/or the universal principle of *res judicata*;
    - and/or in view of the lack of evidence in support of the appeal;
    - and/or the FFCH's failure to submit a protest within the time limit;

- all of the above along with any further rulings required under law, and under all circumstances with an order expressly imposing all costs and expenses associated with these disciplinary proceedings on the FFCH and the FPF in accordance with art. 45 FDC.

# III. CONSIDERATIONS OF THE APPEAL COMMITTEE

108. In view of the circumstances of the present matter, the Committee first decided to address some key procedural aspects, before entering into the substance of the case at stake.

## A. PROCEDURAL ASPECTS

### 1. Competence of the Committee and admissibility of the Appeals

109. First, the Committee recalled that the procedural aspects of the matter at stake were governed by the 2019 edition of the FDC, in particular considering that the FFCH and the FPF (together **the Appellants**) lodged their appeals on 24 June (FFCH) and 27 June (FPF) 2022, *i.e.* while the 2019 FDC was applicable.

110. In this context, the Committee pointed out that, in accordance with art. 56 in conjunction with art. 57 FDC, it was competent to hear the appeals presented by the Appellants against the decision rendered by the Disciplinary Committee on 10 June 2022.

111. This having been established, the Committee acknowledged that:

- The grounds of the Appealed Decision were notified on 24 June 2022;
- The Appellants communicated their intention to appeal on 24 June (FFCH) and 27 June (FPF) respectively;
- On 2 July 2022, the Appellants submitted the proof of payment for their respective appeal fees, as well as their respective reasons for their appeals;
- FIFA received the appeal fees.

112. In view of this, the Committee held that the requirements of art. 56 (3), (4) and (6) FDC were met and therefore declared the present appeals admissible.

### 2. Applicable law

113. In continuation, the Committee deemed that the present matter should be analysed in light of the 2019 edition of the FDC, which was the edition in force at the time of the events, i.e. when the relevant matches (see para. 2 *supra*) were played.

114. Specifically, the Committee made special attention to arts. 21 and 22 FDC as being of relevance in assessing the current matter, this without prejudice that other rules may also be at stake. More specifically, these provisions read as follows:

***Art. 21 FDC – Forgery and falsification***

*1.*
*Anyone who, in football-related activities, forges a document, falsifies an authentic document or uses a forged or falsified document will be sanctioned with a fine and a ban of at least six matches or for a specific period of no less than 12 months.*

*2.*
*An association or a club may be held liable for an act of forgery or falsification by one of its officials and/or players.*

***Art. 22 FDC – Forfeit***

*1.*
*If a player is fielded in a match despite being ineligible, the team to which the player belongs will be sanctioned by forfeiting the match and paying a minimum fine of CHF 6,000. The player may also be sanctioned.*

*2.*
*A team sanctioned with a forfeit is considered to have lost the match 3-0 in 11-a-side football, 5-0 in futsal or 10-0 in beach soccer. If the goal difference at the end of the match is less favourable to the team at fault, the result on the pitch is upheld.*

*3.*
*If ineligible players are fielded in a competition, the FIFA judicial bodies, taking into consideration the integrity of the competition concerned, may impose any disciplinary measures, including a forfeit, or declare the club or association ineligible to participate in a different competition.*

*4.*
*The Disciplinary Committee has also the capacity to act ex officio.*
*(....)*

115. Against such background, and given that part of the dispute at stake revolves around the nationality and related eligibility of the Player, the Committee further referred to art. 5 of the of the Regulations Governing the Application of the Statutes (**RGAS**) which reads as follows:

***1.***
*Any person holding a permanent nationality that is not dependent on residence in a certain country is eligible to play for the representative teams of the association of that country.*

***2.***
*There is a distinction between holding a nationality and being eligible to obtain a nationality. A player holds a nationality if, through the operation of a national law, they have:*

*(a) automatically received a nationality (e.g. from birth) without being required to undertake any further administrative requirements (e.g. abandoning a separate nationality); or*
*(b) acquired a nationality by undertaking a naturalisation process.*

***3.***
*With the exception of the conditions specified in art. 9 below, any player who has already participated in a match (either in full or in part) in an official competition of any category or any type of football for one association may not play an international match for a representative team of another association.*

116. This being established, the Committee subsequently turned its attention to the merits of the present case.

## B. MERITS OF THE CASE

117. On reading the Appealed Decision as well as the Appellants' appeal brief, the Committee reiterated that – *as emphasised in the Appealed Decision* – the present case "*emanated from a complaint lodged by* the *[FFCH] on the basis of (i) the possible falsification of documents granting Ecuadorian nationality to the Player and (ii) the possible ineligibility of the said player to participate in eight qualifying matches of the national team of the FEF in the preliminary competition of the FIFA World Cup Qatar 2022*™"[9].

118. In particular, the Committee took note that the Disciplinary Committee decided to dismiss the charges against the FEF with respect to the potential violation of articles 11 (Offensive behaviour and violations of the principles of fair play), 21 (Forgery and falsification) and 22 (Forfeit) of the FDC. In particular, after a careful analysis of all documents presented before it, the first instance rejected the allegations of falsification made by the FFCH in so far that it "*found no legitimate ground to conclude to the required standard of proof that the Ecuadorian birth certificate (or any other document) had been forged*"[10]. In a similar manner, the first instance rejected the arguments of the FFCH regarding the alleged ineligibility of the Player in so far that it "*was comfortably satisfied that the Player complied with the relevant provisions contained in the RGAS, namely art. 5 (1), to be considered eligible to play for the representative team of the FEF (including at the time of the Matches)*"[11].

119. Having noticed the main elements contained in the Appealed Decision, the Committee subsequently focused on the positions submitted by the parties in the course of the present appeal procedure.

120. In light of the arguments presented by the parties, the Committee considered that the following questions had to be answered during the present appeal proceedings:

[9] Cf. para. 19 of the Appealed Decision
[10] Cf. para. 69 of the Appealed Decision
[11] Cf. para. 79 of the Appealed Decision

1. *Was the first instance entitled to hear the complaint lodged by the FFCH?*

2. *How shall the required standard and burden of proof apply in casu?*

3. *Can it be considered that the Player's documents have been forged or falsified?*

4. *Was the Player eligible to play for the representative team of Ecuador?*

121. Notwithstanding the above, the Committee deemed that prior to addressing those questions, it had to focus on a few preliminary issues related to the present appeal proceedings, specifically with respect to (i) the absence of the Player at the hearing, (ii) the request from the FFCH for an anonymous witness to be heard and (iii) the standing of the Appellants in those proceedings.

## 1. Preliminary issues

### a) The absence of the Player at the hearing

122. To begin with, the Committee acknowledged that, although not being a party to the present appeal proceedings, the Player was called upon – via the FEF – to participate at the Hearing as follows:

- Correspondence from the Secretariat dated 31 August 2022 (addressed to the parties to the present proceedings): "*Finally, and on behalf of the Chairperson of* the *Appeal Committee, we kindly inform the Ecuadorian Football Association, that it is requested to ensure, in the best extend possible, that the player Byron David Castillo Segura is made available for the hearing*";
- Correspondence from the Secretariat dated 2 September 2022 (addressed to the parties to the present proceedings): "*we would like to reiterate that, consistently with art. 20 of the FIFA Disciplinary Code, the Ecuadorian Football Association is requested to ensure that the player Byron David Castillo Segura is made available and attends the hearing. In particular, and on behalf of the chairperson of the Appeal Committee, this committee wishes to emphasize the Ecuadorian Football Association's duty of collaboration in the scope of these proceedings with regard to the clarification of facts, for instance by providing relevant evidence or information and ensuring the assistance of the relevant persons in this process*";
- Correspondence from the Secretariat dated 9 September 2022 (addressed to the parties to the present proceedings): "*Finally, and for the sake of good order, we kindly remind the Ecuadorian Football Association that it is requested to ensure that the player Byron David Castillo Segura attends the hearing. By way of consequence, and on behalf of the Chairman of the FIFA Appeal Committee, we kindly invite the Ecuadorian Football Association to provide the aforementioned details to the Player*."

123. In this context, the Committee subsequently noted that, on 13 September 2022, the FEF provided the Secretariat with the Player's and his legal representative's contact details, along with a copy of the email it addressed to them informing them about the Hearing.

124. In view of the above, the Committee was comfortably satisfied that the FEF correctly conveyed the above information to the Player in so far that the latter was duly notified and informed by the FEF about the request from the Secretariat inviting him to attend the Hearing.

125. Such consideration was further confirmed in the Committee's mind upon reading the communication received on 13 September 2022 from the Player's legal representative in which the latter *inter alia* declared the following (free translation from Spanish):

> *"I have received by email from the Ecuadorian Football Federation (hereinafter FEF) the request from the FIFA Appeal Committee to have Mr. Byron Castillo present at the hearing on 15 September 2022.*
>
> *In this regard, I must inform you that the email sent by the FEF does not state why my client should appear and in what capacity he should do so. It is clear that Mr. Castillo is not a procedural party in this case since, from the beginning, he has not been present as a party, nor at this stage of the appeal, since he has not had the procedural opportunity to review the entire case file and has not been invited to present his position in writing.*
>
> *It is also necessary to note that the FEF email does not state whether Mr. Castillo should appear as a witness for one of the parties, it simply asks the FEF to ensure Mr. Castillo's presence at the hearing.*
>
> *(...)*
>
> *Byron Castillo's presence at a hearing with attorney Carlezzo would further fuel his desire to damage Mr. Castillo's image at a hearing and then use Mr. Castillo's words against him, which brings me to my next point.*
>
> *The case and the appeal for which Mr. Castillo's presence is sought is being held under Swiss law. Swiss law provides for the legal right of the witness to invoke the right to silence if his testimony may prejudice him in any way.*
>
> *(...)*
>
> *I have publicly announced that Byron Castillo will file a lawsuit for damages against the Chilean Football Federation for the statements of its leaders and lawyers, therefore we consider that his presence at the hearing on 15 September could prejudice his position in this lawsuit.*
>
> *Based on these considerations, we inform the FIFA Appeal Committee that Byron Castillo will exercise his right to silence and will not appear at the above-mentioned hearing."*

126. For the sake of good order, the Committee further noted that, while acknowledging receipt of the aforementioned correspondence, the Secretariat also communicated the necessary login details for the Hearing to the Player's legal representative.

127. Summarising the above, the Committee had therefore no doubt that the Player was indeed provided with (i) the information that his presence to the Hearing was required, and (ii) the necessary information enabling him (or at least his legal representative) to attend the Hearing.

128. Notwithstanding the above, the Committee regretted to note that neither the Player nor his legal representative attended the Hearing held on 15 September 2022.

129. In those circumstances, the Committee wished to refer to the duty to collaborate provided for by art. 20 FDC.

130. In this respect, while – as emphasised by his legal representative – the Player is not *per se* a party to the present proceedings (and as such subject would not be subject to art. 20 (2) FDC), it remains that the latter has a duty to collaborate in the relevant proceedings before FIFA's judicial bodies. As a *matter* of fact, the Player is undoubtedly subject to the FDC[12] and art. 20 (3) FDC specifically provides that "*[a]t the request of the judicial body, persons subject to this Code shall help to establish and/or clarify the facts of a case or any possible breaches of this Code and, in particular, shall provide any evidence requested*" (emphasis added).

131. Put differently, the Committee was of the firm opinion that, by failing to attend the hearing despite having been explicitly invited to do so, the Player is to be seen as having failed to comply with the duty to collaborate incumbent upon him under the applicable provisions of the FDC. In fact, the Committee was left unconvinced by the explanations put forward by the Player's legal representative to justify the latter's silence in the context of the present appeal proceedings.

132. Given the above, while keeping in mind that the "*general duty of co-operation is important in disciplinary systems*"[13], the Committee strongly recommended (and instructed the Secretariat to take the necessary steps in view of) the opening of disciplinary proceedings against the Player in relation to a potential breach of art. 20 FDC.

### b) The request from the FFCH for an anonymous witness to be heard

133. As a *starting* point, the Committee recalled that on 13 September 2022, the FFCH informed FIFA that it had "*a very urgent and relevant matter to speak by phone*", in so far that it "*might have a key witness that would be willing to testify based on art 38, Anonymous participants in proceedings. His life will be in danger if he speaks on the record*".

134. Such request was followed by a communication from the Secretariat inviting the FFCH to provide "*a (brief) summary of the testimony that the (anonymous) witness intends to submit,*

[12] See art. 3 (d) FDC
[13] CAS 2014/A/3537 Vernon Manilal Fernando v. FIFA

*including an explanation as to why such testimony "could lead to threats on his person or put him or any person particularly close to him in physical danger" (cf. art. 38 of the FIFA Disciplinary Code)*".

135. In response, *the* FFCH indicated that:

- "*this person had or has a role in the Ecuadorian Football Federation, having knowledge about the matter under debate. This person may bring unknown information so far by the parties and the Appeal Committee*";
- "*The resolution of the case become almost a matter of state in Ecuador, bringing full attention from the entire country. Any person willing to disclose information that would potentially not be in the interest of Ecuador could be a target, specially if Ecuador is removed from the World Cup*";
- "*This person is committed to speak in a private session with the sole presence of the members of the Appeal Committee[e]. It may be arranged to happen before the hearing on Thursday, through video call*".

136. With the above in mind, the Committee further acknowledged that, during the Hearing:

- the FFCH reiterated its request, without however providing (i) a summary of the witness testimony, nor (ii) specific or detailed explanation as to why the conditions of art. 38 FDC would be met;
- the FFCH issued a communication providing the name and role of the aforementioned witness.

137. Based on the above, the Committee considered that it had to assess, whether or not the conditions for said witness to (anonymously) appear in the proceedings at hand was justified.

138. In those circumstances, the Committee recalled that, as a general rule, any witness intended to be called in appeal proceedings shall – subject to the conditions of art. 38 FDC – be disclosed at the time of the appeal brief being submitted. Indeed, in accordance with art. 56 (4) FDC, the appeal brief - *which must be submitted within five days of expiry of the time limit for the declaration of appeal* – shall *inter alia* contain "*a list of the proposed witnesses (with a brief summary of their expected testimony)*".

139. Against such background, the Committee had no other option but to conclude that the request for a witness testimony only occurred on 13 September 2022, *i.e.* two days prior to the Hearing, but also more importantly, way after the deadline to submit the appeal brief had expired. In this respect, while keeping in mind the identity of the witness in question, the Committee pointed out that the FFCH did not provide any valid explanation (neither in writing nor at the hearing) as to why such witness statement could not form part of the appeal brief and was submitted late in the process.

140. Notwithstanding the above, the Committee wished to refer to the jurisprudence of CAS in relation to the admissibility of (late) witness evidence in light of art. R57 (3) of the Code of Sports-related Arbitration (2013 edition)[14]:

[14] CAS 2015/A/4303 Jan Lach v. WAF

*"40. In the Sole Arbitrator's judgment, the relevant principles regarding the application of Article R57 (3) of the Code may be distilled as follows:*

*a. Article R57 (3) of the Code applies to evidence that was not presented by a party in the course of earlier proceedings (which proceedings resulted in a decision that is being challenged before the CAS – the "challenged decision"), if that evidence was available to them or could reasonably have been discovered by them before the challenged decision was rendered (hereafter referred to as "newly presented evidence").*

*b. If the conditions in (a) are satisfied, the Panel has a discretion to exclude newly presented evidence, but is not compelled to do so.*

*c. The Panel has the discretion to admit some newly presented evidence, and to exclude other newly presented evidence.*

*d. It is not necessary for a party to make a specific application pursuant to Article R57 (3) of the Code in order for newly presented evidence to be excluded by the Panel, and the Panel may act of its own volition. However, in the ordinary course of events, a Panel should be cautious about excluding newly presented evidence absent a specific request from a party advocating that course of action. If the Panel is considering acting of its own volition to exclude newly presented evidence pursuant to Article R57 (3) of the Code, it should give the parties a fair and reasonable opportunity to make representations on the issue before making a final decision.*

*e. In deciding whether or not to admit or exclude newly presented evidence pursuant to Article R57 (3) of the Code,* ***the applicable test is ultimately one of balancing the prejudice/hardship that would or may be suffered by the respective parties by the admission or exclusion of newly presented evidence, and deciding whether it is in the interests of justice to admit or exclude such evidence, having regard to all relevant factors****.*

*f. If the Panel is satisfied that a party has behaved in an abusive or otherwise unacceptable procedural manner in its approach to the presentation of evidence, that is likely to be a significant factor militating against the admission of newly presented evidence. However, as a matter of principle, such conduct is not a pre-condition for the exclusion of newly presented evidence pursuant to Article R57 (3) of the Code.*

*g. When considering the exercise of its discretion under Article R57 (3) of the Code, the Panel should have due regard to Article R57 (1) of the Code which, in summary, stipulates that the CAS has full power to undertake a de novo hearing of the parties' dispute.*

*h. Other relevant factors in the exercise of the Panel's discretion may include the following (although it should be stressed that this is not intended to be an exhaustive or prescriptive list, and is not offered in any order of significance):*

*(i) For what period of time, prior to the rendering of the challenged decision, the party seeking to admit the newly presented evidence had such evidence in its possession or control;*

*(ii) The reason(s) why the newly presented evidence was not presented in the earlier proceedings;*

*(iii) At what stage of the CAS proceedings the newly presented evidence is disclosed/submitted; and*

*(iv) The possible probative value of the material and the consequences on the future progress of the proceedings.*" (emphasis added)

141. In particular, the Committee noted that the reasoning of the Sole Arbitrator's reasoning "*[i]n determining that it is in the interests of justice to admit the witness statements*" included the following considerations:

"*a. There has been no specific request from the Respondent to exclude the witness statements, and the Appellant has not had an opportunity to respond to the points made in the Respondent's Answer on this issue.*

*b. There is no persuasive evidence that the Appellant's failure to present the witness statements in the course of the BJE proceedings was attributable to some ulterior or improper motive on his part.*

*c. The witness statements include first-hand observations regarding the events of 12 August 2015, and are therefore potentially relevant to the matter in issue.*

*d. The witness statements were presented at the same time as the Appellant's Statement of Appeal (i.e. at the initial stage of the CAS proceedings) and the Respondent has had a fair and reasonable opportunity to comment on them – an opportunity which it has in fact taken up by making written submissions on the credibility, relevance and probative value of this evidence. In that connection, admitting the evidence has not caused any delay or additional cost to be incurred by the Respondent.*"

142. Keeping in mind the above, the Committee once again wished to point out that (i) the FFCH did not provide any substantial justification as to the reason why said (anonymous) witness was not presented at the time of its appeal brief being submitted – or at least earlier in the proceedings –, (ii) said request was only submitted two day prior to the Hearing taking place, (iii) no explanation was provided as to the content of the intended testimony, and more importantly (iv) the FFCH specifically requested he witness to only be heard by the Committee.

143. In view of this last point, the Committee stressed that granting the FFCH's request would obviously be detrimental to the right to be heard, but also to a fair proceedings of the other parties, in so far that they would not be granted access to the testimony, nor at least be in a

position to provide their views or position on it. Said balance of prejudice/hardship would clearly tend towards the exclusion of the FFCH's request for an anonymous testimony.

144. In addition to the above, the Committee recalled that the FFCH requested the witness to benefit from the specific procedure foreseen under art. 38 FDC in accordance with which:

> *"When a person's testimony in proceedings conducted in accordance with this Code could lead to threats on his person or put him or any person particularly close to him in physical danger, the chairperson of the competent judicial body or the deputy chairperson may order, inter alia, that:*
> *a) the person not be identified in the presence of the parties;*
> *b) the person not appear at the hearing;*
> *c) the person's voice be distorted;*
> *d) the person be questioned outside the hearing room;*
> *e) the person be questioned in writing;*
> *f) all or some of the information that could be used to identify the person be included only in a separate, confidential case file."*

145. In light of the clear and unequivocal prerequisites established under said provision, the Committee however stressed that the FFCH failed to provide any legitimate explanation as to the reason why the witness's testimony "*could lead to threats on his person or put him or any person particularly close to him in physical danger*", and as such as to why the specific procedure foreseen under art. 38 FDC would be justified *in casu*. In particular, it is noted that the limited information provided to the Committee with regard to the identity of the so-called anonymous witness (but also about the testimony it was intending to submit) raised serious doubts as to whether the conditions contemplated in art. 38 FDC may have been met. In the Committee's view, such question would have still remained open even if Appellant may have submitted the required explanations.

146. In view of those considerations, the Committee decided to reject the FFCH's request for an anonymous witness being included in the present appeal proceedings.

### c) The standing of the Appellants in the present appeal proceedings

147. Focusing on the scope of the present proceedings, particularly considering the allegations of the Appellants in light of the Appealed Decision, the Committee deemed that it had to address the standing of both the FFCH and the FPF to appeal the decision rendered by the first instance.

148. In this context, the Committee recalled that in line with the jurisprudence of CAS, in principle, standing to sue is recognised if a person appealing against a certain decision has an interest worthy of protection, *i.e.* a sufficient interest in the matter being appealed[15].

[15] See for instance CAS 2021/A/8140 Gymnastics Canada v. FIG

149. Put differently, a party has standing to appeal if it can show sufficient legal interest in the matter being appealed and if it is aggrieved, *i.e.* that it has something at stake[16], and thus, a concrete legal interest ("*intérêt à agir*")[17]. More specifically, the term "standing to appeal" describes the entitlement of an appealing party to be affected by the decision it appeals[18].

150. Consistently with the above, the Committee went on to assess as to whether the FFCH and the FPF had a concrete, legitimate and personal interest[19] in appealing the decision rendered by the first instance, keeping in mind that a purely theoretical and/or indirect interest is not sufficient.

151. In those circumstances, and as a preliminary remark, the Committee emphasised that "***standing to sue should be restricted to a club that could show*** *(…)* ***that it would directly replace an excluded club*** *and not by the means of possibly being entered into a draw along with a number of other clubs or by a possible one-off decision that the Emergency Panel could take*" (emphasis added)[20].

152. On *account* of the above, the Committee held that neither the FFCH nor the FPF provided any explanation (i) as to how they would "directly replace" the FEF should the latter be excluded" or (ii) as to why they would have a legal interest in the present appeal proceedings other than a hypothetical qualification to the FIFA World Cup Qatar 2022™. As a matter of fact, on the one hand, the FFCH mainly mentioned that the present appeal imply "*a possible exclusion of FEF from the 2022 World Cup and the inclusion of FFCH*", while, on the other hand the FPF essentially argued that the potential breaches by the FEF *in casu* shall lead to its automatic qualification to the FIFA World Cup.

153. On account of the above, the Committee wished to clarify that the present proceedings related to two *distinct* allegations against the FEF, and as such, against two distinct potential breaches committed by the latter, *i.e.* that of art. 21 FDC related to the allegations of forgery and falsification and that of art. 22 FDC related to the potential fielding of an ineligible player by the FEF.

154. By way of consequence, the Committee deemed that it had to distinguish between those two distinct *provisions* to assess the potential legal interest of the Appellants in challenging the Appealed Decision.

#### i. Standing in connection with art. 21 FDC – forgery and falsification

155. Starting with the allegations of forgery and falsification and the related potential breach of art. 21 FDC, the Committee first acknowledged that, on top of the overall submission that the FFCH

[16] CAS 2019/A/6636 BC Arsenal v. Russian Basketball Federation (RBF); see also CAS 2008/A/1674; CAS 2014/A/3744 & 3766
[17] CAS 2017/A/5166 & 5405 Palestine Football Association v. FIFA
[18] CAS 2019/A/6636 op. cit.; see also CAS 2015/A/3959 CD Universidad Católica & Cruzados SADP v. Genoa Cricket and Football Club
[19] CAS 2015/A/4282 Kuwait Karate Federation (KKF), Kuwait Shooting Federation (KSF) & Khaled Jassim Mohammad Almudhaf v. International Olympic Committee (IOC)
[20] CAS 2015/A/4151 Panathinaikos FC v. UEFA & Olympiakos FC

shall be included into the FIFA World Cup, the FPF argued that "*the FEF must be excluded from the competition in which it breached article 21 of the Disciplinary Code, namely the preliminary competition for the FIFA World Cup Qatar 2022 and, in line with this exclusion, must be replaced in the FIFA World Cup Qatar 2022, a competition for which it qualified illegitimately*". As such, the FPF considers that "*the only logical consequence that would respect (i) the principles of fair play, loyalty and integrity – among others – enshrined in article 11 of the Disciplinary Code, (ii) the principle of sporting merit and (iii) the quota of CONMEBOL (South American Football Confederation) members qualifying for the FIFA World Cup Qatar 2022 out of all of the CONMEBOL members (the top four associations automatically qualify and the fifth enters the play-offs against a member of the Asian Football Confederation), would be the FPF's direct qualification for the FIFA World Cup Qatar 2022 as the fourth-placed association, replacing the FEF*" (free translation from Spanish).

156. Upon analysing the above, the Committee however pointed out that, neither the FFCH nor the FPF detailed the necessary causal link between the potential breach of art. 21 FDC and their subsequent (sporting) interest in the Appealed Decision being overturned on that specific point.

157. In this respect, it needs to be stressed that art. 21 FDC provides for a specific list of sanction to be imposed on anyone found responsible of forgery or falsification in so far that they shall be "*sanctioned with a fine and a ban of at least six matches or for a specific period of no less than 12 months*". In so far that an association who would be held liable for an act of forgery or falsification by one of its officials and/or players is concerned, no specific sanction is foreseen by the FDC. In other words, any of the disciplinary measures foreseen under art. 6 FDC could be applicable.

158. As such, the Committee held that the Appellants failed to demonstrate that should the Appealed Decision be overturned and the FEF found in breach of art. 21 FDC, it would "benefit" from such decision by the Committee.

159. As a matter of fact, although the proceedings against the FEF were originally initiated on the basis of a claim brough forward by the FFCH, it did not follow that the latter (nor the FPF) became a party to the proceedings.

160. In those circumstances, the Committee considered that the Appellants are trying to create a non-existing causal link between the potential forgery and/or falsification of the documents of the Player and their subsequent (automatic) qualification to the World Cup. In other words, in the Committee's view, the Appellants failed to establish that the potential forgery of the Player's identification documents would (i) affect his Ecuadorian nationality and as such his eligibility, and, more importantly (ii) lead to the exclusion of the FEF from - and their subsequent qualification to - the FIFA World Cup

161. In fact, the Committee was satisfied that, even if it would overturn the Appealed Decision with respect to the charges of art. 21 FDC, such outcome would exclusively affect the FEF as the sanctioned party. In other words, none of the Appellants would be affected by such a decision.

162. The Committee therefore held that the Appellants failed to demonstrate their concrete, legitimate and personal interest in appealing the decision on the grounds of forgery and falsification, and, as such, had no standing to appeal the part of the Appealed Decision related to the potential breach of art. 21 FDC.

163. With those elements in mind, and for the sake of completeness, the Committee further went on to assess the Appellants' potential standing to appeal the Appealed Decision in relation to the allegations related to the Player's ineligibility.

ii. Standing in connection with art. 22 FDC – Ineligibility player

164. In this context, the Committee focused on art. 22 FDC and the possible consequences to be applied in case it would consider that – as advanced by the Appellants – the Player was ineligible to play for the representative teams of Ecuador at the time he was fielded by the FEF.

165. On that basis, the Committee stressed that art. 22 (1) specifically provides that "*[i]f a player is fielded in a match despite being ineligible, the team to which the player belongs will be sanctioned by forfeiting the match and paying a minimum fine of CHF 6,000*".

166. In continuation, the Committee subsequently turned its attention to art. 22 (3) FDC concerning "*ineligible players (...) fielded in a competition*". As a matter of fact, the Committee reiterated that the present matter pertained to the Preliminary Competition to the FIFA World Cup and, as such undoubtedly fell under the scope of said provision. In such circumstances, "*the FIFA judicial bodies, taking into consideration the integrity of the competition concerned, may impose any disciplinary* measures*, including a forfeit, or declare the club or association ineligible to participate in a different competition*".

167. In other words, the list of sanctions potentially applicable upon the FEF should it be found in breach of art. 22 FDC is open-ended and any of those listed under art. 6 FDC could be applied. The key element to be taking into account upon deciding such sanction(s) being "*the integrity of the competition concerned*".

168. Based on the above, the Committee was comfortably satisfied that there was no obligation upon it to declare the matches at stake lost by forfeit by the FEF in case of the Player being considered ineligible. As a matter of fact, as specifically mentioned, the Committee could also "*declare the (...) association ineligible to participate in a different competition*" or any other disciplinary measure. This, particularly "*taking into consideration the integrity of the competition concerned*".

169. As such, and given that the Preliminary Competition had now been completed, any potential decision rendered with regard to the Player's alleged ineligibility – if proven *quod non* – would have to be passed taking into account the integrity of such competition, thus reinforcing the Committee's view that such infringement shall not necessarily lead to the automatic forfeit of the matches in which the Player took part, or alternatively to the expulsion of the FEF of the FIFA World Cup.

170. By way of consequence, the allegations put forward by both the FFCH and the FPF[21] that the FEF should be expelled from the FIFA World Cup and replaced by them are groundless and only hypothetical as there is no mandatory provisions supporting such argumentation. Indeed, keeping in mind that, as previously emphasised, "*standing to sue should be restricted to a club that could show (…) that it would directly replace an excluded club*" [22], the Committee was satisfied that the Appellants failed to establish that, based on the applicable framework, (i) that they would have a prevailing (procedural) right over the other Appellant in the outcome of the present proceedings, and more importantly (ii) that the outcome of their respective appeals "*would be that [they] would simply replace [the FEF]*" at the FIFA World Cup[23].

171. On that basis, the Committee wished to point out that, even in the hypothetical scenario where it would decide that the FEF shall be excluded from the FIFA World Cup – *as suggested by the Appellants* –, the subsequent actions would in any case fall out of its competence. Indeed, as specifically provided for by art. 6 of the Regulations of the Preliminary Competition to the FIFA World Cup 2022™, "*[i]f any association (…) is excluded from the competition, FIFA shall decide on the matter at its sole discretion and take whatever action is deemed necessary*". In other words, there would be no guarantee that the representative team that would be potentially replacing Ecuador would be the one of one of the Appellants. As such, it appears to be clear that the (sporting) interest of both the FFCH and the FPF, despite their respective argumentation that they shall be automatically qualified to the FIFA World Cup, remains only hypothetical.

172. In those circumstances and given that the (sporting) interest of the Appellants in having the Appealed Decision overturned based on a potential ineligibility of the Player is purely theoretical, the Committee deemed that, on the basis of the relevant jurisprudence of CAS, the latter also had no standing to appeal the part of the Appealed Decision related to the potential breach of art. 22 FDC.

173. The aforementioned conclusions were further supported in the Committee's view by the procedure the Appellants decided to follow to bring up their claim to the knowledge of FIFA. As a matter of fact, and as will be further detailed at a later stage, neither the FFCH nor the FPF formally lodged a protest on grounds of (in)eligibility on the basis of art. 46 FDC (as read in conjunction with art. 14 of the Regulations of the Preliminary Competition to the FIFA World Cup 2022™ [24]), but rather elected to lodge a complaint which was subsequently followed up by the opening of formal disciplinary proceedings on the basis of art. 52 FDC.

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[21] The FPF explaining that "*the appropriate and proportionate sanction [for a potential breach of art. 22 FDC] is, at the very least, the immediate expulsion of the FEF from the competition affected by the falsification, namely the FIFA World Cup Qatar 2022 preliminary competition, and, as a logical consequence, its elimination from the FIFA World Cup Qatar 2022*", as a result of which "*the fourth of the automatic qualification slots for the FIFA World Cup Qatar 2022 assigned to CONMEBOL member associations, previously held by the FEF, must pass to the member association that is next in the standings, the FPF, which would thus automatically qualify for the FIFA World Cup Qatar 2022*" (free translation from Spanish).

[22] CAS 2015/A/4151 Panathinaikos FC v. UEFA & Olympiakos FC

[23] See also CAS 2015/A/4151 Panathinaikos FC v. UEFA & Olympiakos FC

[24] Said article *inter alia* provides that "*[p]rotests regarding the eligibility of players selected for matches in the preliminary competition shall be submitted in writing to the FIFA Match Commissioner within two hours of the match in question and followed up with a full written report, including a copy of the original protest, to be sent by email to the FIFA general secretariat within 24 hours of the end of the match, otherwise they will be disregarded*".

174. As stated by CAS[25], the provisions related to protests, unlike that related to the opening of disciplinary proceedings (art. 52 FDC *in casu*, formerly art. 108 of the 2017 edition of the FDC) guarantee "*the "protesting" party: (i) the opening of disciplinary proceedings against the alleged offender, (ii) the adoption by the FIFA disciplinary bodies of a final decision on the matter, and (iii) procedural rights in the context of disciplinary proceedings*" (free translation from Spanish).

175. With respect to those procedural rights, the Panel of the referenced case made it clear that:

- the relevant provision related to protests "*confers procedural rights on the "protesting" federation in the* proceedings *against the alleged offender. First, it gives it the right to submit its allegations "in writing" in a protest (…). Second, (…) [said provision]* ***grants the "protesting" federation the right to be considered by FIFA as a party with certain procedural rights in the disciplinary proceedings against the "protested" federation***. ***For example, upon dismissal of its protest, the protesting party could appeal the decision of the Disciplinary Committee to the Appeal Committee, as derived from article 119 FDC*** *("any person who has been a party to the proceedings before the first instance and has a legally protected interest that justifies the amendment or reversal of the decision may appeal to the Appeal Committee"), and then to CAS under articles 126 para. 2 and 128 FDC and the corresponding articles of the FIFA Statutes*" (emphasis added – free translation from Spanish);
- to the contrary, art. 108 of the 2017 edition of the FDC (now replaced by art. 52 FDC) "*being a discretionary action of FIFA, does not confer any procedural rights on the reporter/complainant (…). Article 108 does not guarantee that FIFA will consider a complaint as relevant and process the case before the Disciplinary Committee.* ***Nor does it guarantee that the reporter/complainant has the right to participate in the disciplinary proceedings, if any***. *On the contrary, FIFA's practice, as explained in its letters to the FFC and FPF of 5 October 2016 (see supra, par. 14), is that disciplinary proceedings under article 108 FDC are, as a general rule, proceedings that only concern the accused parties and not the reporter/complainant of the infringement.* ***Therefore, when a federation lodges a communication/complaint through article 108 FDC, this action serves only to alert FIFA of a possible disciplinary offence****, leaving FIFA the discretion to initiate or not a procedure and whether or not to issue a decision (see supra par. 89(iii)).* ***In other words, submissions/complaints under Art. 108 par. 2 FDC do not confer any procedural rights on the reporter/complainant*** *and do not change the "ex officio" legal nature of the disciplinary file that FIFA has the discretion to initiate and process under Art. 108 par. 1 FDC*" (emphasis added – free translation from Spanish).

176. Summarising the above, and contrary to the situation where one lodges a formal protest in accordance with the applicable provisions, no procedural rights (including that to lodge an appeal against the Appealed Decision) shall in principle be conferred to those lodging a complaint before FIFA.

177. Put differently, by deciding to lodge a complaint before FIFA rather than a protest, the FFCH should normally be considered as having lost any and all potential procedural rights connected

[25] CAS 2017/A/5001 & CAS 2017/A/5002 Federación Boliviana de Fútbol v. FIFA

to such protest. Such stance should also be applied to the FPF which did not lodge a protest (nor even a complaint[26]) in connection with the alleged ineligibility of the Player.

178. In those circumstances, the Committee was satisfied that all above developments tend to demonstrate that neither the FFCH nor the FPF had a standing to appeal the decision of the first instance on grounds of ineligibility of the Player.

179. Notwithstanding the above, and for the sake of completeness, the Committee went on to address the other key aspects related to the merits of the present appeal given that, as will be demonstrated, those would also lead to the rejection of the appeal.

## 2. Was the first instance entitled to hear the complaint lodged by the FFCH?

180. First and foremost, the Committee observed that, according to the FEF, the FFCH should have followed the legal procedure foreseen under art. 46 FDC (protests). In other words, it should have submitted its protest within the mandatory time limit of 24 hours after the end of the match in question. To that end, the FEF emphasised that, although the technical staff of the FFCH "*objected*" to the personal circumstances of the Player prior to the qualifying match between the FFCH and the FEF was played, it failed to file the relevant protest in due time and in accordance with the relevant provisions.

181. In these circumstances, the Secretariat wishes to refer to an award rendered by CAS in relation to allegations of ineligibility of a Player in the context of a competition organised by the Confédération Africaine de Football (**CAF**)[27], in which the Panel determined the following:

> "*98. In short, according to [the applicable] provision, an association must meet three prerequisites to duly file a protest against the qualification of a Player: (i) to raise it before the match, (ii) to confirm it within 48 hours, and (iii) to pay an amount of USD 2,000.*
>
> *99. In light of the evidence provided in the file, the Panel is not in a position to state that the FMF filed any "protest" before the Matches and, that the FMF's confirmation was filed within 48 hours after the Matches. However it is to be noticed that at that time, the FMF most probably did not have knowledge of the Player's situation (…). Therefore, the Panel considers that it was not possible for the FMF to file a "protest" in terms of the rule invoked by the Appellant.*
>
> *100. In the Panel's view, the communication sent by the FMF to the CAF on 14 April 2016 was to alert the latter about a FIFA decision that sanctioned the FEGUIFUT with fraud and to trigger a disciplinary investigation in this respect. Therefore, the Panel considers that the Appellant's communication was not a "protest" in terms of Article 41, but a communication in accordance*

[26] For the sake of good order, the Committee recalled that the FPF was invited to the present proceedings by the first instance following the complaint lodged by the FFCH.
[27] CAS 2016/A/4831 Equatorial Guinea Football Federation (FEGUIFUT) v. Confédération Africaine de Football (CAF) & Fédération Malienne de Football (FMF)

*either with Article 43 of the Competition Regulations or Article 43 of the Disciplinary Code which read as follows:*

*- Article 43 of the Competition Regulations (underline added):*

*"If CAF is informed, no matter the source, that a fraud or a forgery was committed by any means and /or support whatsoever by one or more national team(s), an investigation will be opened".*

*- Article 43 of the CAF Disciplinary Code (underline added):*

*"COMMENCEMENT OF PROCEEDINGS*

*1. Disciplinary infringements are automatically prosecuted.*

*2. Any person or authority may report conduct that he or it considers incompatible with the Regulations of CAF to the legal bodies. Complaints shall be made in writing.*

*3. Match officials are obliged to expose in writing, in or attached to their official reports, infringements which have come to their notice" (underline added).*

*(...)*

*102. In light of the above, the Panel concludes that there were no procedural flaws in the proceedings before the CAF and, therefore, the Appellant's request to annul the Appealed Decision based on these arguments shall be rejected."*

182. Focusing on the case at hand, the Committee pointed out that similar provisions to those contained in the CAF Regulations exist in the FDC with regard to (i) protests, but also more importantly (ii) the initiation of disciplinary proceedings.

183. More specifically, while art. 46 FDC provides for the necessary requirements to lodge a protest, art. 52 FDC provides for the conditions under which disciplinary proceedings may be initiated, as follows:

*1.*
*Proceedings are opened by the secretariat of the Disciplinary Committee:*
*a) on the basis of match officials' reports;*
*b) where a protest has been lodged;*
*c) at the request of the FIFA Council;*
*d) at the request of the Ethics Committee;*
*e) on the basis of a report filed by FIFA TMS;*
*f) on the basis of article 15 of this Code;*
*g) on the basis of documents received from a public authority;*
*h) ex officio.*

*2.*
*Any person or body may report conduct that he or it considers incompatible with the regulations of FIFA to the FIFA judicial bodies. Such complaints shall be made in writing.*

184. In other words, the Committee considered that the same reasoning than the one made by CAS in the aforementioned award can be applied *in casu*, particularly considering that the Disciplinary Committee is competent to open proceedings *ex officio*, that it to say also on the basis of any complaint lodged in accordance with art. 52 (2) FDC.

185. Such approach is further supported by an award rendered by CAS in a very similar matter[28] in which the Panel went on to analyse the coexistence of the various regulatory provisions related to protests – *at the time, art. 15 (3) of the Regulations of the 2018 World Cup Russia (**2018 WC Regulations**)* – and those of the then applicable edition of the FDC related to the commencement of proceedings – *specifically art. 108 of the 2017 edition of the FDC[29]* –. In particular, the Panel drew the following conclusions to which the Panel fully adhered (free translation from Spanish – emphasis added):

> *86. (…) The Panel notes that **these rules** [art. 15 (3) 2018 WC Regulations and art. 108 FDC] **are reconcilable because they confer different rights and produce different effects for FIFA and for the other parties**.*
>
> *87. On the one hand, article 108 of the FDC gives (i) FIFA the right to prosecute disciplinary offences ex officio, i.e. without necessarily conditioning the initiation of disciplinary proceedings against someone on the basis of a request from a third party, and (ii) any person or authority (including, of course, national federations) the power to report in writing conduct that they consider to be contrary to FIFA regulations.*
>
> *88. On the other hand, article 15, par. 3 of the [2018 WC Regulations], together with article 8 of the same [2018 WC Regulations] confers: (i) on each national association the right to lodge a protest against the ineligibility of a selected player for a match of the 2018 World Cup (including the preliminary phase) within a very short fixed period of time after the match, and (ii) on FIFA the obligation to process the disciplinary file resulting from such a protest before the Disciplinary Committee.*
>
> *(…)*
>
> *93. Finding no conflict between Articles 108 of the FDC and Article 15 of the MCR, the Panel concludes that **these two rules can coexist with reference to the same situation** (…).*
>
> *(…)*
>
> *94. As stated above, the Panel considers that under Article 108 para. 1 FDC, FIFA has the right to initiate disciplinary proceedings ex officio. The Panel notes that neither articles 15 of the [2018 WC Regulations] or 108 of the FDC, nor other rules, limit in any way, explicitly or implicitly, such a right of FIFA, regardless of the manner in which information about a potential disciplinary offence reaches FIFA. **FIFA's Statutes and regulations as a whole, as currently drafted, do***

[28] CAS 2017/A/5001 & CAS 2017/A/5002 Federación Boliviana de Fútbol v. FIFA
[29] Said article providing that "*[d]isciplinary infringements are prosecuted ex officio*"

***not indicate or suggest that FIFA's power to take disciplinary action ex officio is eliminated or in any way limited when it becomes aware of a player's potential ineligibility through information set out in a communication or complaint filed pursuant to article 108 of the FDC by a federation with the right to lodge a protest pursuant to article 15 of the [2018 WC Regulations]. On the contrary, as will be detailed below, as the aforementioned rules are drafted, in order to open a disciplinary procedure according to article 108 FDC, FIFA can rely on any information found by itself*** *(e.g. by press reports, as it happened in the case of the case in question, by press reports, as was the case in CAS 2011/A/2425, CAS 2011/A/2426 and CAS 2011/A/2433)* ***or on information coming from another party*** *(be it a person or entity belonging or not to the FIFA family)* ***and formulated in any way*** *(be it in the form of a communication, complaint, protest, claim, etc.). (...)*

186. By way of consequence and keeping in mind all aforementioned developments, the Secretariat was satisfied that, contrary to the allegations of the FEF, the Disciplinary Committee was competent to open proceedings (and subsequently decide on the matter at hand), although no formal protest in the sense of art. 46 FDC had been lodged by the Appellants.

### 3. How shall the required standard and burden of proof apply *in casu*?

187. As a preliminary remark, the Committee recalled that the concepts and principles related to standard and burden of proof in proceedings before FIFA's judicial bodies are governed by arts. 35 and 36 FDC.

188. Those provisions read as follows (emphasis added):

***Art. 35 - Evidence, evaluation of evidence and standard of proof***

*1.*
***Any type of proof may be produced****.*

*2.*
*The* ***competent judicial body has absolute discretion regarding the evaluation of evidence****.*

*3.*
*The* ***standard of proof*** *to be applied in FIFA disciplinary proceedings is the* ***comfortable satisfaction*** *of the competent judicial body.*

***Art. 36 - Burden of proof***

*1.*
*The* ***burden of proof regarding disciplinary infringements rests on the FIFA judicial bodies****.*

> *2.*
> ***Any party claiming a right on the basis of an alleged fact shall carry the burden of proof of this fact**. During the proceedings, the party shall submit all relevant facts and evidence of which the party is aware at that time, or of which the party should have been aware by exercising due care.*
>
> *(...)*

189. With those elements in mind, the Committee acknowledged that in its decision, the first instance *inter alia* emphasised the following elements:

- in accordance with art. 36 (2) FDC – an as confirmed by the jurisprudence of CAS –, the FFCH was "*responsible to provide sufficient evidence to substantiate its allegations*"[30];

- "*in line with art. 36 (1) FDC, the burden of proof regarding disciplinary infringements rests on the FIFA judicial bodies, while keeping in mind that, consistently with art. 35 (3) FDC, the standard of proof to be applied in FIFA disciplinary proceedings is that of the "comfortable satisfaction" of the competent judicial body*"[31]. As a result, it considered that "*in order to confirm the charges levied against the FEF, [it] would need to have sufficient elements to be comfortably satisfied (i) that the documents related to the Ecuadorian nationality of the Player have been falsified and/or forged, and (ii) of the Player's ineligibility to play for the representative team of Ecuador*"[32].

190. The parties to the present appeal proceedings however disagree on the above concepts in so far that:

- According to the FFCH, "*[t]he interpretation of the burden of proof and the standard of proof made by the Disciplinary Committee for this case create a real and direct impossibility for the [FFCH] to prove anything*" given that the "*standards set by the decision are so high that, virtually, they are impossible to be reached*";

- The FPF considers that:

    - It is up to the Appellant(s) to provide evidence of a fact to the comfortable satisfaction of the Appeal Committee – *in casu*, on the use of forged documentation allowing the Player to play for the Ecuadorian national team;
    - The Appeal Committee has to be subjective in its decision-making in accordance with the applicable standard of proof;
    - The Appellants as well as FIFA have limited investigative powers. Given the nature of the infringing conduct, it is virtually impossible to acquire direct evidence of it;
    - The probatory requirements of the judicial body when determining whether or not there was a breach cannot be such that they unjustifiably elevate the applicable

[30] Cf. para. 20-22 of the Appealed Decision
[31] Cf. para. 23 of the Appealed Decision
[32] Cf. para. 24 of the Appealed Decision

standard of proof (comfortable satisfaction) of the Appeal Committee to a level that is impossible to achieve under the very specific circumstances of the case;
- All documents on file point towards the same direction. As such, the burden of proof to rebut the allegations brought forward shall lie with the FEF;

- The FEF on its side argues that the complaint (and subsequent appeal) of the FFCH (and of the FPF) does not fulfil the burden of proof required under art. 36 FDC and failed to prove its allegation towards the Player.

191. In view of the arguments raised by the parties, the Committee wished to refer to an award rendered by CAS in a (very) similar matter concerning the eligibility of a player to play the AFC Champions League in which part of the dispute revolved around the burden of proof[33]. In its decision, the Panel drew the following considerations (emphasis added):

> *"48. The parties disagree regarding the question whether the burden of proof lies with the Appellant or with the Respondents. The Appellant claims that the club shall be responsible for providing sufficient evidence that the players on the pitch are eligible to play. The Respondents state that since the Appellant derives rights from the allegation that the Player was not eligible, the burden of proof lies with the Appellant.*
>
> *(...)*
>
> *51. Taking these rules into account, the Sole Arbitrator emphasises that the Appellant lodged a protest after the Match in order to initiate disciplinary sanctions (forfeit-loss) upon the Second Respondent. The Sole Arbitrator therefore deems it evident that in such procedure, the burden of proof lied on the AFC and not on the Second Respondent.*
>
> *52.* ***In the proceeding before the CAS, the Appellant derives rights (i.e. the appeal being upheld and the Second Respondent being sanctioned) from the allegation that the Player was not eligible to be fielded during the Match. Therefore, the Sole Arbitrator concludes that the burden of proof with respect to the Player's ineligibility lies with the Appellant.***
>
> *(...)*
>
> *59. To conclude, the Sole Arbitrator holds that there is no evidence produced that the Player was not eligible to play the Match. Therefore, the First Respondent's decision to reject the Appellant's protest was correct. Hence, the appeal shall be fully dismissed."*

192. Such reasoning had been adopted by CAS in separate awards in which it considered the following (emphasis added):

- "*in practice, (...)* ***when a party invokes a specific right it is required to prove such facts as normally comprise the right invoked****, while the other party is required to prove such facts as exclude, or prevent, the efficacy of the facts proved, upon which the right in question is based.* ***This principle is also stated in the Swiss Civil Code****. In accordance with Article 8 of the Swiss*

[33] CAS 2015/A/4260 Al Hilal Saudi Club v. AFC & Al Ahli Club

*Civil Code:* ***Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact"***[34];

- "*(…)* ***if a party wishes to establish some fact and persuade the deciding body, it must actively substantiate its allegations with convincing evidence*** *(e.g. CAS 2003/A/506, para. 54; CAS 2009/A/1810 & 1811, para. 46 and CAS 2009/A/1975, para. 71ff)*" [35].

193. In the light of this, the Committee concluded that, in circumstances such as the ones at hand, while it remains that the Disciplinary Committee (and subsequently the Appeal Committee) shall bear the burden of proving any disciplinary infringement (art. 36 (1) FDC) – *i.e. that there are sufficient elements to confirm such infringement to its comfortable satisfaction* –, the initial burden of proof, that is to say to substantiate the claim – *i.e. to prove (i) that the documents related to the Ecuadorian nationality of the Player have been falsified and/or forged, and/or (ii) the Player's ineligibility* – lies with both the FFCH and the FPF.

194. In the present context, the Committee pointed out that in a separate award[36], CAS made it clear that (i) it is up to the party invoking the ineligibility of an (opposing) player to prove such fact, (ii) said party cannot invoke a reversal of such burden in so far that the opposite party would need to demonstrate a contrario the player's eligibility, and (iii) strong evidence are required for the judicial body (emphasis added):

> *"**The Panel again finds that the Appellant has not sufficiently discharged the burden of proof. The CAF Appeal Board could only reach a decision on the Player's eligibility if it had stronger evidence from the Appellant as to where the Player lived at what stage**, as opposed to submissions that he played for foreign clubs since 2004 and an attempted reversal of the burden of proof by the Appellant. **It is not sufficient to say the CAF did not show the Player lived continuously in Burkina Faso for 5 years** after he reached the age of 18. **The Appellant needed to provide the evidence** to demonstrate where the Player was living; to provide submissions on the application of Article 17 as against Article 18 of the FIFA Statutes; to produce submissions and evidence on what was meant be "continuously living" – is it actual residence or maintaining nationality – and to provide submissions to support Article 36.12 can be used in any event, or whether it only has application on an association after a player has been sanctioned."*

195. Put differently, *in casu*, it is not up to the FEF (nor to the FIFA judicial bodies) to demonstrate that the Player's documents have not been forged/falsified or that the latter was indeed eligible to play for its representative teams.

196. In fact and to the contrary, the Committee was firmly convinced that the FFCH and the FPF were undoubtedly required to discharge their burden of proof by proving with strong evidence the facts that are at the basis of their initial complaint and/or of the present appeal (see also art. 36 (2) FDC).

[34] CAS 2016/A/4843 Hamzeh Salameh & Nafit Mesan FC v. SAFA Sporting Club & FIFA
[35] CAS 2020/A/6796 Andriamirado Aro Hasina Andrianamimanana & Kaizer Chiefs FC v. Fosa Juniors FC & FIFA
[36] CAS 2011/A/2654 Namibia FA v. CAF

197. This being established, it however remains that, upon deciding on the present case, the first instance (and subsequently the Appeal Committee) shall assess the evidence on file (art. 35 (2) FDC) including those provided by the parties (art. 35 (1) FDC) to then prove the related disciplinary infringements to their comfortable satisfaction.

198. By way of consequence, the Committee was of the opinion that the first instance did not err in its appreciation of the concepts contained in arts. 35 and 36 FDC.

### 4. Can it be considered that the Player's documents have been forged or falsified?

199. To begin with, the Committee noted that upon analysing the allegations brought forward by the FFCH (and the FPF), the first instance considered that the case revolved around three key sets of documents: (i) the birth certificates (the Colombian birth certificate and the Ecuadorian birth certificate), (ii) the documents related to the investigations conducted by the FEF in relation to the Player's identity in 2018, and (iii) various decisions from Ecuadorian courts together with different identification documents in the name of the Player[37].

200. In this context, and "*after having carefully analysed and considered all documents on file and keeping in mind that the burden of proof regarding the charges brought against the FEF – including those related to art. 21 FDC – rest on it, the Committee could not conclude to its comfortable satisfaction that the documents granting Ecuadorian nationality to the Player had been forged and/or falsified. Indeed, while the documents submitted by the ANFP essentially suggest that there are (or may have been) some irregularities in relation to the Player's identity and the related documents, the Committee held that the FEF provided sufficient documents to confirm the Player's identity as registered in the Ecuadorian Civil Registry, but also more importantly, as mentioned on the Ecuadorian birth certificate and on his various identification documents (including his Ecuadorian passport)*"[38]. Put differently, "*the Committee found no legitimate ground to conclude to the required standard of proof that the Ecuadorian birth certificate (or any other document) had been forged. As a result, the Committee decided to dismiss the charges related to art. 21 FDC against the FEF*"[39].

201. Both the FFCH and the FPF however challenge those conclusions in the context of the present appeal proceedings.

202. More specifically, the FFCH essentially considers that (i) "*there was an incorrect and partial assessment of evidence made by the Disciplinary Committee when it declared that it was not proved that the Player was born in Colombia*", and (ii) "*[t]oo much power has been given to the words of FEF and almost zero importance to the Appellant's evidence*". In particular, the FFCH deems that "*everything in this Appeal goes around the Player's real place of birth*" and that it has *inter alia* "*been able to demonstrate, without any reasonable doubt, that:*

[37] Cf. para. 45 of the Appealed Decision.
[38] Cf. para. 68 of the Appealed Decision
[39] Cf. para. 69 of the Appealed Decision

a) *There are 2 birth certificates connected to the Player, one from Colombia (Bayron Javier Castillo Segura) and the second from Ecuador (Byron David Castillo Segura), with slightly different names.*
b) *The Colombian certificate states the Player was born on 25 July 1995 and the Ecuadorian certificate states the Player was born on 10 November 1998.*
c) *Both certificates declare the name of the same father (Harrinson Javier Castillo) and mother (Olga Eugenia Segura Ortiz).*
d) *Both father and mother got married in Tumaco, Colombia (Exhibit 05).*
e) *The Player was baptized in Tumaco.*
f) *The signature of the father Harrinson Jose Castillo in the Ecuadorian document (Exhibit 06) does not correspond to the signature in the Colombian document.*
g) *The Player does not have a brother, he has a sister, Maria Eugenia Castillo Segura, who was born and lives in Tumaco (Exhibit 07).*
h) *There is no Death Certificate of Bayron Javier Castillo Segura, so it can be presumed he is alive.*
i) *The family of the Player has never showed up to clarify who is the Colombian Bayron Javier Castillo Segura.*
j) *Several members of the Segura's and Castillo's families are based in Tumaco, Colombia, the birthplace of the Colombian Bayron Javier Castillo Segura.*
k) *There is no indication whatsoever of Player's relatives in the Ecuadorian city of General Villamil Playas, where he claims to have born.*
l) *There are several links between the Player and residents in Tumaco.*
m) *The Player remains inexplicably silent and refrains from giving interviews or explanations to the authorities about his past.*"

203. In addition to the above, the FFCH relies (once again) on the investigations conducted some years ago by the FEF with respect to potential irregularities in the Player's identification documents[40], providing an audio allegedly recorded in the context of those investigations, further rejecting the application of the National Court Decisions to the proceedings at hand – considering that the related proceedings solely (i) concerned the Player's right to be heard during the proceedings before the FEF ("*acción de protección*" proceedings) or (ii) aimed at "unlocking" his ID card ("*Habeas Data*" proceedings) –.

204. The FPF for its part, mainly considers that there are a number of items of evidence pointing towards a breach of art. 21 FDC (forgery and falsification) and that the Appealed Decision contains a somewhat questionable, even shallow, assessment of these key pieces of evidence. The FPF specifically claims that upon analysing the present case file it can be deducted that the Player's birth registration documents were forged in order for the Player to get the Ecuadorian nationality by birth. Focusing on the birth certificates, the FPF stresses that (i) the FEF has not presented an alternative or coherent explanation for the Colombian birth certificate and its evident and acknowledged contradiction with the Ecuadorian birth certificate, and (ii) the first instance never explained why there are similarities between the two documents, nor does it satisfactorily rebut the abundant evidence pointing to the Ecuadorian certificate being a forgery.

[40] The FFCH mainly relying on a conversation between the Player and the Head of the Investigations conducted by the FEF, but also on the conclusions of the Investigative Report.

205. In reply to the above, the FEF essentially argues that:

- the Player's personal documentation confirms his Ecuadorian citizenship and would be sufficient in order to reject the claims made by the FFCH (and the FPF);
- the judicial authorities of the Republic of Ecuador have established, issuing several rulings that have become final, that the Player is an Ecuadorian citizen for all appropriate legal purposes.

206. In view of the above, and as a starting point, the Committee referred to art. 21 FDC, in accordance with which "*[a]nyone who, in football-related activities, forges a document, falsifies an authentic document or uses a forged or falsified document will be sanctioned with a fine and a ban of at least six matches or for a specific period of no less than 12 months*".

207. Keeping in mind its previous considerations, the Committee reiterated it is up to the Appellants to provide substantial evidence that the Player and/or the FEF "*forge[d] a document, falsifie[d] an authentic document or use[d] a forged or falsified document*". Upon analysing the entire case file, and in order for the related sanctions to potentially be imposed, the Appeal Committee would then be required to establish such infringement(s) to its comfortable satisfaction on the basis of "*cogent evidence*"[41].

208. Against such background, the Committee pointed out that the Appellants essentially rely on the same set of evidence as presented before the first instance[42].

209. In fact, it was clear to the Committee that the Appellants relied and still rely on mere assumptions that the Colombian documents and the Ecuadorian documents actually relate to the same person, *i.e.* the Player without however providing any documentary evidence in that sense. At best did they manage to emphasise that the Player's family has connection with Colombia, but at no point did they provide "*cogent evidence*" that the documents related to the individual born in Colombia indeed relate to the Player.

210. Instead, the FFCH rather counts on the fact that the FEF and/or the first instance should have *a contrario* proven that those documents are not those of the Player. In this respect, and as previously detailed, the Appellants cannot expect a reversal of the burden of proof and remain responsible to prove with strong evidence that the Player's documents have been forged/falsified.

[41] In that sense, CAS emphasised that "*[a]llegations of this nature – in particular forgery, falsification, deception and dishonesty – require cogent evidence*" (CAS 2018/A/5876 Adnan Darjal v. IFA). In said case, CAS overturned the decision passed by the Appeal Committee of the Iraq Football Association, considering that (i) the latter "*has not put before the Sole Arbitrator any convincing evidence of any breach by the Appellant of Articles 79, 80 and/or 121(3) of the Disciplinary Code, or any other applicable rule or provision*", (ii) "*[t]he allegations of falsified documents and letters appear to be based largely on guesswork and speculative internet searches*" and (iii) there was no cogent evidence.

[42] While the FPF did not provide any documentary evidence in support of its submission, the FEF mainly provided the same documents as before the first instance (it however added some "legal report" on the various procedure conducted before the Ecuadorian courts).

211. In continuation, and although the parties appear to argue on the context and scope of the proceedings before the Ecuadorian courts, it remains that, on the basis of the documentation on file, no court or state authority in Ecuador (nor in Colombia or elsewhere) ever decided that:

- the Colombian documents actually relate to the Player;
- the Player's Ecuadorian documents contain falsified (or at least) incorrect information;
- any of the (Ecuadorian) documents on file has been falsified or forged.

212. To the contrary, and despite all the arguments and allegations raised by the Appellants, the Committee was eager to underline that Ecuadorian authorities issued various documents to the Player confirming his identification details (as contained in his Ecuadorian passport) as well as his Ecuadorian nationality.

213. More fundamentally, the Committee underlined that it is uncontested that the Ecuadorian passport and the Ecuadorian identity card presented to it were those duly issued by the relevant public and/or state authority. In fact, the Committee noted that the allegations put forward by the Appellants essentially revolve around the veracity of the information contained in those documents (specifically with respect to the Player's place of birth). Put differently, they are to be considered as authentic documents issued by the competent authorities and there is no evidence on file that would demonstrate that those documents would actually be falsified or forged documents.

214. In this respect, the Committee stressed that, as rightly emphasised in the Appealed Decision[43], those documents were issued to the Player before[44], during[45] or even after[46] the various decisions from the Ecuadorian courts (see also para. 65 of the Appealed Decision).

215. Upon analysing those decisions in light of the Appellants' submission, the Committee gave particular attention to the *Habeas Data* proceedings. In particular, the Committee acknowledged that, as specifically mentioned in the Appealed Decision, after his identity "*had been blocked in the Ecuadorian National Civil registry* ", the Player "*exercised an Ecuadorian constitutional remedy the so-called Habeas Data, in front of the Ecuadorian courts which lead to two separate decisions rendered by (i) the "Unidad Judicial Norte 2 Penal con sede en el Cantón Guayaquil, Provincia de Guayas" on 4 February 2021 (**the First Instance Decision**) and (ii) the "Sala Especializada de lo Penal, Penal Militar, Penal Policial y Tránsito de la Corte Provincial de Justicia de Guayas" on 22 April 2021 (**the Appeal Decision**)*"[47].

216. With this established, the Committee recognised that the Appellants contest the interpretation made by the first instance with respect to said *Habeas Data*, the FFCH arguing that such procedure solely served to "unlock" the Player's ID card and the FPF considering that at no point did said procedure establish the authenticity of the documents under scrutiny in the present proceedings.

[43] See para. 65 of the Appealed Decision
[44] Ecuadorian passport issued to the Player on 13 November 2017
[45] Ecuadorian Identification Document issued to the player on 17 March 2021
[46] Ecuadorian Identification certificate issued to the Player on 13 May 2022
[47] See para. 59 of the Appealed Decision

217. In reply thereto, the Committee wished to refer to some key considerations made by the Ecuadorian courts during the *Habeas Data* proceedings (free translation from Spanish:

- In the First Instance Decision

"*It is apparent from the above that* ***the registration of birth to which this action relates does not contain any errors as regards the identity of the claimant BYRON DAVID CASTILLO SEGURA****. It is accordingly concluded that, based on the evidence submitted,* ***it has been established that his constitutional right to his personal identity has been violated by the legal reports issued by the Civil Registry that insinuate supposed irregularities in the data relating to the claimant's birth****, data which, it must be pointed out, was entered by the Civil Registry itself at the time, as is apparent from the birth certificate for CASTILLO SEGURA BYRON*" (emphasis added)

- In the Appeal Decision

"*In this case, following the emergence of inconsistencies within the respondent body concerning the data recorded in the files for the claimant, his identity document was flagged as invalid for the reason stated on the Civil Registry's page. Nonetheless,* ***an entry exists with the claimant's civil status and identity data, and it is accordingly necessary to update the information contained in the public database and to cancel the notice concerning the invalidity of his personal identity document or identity card***" (emphasis added)

218. Based on those clear and unequivocal considerations, the Committee deemed that it had no other alternative but to conclude that the information contained in the Ecuadorian civil register should be considered as valid, authentic and accurate, particularly considering that they had been confirmed by the competent judicial bodies on the basis of a constitutional remedy.

219. This being established, the Committee found it important to note that the information confirmed by the Ecuadorian courts are precisely those contained in the Player's identification documents at stake, including his passport.

220. In other words, it appears to be clear that the various proceedings before the Ecuadorian courts – including the *Habeas Data* – had no impact on the Player's Ecuadorian nationality, and that at no point was said nationality questioned or annulled by the Ecuadorian state authorities (nor by any other state authority) on possible grounds of forgery and/or falsification.

221. In the absence of any such evidence, the Committee therefore deemed that it could not be establish to its comfortable satisfaction that either the Player and/or the FPF "*forge[d] a document, falsifie[d] an authentic document or use[d] a forged or falsified document*".

222. In fact, after a careful and thorough analysis of the entire set of evidence, the Committee stressed that the conclusions reached by the first instance shall be sustained in so far that the documents upon which the Appellants rely cannot be considered as "*cogent evidence*"

demonstrating that the documents related to the Ecuadorian nationality of the Player have been falsified and/or forged.

223. Notwithstanding the above, the Committee found it worthwhile to emphasise that, in its view, the Appellants are using the wrong forum to put forward such allegations of forgery and/or falsification in relation to the Player's information concerning his identity and/or nationality.

224. Again, the Committee reiterated that

- the documents at stake, *i.e.* the passport and other identification documents have undoubtedly been issued by the competent state authorities and, as such, are to be considered genuine and authentic;
- up until today, any and all information contained in those documents have been regarded as valid and accurate, being even confirmed in the context of the *Habeas Data* proceedings.

225. As such, the Committee was convinced that any issue related to the alleged falsification of information related to the Player's identity and/or place of birth are beyond its scope of competence and shall be raised before the Ecuadorian (or Colombian) competent authorities or judicial bodies.

226. In conclusion, the Committee was convinced that the fact that the Appellants have not proven that any act of forgery and/or falsification has been committed with respect to the Player's identification documents was sufficient to reject their appeals. By way of consequence, it was therefore unnecessary to address the issue raised by the Appellants in relation to the Player's potential eligibility to play for the representative teams of the FEF. Nevertheless, and for the sake of completeness, the Committee went on to address said topic, particularly to demonstrate that the appeal would also be rejected on that basis.

## 5. Was the Player eligible to play for the representative team of Ecuador?

227. By way of introduction, reference shall be made to the Appealed Decision in which the first instance considered that the Player was eligible to play for the representative teams of the FEF, a conclusion which is challenged by the Appellants in the present appeal proceedings.

228. While the FEF resubmitted and referred to the various official documents issued by the competent national authorities – *which, in its opinion, convincingly establishes the unquestionable Ecuadorian citizenship of the Player*[48] *and, as such, its eligibility to play for its representative teams* –, the Appellants essentially point towards some irregularities and doubts over the Player's Ecuadorian nationality.

[48] Namely: the Player's Ecuadorian identity card (issued by the General Directorate of Civil Registry of the Republic of Ecuador), the Player's voting certificate (establishing that the Player exercises the constitutional rights vested in him under the Ecuadorian legal system), the Players Ecuadorian passport, a Certificate issued by the General Directorate of Civil Registry, Identification and Identity Cards (confirming that the Player "is an Ecuadorian citizen for all purposes")

229. Against such background, the Committee first wished to stress that the concept of sporting nationality (from which the notion of eligibility to play for a representative team derives) is different from that of the "legal" nationality. Indeed, as emphasised in FIFA's Commentary on the Rules Governing Eligibility to Participate for Representative Teams (**the Commentary**), CAS "*has consistently confirmed the authority of international sports governing bodies to regulate "sporting nationality", noting "two different legal orders, one of public law, the other of private law, which do not overlap and do not come into conflict""*[49].

230. In other words, "*[a] person may have two or more legal nationalities, but every athlete can only have one sporting nationality (…)*"[50]. In that sense, CAS confirmed that "*[s]porting nationality's regulation is an issue that belongs to the international sports governing bodies as they are the only subjects designated to govern and regulate a private law system such as the sports system*"[51].

231. As such, while "*[e]ach country has the right to determine its own rules as to nationality*"[52], FIFA (similarly to other international sports governing bodies) is entitled to define the criteria of the so-called "sporting nationality", and, by way of consequence the that of a player.

232. In this respect, it is important to keep in mind one key principle that is at the basis of FIFA's eligibility rules to play for national teams: in order "*to obtain a sporting nationality, the player must hold the nationality of the relevant country*"[53].

233. Such principle is reflected in art. 5 (1) of the RGAS, which reads as follows "*[a]ny person holding a permanent nationality that is not dependent on residence in a certain country is eligible to play for the representative teams of the association of that country*".

234. In the context of FIFA competitions, the "*proof of "nationality" is only provided through the holding of a "permanent international passport""*[54]. Such approach has *inter alia* been confirmed by CAS in the following terms: "*the players participating in the Competition shall present their valid passports*"[55].

235. Such approach derives from the fact that FIFA remains a private entity, distinct from any state authority, and as such has no power towards an individual nationality of public law, but solely towards the one related to its private law. As such, the Committee confirmed that any official nationality document issued by a state authority, such as a passport, shall constitute strong first-hand evidence that a specific individual or player holds permanent nationality of a country in the sense of art. 5 (1) RGAS.

[49] TAS 92/80 B. v. Fédération Internationale de Basketball (FIBA)
[50] CAS 98/215 International Baseball Association (IBA)
[51] CAS 2021/A/8075 Football Association of Albania & Nedim Bajrami v. FIFA & Swiss Football Association.
[52] CAS 94/132 Puerto Rico Amateur Baseball Federation (PRABF) / USA Baseball (USAB)
[53] CAS 2021/A/8075 op. cit.
[54] Cf. para. 7 of the Commentary
[55] CAS 2016/A/4831 FEGUIFUT v. CAF & FMF

236. With those considerations in mind and focusing on the factual circumstances at stake, the Committee took note that the FEF submitted (and relied upon) a copy of the Player's Ecuadorian passport.

237. Turning its attention to said document, the Committee acknowledge from the relevant match reports that its identification number corresponds to that of the passport presented by the Player to the match officials for each of the matches under scrutiny.

238. On account of said document, and keeping in mind that no other document issued by a state authority of the same weight was brought forward in the present proceedings, the Committee held that the Player was to be considered as "*holding permanent [Ecuadorian] nationality*" as per art. 5 (1) RGAS, and as such shall be deemed eligible to play for the representative teams of Ecuador in accordance with said article.

239. In fact, the Committee formed the belief on the basis of the documents on file in light of the applicable legal framework – *specifically that contained in the RGAS* –, the Player's participation in international football for the representative teams of Ecuador is solely subject to his Ecuadorian nationality, such nationality being one of the elements that the Appellants are trying to challenge.

240. As a matter of fact, the Committee was eager to underline that the Appellant's argument that the Player shall not be eligible to play for the representative team of Ecuador given that he would allegedly be born in Colombia, are irrelevant given that the key element in determining a player's eligibility is his "*permanent nationality that is not dependent on residence in a certain country*" (cf. art. 5 (1) RGAS).

241. In other words, regardless of a player's place of birth, his eligibility shall be assessed on the sole basis of his "*permanent nationality*".

242. In those circumstances, it appeared to the Committee that most elements on file tend to demonstrate that the Player has actually been recognised as an Ecuadorian national by the Ecuadorian authorities – *that granted him amongst other things an Ecuadorian passport* – but also by the Ecuadorian courts – *that confirmed the Player's details regarding his birth date and location* –.

243. In the same line of thoughts, the Committee underlined that there is no element on file that could suggest that the Player would actually be Colombian, or bear another nationality. Indeed, neither did the Colombian authorities (or those from another country) recognise him as one of their nationals, nor did the Ecuadorian ones withdraw his Ecuadorian nationality in favour of the Colombian one (or of any other one)[56].

[56] For the sake of completeness, the Committee wished to stress that, even if it were to follow the Appellants' unproven argument that the Player would have been born in Colombia, it could only observe that:

(i) such element would not prove that the latter holds Colombian nationality, when the elements on file support that he does not;

244. Keeping in mind that, as explicitly mentioned, the Player played for the FEF in possession of a valid Ecuadorian passport, reference could be made to an award from CAS previously cited[57], in which the Appellant contested the validity of the passport of a player and by way of consequence her eligibility. In this respect, the Panel drew the following conclusions (emphasis added):

> "*109. (…) As it has been established, for the WAFCON 2016 the Appellant registered the Player for the Competition with her current and valid passport. There is no evidence whatsoever contesting the integrity or the correctness of the information contained in this (second) passport of the Player.*
>
> *110. In this respect, the Panel notes that the First Respondent has questioned the validity of the current passport by stating that if the first passport contained wrong information, it cannot be sure that the second passport is correct.* ***In the Panel's opinion, this is not a valid argument. The Equatoguinean authorities have issued a new passport for the Player and it shall be considered as official and valid until proven otherwise.*** *The CAF failed to substantiate its allegations and thus,* ***in lack of any reliable evidence, its argument concerning a possible wrong content of the second, new passport of the Player shall be rejected****.*"

245. Applied *in casu*, the Committee was of the firm opinion that the Player's Ecuadorian passport shall be considered "*as official and valid until proven otherwise*". In fact, FIFA (and its judicial bodies) have no other option but to rely on such (official) document and – with the exception of obviously fraudulent or forged documents – shall rely on it until and unless a state authority or court would annul such document or establish that it contains incorrect or false information.

246. In view of all of the above, the Committee was comfortably satisfied to confirm the Appealed Decision in so far that (i) "*the Player complied with the relevant provisions contained in the RGAS, namely art. 5 (1), to be considered eligible to play for the representative team of the FEF (including at the time of the Matches)*"[58], and (ii) that the Appellant did not provide any documentary evidence that would demonstrate the contrary.

247. As a final note on the Player's eligibility, the Committee found it worthwhile to emphasise that, on the basis of the case file presented to it, it appeared that, at the time of the matches at stake, the FEF could solely have refused to call up the Player on sporing grounds. As a matter of fact, as emphasised on multiple occasions in the course of the proceedings at hand, the FEF originally initiated disciplinary proceedings against the Player (in view of alleged irregularities in his identity), resulting in his suspension by the FEF (including a suspension from participating in matches with the national team). Given that those proceedings were subsequently closed on the basis of a decision passed by the Ecuadorian courts, the Player became (again) entitled to be called up by the FEF and as such to play for its representative teams on the basis of his

(ii) in the hypothetical (and unproven) scenario the latter would be considered as holding Colombian nationality, it remains that the latter still holds the Ecuadorian one and would therefore remain eligible to play for the representative teams of Ecuador on the basis of art. 5 (1) RGAS.

[57] CAS 2016/A/4831 FEGUIFUT v. CAF & FMF
[58] Cf. para. 79 of the Appealed Decision

Ecuadorian nationality. In other words, any decision from the FEF to not call up the Player on any ground other than the sporting ones would obviously have unfairly and unjustifiably affected the latter's (professional and personal) rights.

## C. CONCLUSION

248. In view of all the above, the Committee concluded that the present appeal should be rejected and the decision of the Disciplinary Committee be confirmed in its entirety.

249. For the sake of good order, the Committee wished to reiterate its considerations related to the absence of the Player at the Hearing (see in particular para. 131 *supra*), which should be followed by the initiation of disciplinary proceedings against the latter.

## D. COSTS

250. The Committee decided, based on art. 45 (1) FDC, that the costs and expenses of these proceedings amounting shall be borne by the Appellants.

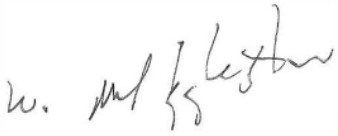
251. In this sense, since the Appellants have already paid their respective appeal fees, the costs and expenses of the proceedings are set off against these amounts.

# IV. Decision of the Appeal Committee

1. **The appeals lodged by both the Chilean Football Association and the Peruvian Football Association against the decision passed by the Disciplinary Committee on 10 June 2022 are dismissed. Consequently, said decision is confirmed in its entirety.**

2. **The costs and expenses of these proceedings are to be borne by both the Chilean Football Association and the Peruvian Football Association. The amount is set off against the respective appeal fees already paid.**

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



**Neil Eggleston**
Chairperson of the FIFA Appeal Committee

## LEGAL ACTION

According to art. 58 (1) of the FIFA Statutes reads together with art. 49 FDC, this decision may be appealed against before the Court of Arbitration for Sport (**CAS**). The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision. Within another 10 days following the expiry of the time limit for filing the statement of appeal, the appellant shall file a brief stating the facts and legal arguments giving rise to the appeal with the CAS.