

**Decision**  
of the  
**adjudicatory chamber**  
of the  
**FIFA Ethics Committee**

Mr. Fiti Sunia [ASA], Deputy Chairman  
Mr. Mohammad Ali Al Kamali [UAE], Member  
Ms. Ayotunde Phillips [NGA], Member

taken on 19 February 2020

in the case of:

**Mr. Wilmar Valdez [URU]**

Adj. ref. no. 27/2019  
(Ethics E19-00007)

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## **I. FACTUAL ANALYSIS**

### **A. Proceedings before the investigatory chamber of the FIFA Ethics Committee**

#### **a) Procedural background**

1. Mr. Wilmar Edgardo Valdez Pombo (“Mr. Valdez”) is a Uruguayan national who held high ranking positions in football, in particular as president of the Uruguayan Football Association (“AUF”) between 2014 and 2018, member of the FIFA Council from 2016 to 2018 and member of the FIFA 2016 Reform Committee from 2015 to 2017. Mr. Valdez also held the positions of Executive Committee member and Vice-President of the Confederación Sudamericana de Fútbol (“CONMEBOL”).
2. On 6 August 2018, the investigatory chamber of the FIFA Ethics Committee (“investigatory chamber”) received a communication from the Ethics Committee of CONMEBOL, informing that investigation proceedings had been opened against Mr. Valdez, based on various publications of the Uruguayan press which revealed conversations between Mr. Valdez and [A], a lobbyist and an intermediary for various companies bidding for AUF tenders, as well as a car provider for AUF. The conversations, secretly recorded by [A], unveiled several instances in which Mr. Valdez had allegedly disclosed confidential information and negotiated illicit commissions.
3. Following an exchange of correspondence, the investigatory bodies of CONMEBOL and FIFA concluded that the accusations made against Mr. Valdez would fall under FIFA’s exclusive jurisdiction.
4. On 1 October 2018, after he was made aware by AUF of FIFA’s preliminary investigations, Mr. Valdez sent a letter to the Ethics Committee in which he offered his full cooperation and availability to clarify the facts.
5. On 11 October 2018, Mr. Valdez sent another letter complaining about the extraordinary general meeting held by CONMEBOL through which the confederation was planning to dismiss him as a member of its Executive Committee.
6. On 18 October 2018, the investigatory chamber confirmed that preliminary proceedings had been opened against Mr. Valdez and that he would be able to submit his written position in due time.
7. On 31 January 2019, CONMEBOL forwarded the case file pertaining to its investigation against Mr. Valdez to FIFA. The file contained all the procedural steps taken by the CONMEBOL, as well as various documentary evidence.

8. On 20 February 2019, the investigatory chamber requested Mr. Valdez's position regarding the facts of the case, which he sent on 8 March 2019, together with other audio recordings and annexes.
9. On 2 May 2019, after thorough analysis of the documentation obtained throughout the preliminary stage of the investigation, the Chairperson of the investigatory chamber, Ms. Maria Claudia Rojas, concluded that there was a *prima facie* case that Mr. Valdez had committed violations of the FIFA Code of Ethics and notified him of the opening of formal investigation proceedings.
10. On 9 May 2019, Mr. Valdez provided the investigatory chamber with a second statement addressing issues that had been left unanswered by his first submission.
11. On 26 September 2019, the investigatory chamber interviewed [A] as a witness to shed light on the content of the conversations he had recorded.
12. On 29 November 2019, the investigatory chamber informed Mr. Valdez that it had concluded its investigation proceedings and submitted its final report ("Final Report") to the attention of the Chairperson of the adjudicatory chamber of the FIFA Ethics Committee ("adjudicatory chamber").
13. With regard to the procedural history before the investigatory chamber, reference is made to the relevant section of its Final Report.

#### **b) Findings of the investigatory chamber**

14. In the scope of its investigation, the investigatory chamber gathered different types of evidence, including: recordings of conversations between Mr. Valdez and [A] ("Recordings"); voice and text messages exchanged by [A] and others in relation to the Recordings; documents pertaining to the projects discussed in the Recordings; [A]'s interview with the investigatory chamber; documents pertaining to the criminal proceedings in Uruguay.
15. The adjudicatory chamber examined those findings and weighted the new evidence submitted by the Party at the adjudicatory stage.

#### **1. Mr. Valdez's resignation**

16. On Sunday 29 July 2018, two days before AUF's elections, Mr. Valdez publicly announced on a television program called *Punto Penal* his resignation as president of AUF as well as the withdrawal of his candidacy to the imminent elections.
17. During the week prior to Mr. Valdez resignation, several media outlets had already started reporting on the potential existence of secret recordings, the content of which would damage his reputation and reelection campaign. When questioned about the existence of compromising audio recordings on *Punto Penal* on 29 July 2018, Mr. Valdez denied any wrongdoing and affirmed that his decision to resign was strictly due to family reasons.

18. [B], the journalist conducting the interview, asked Mr. Valdez whether he regretted anything about the recordings, to which Mr. Valdez replied: "*evidently what I regret is having talked about certain people in a certain context, in a private conversation that I never really imagined that they were recording me*".
19. Further in the interview he explained: "*we are all exposed to this type of things and I reiterate that we all make mistakes. Human beings make mistakes, eh, and for those mistakes you also pay*".
20. The next day, on 30 July 2018, Mr. Valdez submitted his formal resignation as AUF president and reaffirmed that his decision to step down was purely based on personal and family reasons.

## **2. Proceedings before the Uruguayan authorities**

21. On 31 July 2018, the Attorney General of the Oriental Republic of Uruguay, ("Attorney General") issued a memorandum based on several press articles relating to Mr. Valdez's resignation and initiated *ex officio* preliminary investigations into the matter. Those proceedings were aimed at determining whether Mr. Valdez had been unduly pressured into resigning from his positions in football.
22. On 7 August 2018, Mr. Valdez filed a complaint against [A], considering the latter's conduct amounted to extortion; thereby acquiring the status of claimant in addition to that of witness in the Uruguayan proceedings.
23. On 5 October 2018, Mr. Valdez extended his complaint to the following defendants: Messrs. Jose Luis Palma, president of Liverpool F.C. (Montevideo); Arturo Del Campo, a rival candidate in AUF 2018 elections; and [B], a journalist.
24. The Attorney General found that Messrs. [A], Del Campo, Palma, and [B] were potentially involved in a complot aimed at removing Mr. Valdez from power, however, it was considered that the evidence presented was not satisfactory under the standard of proof applicable to the Uruguayan criminal proceedings requiring that facts be established "beyond reasonable doubt". Therefore, the case was closed on 21 December 2018, and all defendants were cleared of the charge of private violence.

## **3. The Recordings**

25. In 2016, [A] made several recordings of conversations he held privately with Mr. Valdez. On 8 August 2018, *El País*, a Uruguayan newspaper, published some of those recordings on its website, the content of which is summarized below.

### Audio 1

26. Audio 1 is an approximate half-hour conversation between [A] and Mr. Valdez that took place in July 2016, as confirmed by a follow up email sent on 20 July 2016, by [A] to his partners. At the time of the conversation [A] was an intermediary and lobbyist for [Company 1], a Korean company.
27. Specifically, both men discussed the following topics: the renovation of the Centenario stadium in Montevideo, the purchase and installation of a facial recognition system for/in the Centenario stadium, and the possibility for [Company 1] to sponsor the Uruguayan national football team. The tone of the conversation is casual, which indicates that Mr. Valdez is familiar with the topics addressed by [A].
28. After having greeted and spoken about personal issues, [A] started talking about dealings with [Company 1] and how those kept him motivated. Mr. Valdez immediately replied that he would have a meeting with CAFO (Comisión Administradora del Field Oficial), the body supervising the administration of the stadium.
29. Later on, with respect to the renovation of the Centenario stadium, [A] informed Mr. Valdez that the Korean companies that he was representing were helping him prepare a sketch of the call for tenders, which Mr. Valdez should later present as his own and use as AUF's official call for tenders. Mr. Valdez accepted by replying "good" and later on *"Well, ok. When you have it, you pass it to me and I take it as mine and I [...] go forward"*.
30. Subsequently, [A] told Mr. Valdez that the financing of the project would be done in installments. [A] expressly mentioned that in the first payment the "three" of them will be considered, without specifying that Mr. Valdez was included in the three people mentioned. Moreover, [A] asked that the call for tenders (i.e., the period for presenting offers) be short.
31. Additionally, [A] asked Mr. Valdez whether he should approach someone else or whether he should only talk to him. Mr. Valdez indicated that those topics should only be dealt with him, explaining that, otherwise other people would try to get something out of the deals. He also highlighted to [A] the importance of the places where they met. This was a clear reminder that their meetings must remain discreet, if not secret.
32. Mr. Valdez and [A] agreed that the deal must be quickly closed, emphasizing that an agreement should be reached between them while Mr. Valdez is the president of AUF. However, Mr. Valdez informed [A] that [State entity 1] had already decided that the bid winner would be a company called [Company 2] because someone in said [State entity 1] had most likely received something for it.

33. Eventually, Mr. Valdez additionally offered a new option to [A] in the form of the sponsorship of the Uruguayan national football team.
34. Mr. Valdez gave [A] indications about the budget and the elements the sponsorship offer should include. They then discussed about the way of bringing the deal and the importance of an intermediary company to get a commission. Finally, Mr. Valdez mentioned to [A] that the sponsorship can only start as of January 2017. [A] expressed his excitement about this new topic and mentioned that it would be a great achievement since [Company 1] could both renovate the stadium and sponsor the Uruguayan national football team.
35. During his interview by the investigatory chamber, [A] provided further clarification about the content of this recording. In summary, [A] asserted the following:
  - a. The voices heard in the audio recordings were Mr. Valdez's and his;
  - b. For the project of the renovation the Centenario stadium, USD 3 000 000 were to be shared between Mr. Valdez, [C] ([A]'s associate) and himself;
  - c. The company he represented ([Company 1]) did not win the bidding process for the facial recognition project, because as specified by Mr. Valdez, the project was already reserved for another bidder.
36. [A] further affirmed that had they achieved the sponsorship deal, Mr. Valdez, [C] and he would have received a commission.

#### Audio 2

37. The second audio recording has been broadcast by *Tirando Paredes*, a radio show. The snippet was a 5-minute conversation between Mr. Valdez, [A] and [C], in which they discussed the feasibility of the facial recognition system project. The complete version of this audio was later provided by [A].
38. In the audio [C] asked Mr. Valdez to update the Korean representatives on the topic. After having explained the difficulties they were facing regarding the project, Mr. Valdez mentioned that it was a political issue and that, as such, it should be approached carefully. Mr. Valdez expressly said that the tender for the cameras of the facial recognition system had already been granted to a company called [Company 2], which was chosen by [State entity 1], not by AUF. Finally, Mr. Valdez said that if there was a big difference in terms of costs, they could approach the winning company and ask that the Koreans buy the cameras and bring the material while [Company 2] would take care of the installation and maintenance of the system.

### Audio 3

39. The third recording was a 26-second voice message that Mr. Valdez left to [A]. In the voice message Mr. Valdez informed that he would be leaving his house around 1 pm, and would tell [A] where he would pick him up, in order to talk for 2 minutes in the car and explain to him how to “present it”.
40. During his interview with the investigatory chamber, [A] confirmed that the voice message was from Mr. Valdez. Furthermore, [A] stated that the “indications” Mr. Valdez wanted to give him were in relation to the sponsoring of the Uruguayan National team and on how to present the offer.

### Audio 4

41. The fourth recording was an 18-minute conversation between Mr. [A] and Valdez.
42. The exchange covered several topics, including specifics about the intermediation for the sponsorship deal, which was proposed by Mr. Valdez to [A] after AUF terminated its sponsorship contracts with [Company 3], a Uruguayan broadcasting company.
43. In that regard, a company called [Company 4] was mentioned as an intermediary between AUF and [Bank 1], a candidate for the sponsorship of the Uruguay national team. Throughout the recording, Mr. Valdez explained to [A] the importance of having an intermediary company for the purpose of obtaining a commission and that all communications should not be directly sent from the bank, but through other channels. Mr. Valdez further clarified that AUF’s marketing division would handle the process, but that this intermediary company needed to send the letter directly to him.

### Other recordings

44. A fifth recording (“Audio 5”) of yet another discussion between Mr. Valdez and [A] was provided at the adjudicatory stage by Mr. Valdez. This recording is summarized in the relevant section below (I.B).
45. Other recordings were submitted to the adjudicatory chamber, including [A]’s statement before the Attorney General dated 29 August 2018, regarding alleged acts of extortion and conversations in which various persons discussed [A]’s recordings and how to use them.

#### 4. AUF's projects and tenders

46. The four projects/tenders mentioned in the recordings, which will be examined below, are the renovation of the lighting of the Luis Franzini stadium in Montevideo, the renovation of the Centenario stadium in Montevideo, the facial recognition system for the Centenario stadium, and the sponsorship of the Uruguay national team.

##### The lighting of the Luis Franzini stadium

47. Based on an article published by *Busqueda*, a Uruguayan newspaper, Mr. Valdez accepted a bribe of USD 35,000.00 in exchange for allocating funds totaling 200,000.00 to Defensor Sporting Club ("Defensor Sporting") with the aim of replacing the flood lights of the Estadio Luis Franzini in 2017. Those allegations were reportedly based on two recordings held by the newspaper but have not been obtained by FIFA's judiciary bodies.
48. On 10 August 2016, following the request from the Defensor Sporting, a consultancy company called [Company 5] issued an analysis report about the state of the floodlights in place, which prompted the club to ask several companies for their quotations. The club received three quotes from [Company 6], [Company 7] and [Company 8].
49. On 28 November 2016, Defensor Sporting and [Company 8] signed a contract for the installation of new lights. From the documentation sent by AUF, it is noted that [Company 8] was chosen because it was the most economically convenient and it was the one that offered a "turnkey" solution.
50. AUF stated that it was Defensor Sporting who decided to carry out the project and request the quotations. AUF allegedly only approved to support the project because the club agreed to provide, without costs, the stadium for matches related to CONMEBOL.
51. Two weeks after the club and [Company 8] signed the agreement, AUF asked CONMEBOL to release funds totaling USD 200,000.00 for the project. The payment was made on 20 January 2017.
52. On 2 February 2016, AUF and Defensor Sporting signed an agreement granting CONMEBOL funds totaling USD 200,000.00 to the club for the project. An addendum to the contract dated 28 November stated that AUF would be the managing party of the funds.
53. On 8 February 2017, AUF made the bank deposit of USD 200,000.00 to the Club Defensor Sporting.



54. On 21 February 2017, the club made an advance payment to [Company 8] in the amount of USD 127,000.00 to start the project.
55. In his interview, [A] claimed that Mr. Valdez asked a commission of 10%, hence receiving USD 35,000 (USD 3,500 per month), in exchange for allocating funds to this project and for granting the project to [Company 8].
56. [A] also delivered several communications that he believed demonstrated that Mr. Valdez received a commission, including Several WhatsApp messages. None of those indicated that Mr. Valdez obtained a benefit; they only showed that [A] contacted Mr. Valdez and [Company 8] in several occasions in order to get his own commission.
57. On the other hand, one transaction was considered suspicious by the investigatory chamber: a transfer of USD 3,717.50 with reference [...], made on 2 February 2017. This was the day the contract between AUF and the Club, and the addendum to the agreement between the Club and [Company 8], were signed.
58. Notwithstanding the above, the investigatory chamber concluded that there was not sufficient evidence to establish that Mr. Valdez obtained a benefit for having allocated funds to the project.

#### *The renovation of the Centenario stadium*

59. Comisión Administradora del Field Oficial (CAFO) is a body in Uruguay integrated by representatives of AUF (including Mr. Valdez) and [State entity 2]. CAFO has been responsible for the administration of the Centenario stadium since the first FIFA World Cup, in 1930.
60. In December 2015, CAFO launched a competition of architectural and urban design ideas with the aim of remodeling the Centenario stadium and its surroundings in view of the Uruguay-Argentina joint bid to the 2030 FIFA World Cup.
61. On 2 May 2016, a special commission for the remodeling of the Centenario stadium was established and composed of Mr. Valdez, as president of AUF; [D], as [...]; [E] and [F], as representatives of [State entity 2]; and Messrs. [G] and [H], as representatives of CAFO.
62. At the date when the Final Report was submitted, CAFO had not concluded any kind of agreement regarding the remodeling of the Centenario stadium and no competitive bidding process had been made public.
63. Nevertheless, there is evidence that representatives of CAFO and AUF held several meetings and exchanged communications with [Company 1] and their representatives ([Company 9]) regarding the renovation project.

64. The investigatory chamber found communications between Mr. Valdez and Messrs. [A] and [C], dating back to 7 November 2014 about the renovation project.
65. [A], was the only representative of [Company 1] residing permanently in Uruguay. Mr. Valdez invited [Company 1]'s representatives to attend meetings on the project. For instance, in June 2015, [Company 1] representatives held a meeting at AUF offices with Mr. Valdez and other government representatives. In this meeting, according to the reply from AUF, [Company 1] handed in their expression of interest dated 26 June 2015, by means of which they proposed to finance the project up to USD 255,000,000. In the same letter, [Company 1] named [Company 9] as their representative for the specific project thereby authorizing among others Messrs. [A] and [C] to act on their behalf.
66. On 11 January 2016, Mr. Valdez wrote a letter to the [L], to invite him to take part in a meeting in January 2016 with Messrs. [A], [C], [I] and [J], all as intermediaries of [Company 1].
67. There is no evidence that [L] ultimately accepted the invitation but the meeting appears to have occurred on 10 March 2016. [K], a [Company 1] representative, apologized via email for his absence.
68. In the same letter, [K] asked Mr. Valdez for an update regarding the renovation of the stadium, and the progress made on the facial recognition system project. On 15 April 2016, Ms. Andrea Lanfranco (General Secretary of AUF) sent [A] and [C] a letter to be forwarded to [Company 1]. Likewise, Mr. Valdez replied with an update on 19 April 2016 stating that once the special commission for remodeling the Centenario stadium would be established, [K] should visit again.
69. Through a letter dated 9 May 2016, Mr. Valdez informed [K] that the special commission for the renovation of the stadium had finally been established and invited him to a meeting with the commission to be carried out between 20 and 28 May 2016.
70. On 30 May 2016, Mr. Valdez authorized Messrs. [A], [C] and [I] as exclusive intermediaries between AUF and [Company 1] for the renovation project of the Centenario stadium.
71. On 22 July 2016, Mr. Valdez sent another invitation to [Company 1] and [Company 10] (hereinafter "[Company 10]"), expressing his interest in receiving them between 15 and 25 August 2016, to discuss both the remodeling the Centenario stadium and the facial recognition project.
72. On 17 August 2016, AUF and [Company 10] signed a memorandum of understanding expressing their commitment to achieve the remodeling of the

Centenario stadium and appointed [A] as AUF's exclusive intermediary to continue the cooperation with [Company 10], a Korean company.

*The facial recognition system*

73. On 29 August 2014, AUF issued a call for tenders for the purchase and installation of a video surveillance and access control system of cameras of facial recognition in the Centenario stadium. After the closing date for the bidders' offers, on 28 September 2015, an external consultancy company called [Company 11] issued a technical analysis of the presented offers and advised that only the companies [Company 2] and [Company 12] complied with the technical evaluation. In that first report, [Company 11] recommended [Company 2] as the preferable option.
74. However, the award of the tender to the winning company was never concluded because the costs of the winning offer were higher than expected. Subsequently, on 29 July 2016, the Executive Council of AUF formally cancelled the tender of 2014, considering that its results did not meet the economic and financial interests of AUF.
75. Two weeks later, on 14 August 2016, AUF published a similar tender document and called for any interested company to present its offer.
76. The next day, AUF and [State entity 1] signed an agreement for the purchase and installation of a video surveillance and access control system by cameras of facial recognition for the Estadio Centenario in order to facilitate the eradication of violence during the sporting events.
77. The bidding document indicated that the presentation of the offers shall be made from 15 to 22 August 2016.
78. By 22 August 2016, fourteen offers corresponding to different companies were submitted, including [Company 2]'s and the joined offer of [Company 8]-[Company 10]. [Company 8]-[Company 10] together with other companies were requested to take part in pilot tests, which were carried out at the end of September 2016 in the Centenario stadium's facilities.
79. [Company 2] was not required to undergo such tests since, as stated in the [Company 11] report, it had participated in a similar tender in 2014, in which it had obtained good results.
80. [Company 8]-[Company 10]'s results in the pilot test were not deemed satisfactory. Through a letter dated 27 September 2016, representatives from [Company 8]-[Company 10] explained why they believed they had underperformed, and made a new proposal as well as requested another test. [Company 8]-[Company 10] was ignored, and no agreement between [Company 8]-[Company 10] and AUF was ever concluded.

81. On 7 October 2016, [Company 11] provided a technical evaluation of the offers presented and their test results. Through it, [Company 11] recommended the awarding of the tender to [Company 13] as the preferable option because it had fulfilled all requirements and offered the best financial option. However, when such evaluation was shared with [State entity 1], several objections were made. The [State entity 1]'s disapproval led to an exchange of communications with [Company 11] and AUF.
82. On 26 October 2016, [Company 2] sent a modified offer deducting USD 95,000.00 from its initial offer. On 31 October 2016, a meeting between [Company 11] and the technicians from [State entity 1] was arranged. At the end of the meeting, [Company 11], considering the new offer from [Company 2] and the supporting arguments from [State entity 1], suggested to award the project to [Company 2], even though [Company 13]'s offer was still sixteen percent less expensive, as [Company 2] identification's accuracy rate scored higher.
83. The new offer made by [Company 2] was finally approved on 1 November 2016 by the Executive Council of AUF.
84. On 25 November 2016, the award of the project was formalized through the signing of the contract by Mr. Valdez, acting as AUF's representative. The total cost of this project amounted to USD 1,321,773.

#### *The Sponsorship of the Uruguayan national team*

85. In both Audios 1 and Audio 4, Messrs. Valdez and [A] discuss the sponsorship of the Uruguayan football national team. Ultimately, AUF did not reach any final sponsorship agreement with the companies represented by [A] on this matter.
86. Nevertheless, Messrs. [A] and Valdez discussed the sponsorship extensively in communications stretching over a year, from 21 October 2016 to 2 October 2017.
87. On 29 May 2017, [K]'s email to [A] asking whether Mr. Valdez would be visiting Korea was forwarded to the latter who replied:

*"Hi [A], tomorrow I travel to Ireland and if we make it to semi-finals, from there I continue to Korea. I tell you that now we are actually in conditions to sell the sponsorship of the national team. So, if there any interested [party] we are open to talk. It could be [Company 14], [Company 1] or any other important firm. Remember what we have agreed with the players about the image rights, so they are in with everything that is done for AUF."*

88. Mr. Valdez confirmed that prestigious banks would also be considered suitable candidates for the sponsorship of the national team.

89. In "Audio 4", a company called [Company 4] is referred to as an intermediary between AUF and [Bank 1].
90. On 2 October 2017, Mr. Valdez authorized [Company 4], of which [A] was a representative, as the exclusive intermediary between AUF and [Bank 1] for the sponsorship deal.

### **c) Conclusions of the investigatory chamber**

91. Based on the above considerations, the investigatory chamber concluded that Mr. Valdez had violated the following provisions of the 2012 FCE as well as their provisions in the 2019 FCE:
  - Art. 13 of the FCE 2012 (General rules of conduct);
  - Art. 15 of the FCE 2012 (Loyalty);
  - Art. 16 par. 1 of the FCE 2012 (Confidentiality);
  - Art. 18 par. 1 of the FCE 2012 (Duty of disclosure, cooperation and reporting);
  - Art. 21 par. 1 of the FCE 2012 (Bribery and corruption).

## **B. Proceedings before the adjudicatory chamber of the FIFA Ethics Committee**

### **a) Procedural background**

92. On 2 December 2019, Mr. Vassilios Skouris, chairperson of the adjudicatory chamber, opened adjudicatory proceedings against Mr. Valdez in accordance with art. 68 par. 3 of the FCE, 2019 edition ("FCE"). Mr. Valdez was also provided with a copy of the Final Report and its enclosures and informed of the deadlines granted to provide his position on the Final Report and request a hearing.
93. On 11 December 2019, Mr. Valdez, via his legal representative, requested a hearing as well as an extension of the deadline to submit his position to the adjudicatory chamber until 10 January 2020. Both requests were granted by the adjudicatory chamber.
94. On 10 January 2020, Mr. Valdez submitted his statement of defense to the adjudicatory chamber together with various enclosures and a request to call as a witness Ms. Andrea Lanfranco, former general secretary of AUF.
95. On 21 January 2020, Mr. Valdez was informed about the composition of the adjudicatory chamber's panel ("Panel") as well as the date and time of the hearing.
96. Further communications were exchanged concerning the organization of the hearing held on 19 February 2020.

## **b) Summary of Mr. Valdez's written submission**

97. In his submission dated 10 January 2020, Mr. Valdez's legal representative provided the following summarized statement of defense, the main lines of which were repeated in the statements made orally at the hearing on 19 February 2020.
98. Mr. Valdez stated that FIFA's jurisdiction is limited to the matters involving FIFA funds, those being: the lighting of the Luis Franzini stadium and the facial recognition system. According to Mr. Valdez, the remaining issues (the sponsorship of the national team and the renovation of the Centenario stadium) ought to be prosecuted by CONMEBOL, whose competence shall not be transferred to FIFA since the requirements of art. 30 par. 2 are not met. Additionally, Mr. Valdez argued that there are parallel ongoing proceedings before AUF's ethics body and the Uruguay's judiciary, which, until they are resolved, should suspend FIFA's proceedings.
99. Mr. Valdez sustained that the investigatory chamber misinterpreted the evidence, especially the audio recordings pertaining to the criminal case, which were wrongly identified as additional recordings while they were in fact either edited excerpts of recordings already provided to FIFA or irrelevant conversations between [A], [B] and Mr. Del Campo (i.e., to the exclusion of Mr. Valdez) discussing what to do with the recordings.
100. He also claimed there was nothing unusual nor suspicious about the places where the discussions between Messrs. [A] and Valdez occurred (e.g. in cars, in the streets) since the former was running a car rental company and the streets are by essence a public space.
101. Mr. Valdez argued that the investigatory chamber disregarded the applicable standard of proof by applying the standard of "balance of probability" rather than the applicable and higher standard of "personal conviction" or "comfortable satisfaction".
102. Further, [A]'s reliability as a witness was called into question due to his vengeful motives, his propensity to lie and to contradict himself.
103. As for the facial recognition system, Mr. Valdez stated that he had "no evidence of anything illegal, but widespread rumors were that there was something suspicious with the whole process".
104. With respect to the renovation of the Centenario stadium, Mr. Valdez highlighted that ultimately the project was never implemented, and that he never received the draft of the call for tenders.
105. About the sponsorship of the national team, Mr. Valdez provided some background on his decision to end [Company 3]'s more than 20-year-old exclusive sponsorship and start exploring other opportunities. According to Mr. Valdez, this was handled professionally and included the following: the involvement of Mediapro, a Spanish

production and media rights agency, for the valuation of the rights; a call for tenders published on AUF's website; interviews with more than 30 companies; and the AUF's marketing division's supervising. Mr. Valdez interests in any proposal, including [A]'s offer to bring [Company 1], stemmed from his willingness to succeed in what he called "a sensitive issue".

106. Mr. Valdez's counsel explained that the use of "we" in colloquial Spanish, and in this particular context, is to be understood as an equivalent of "you", hence Mr. Valdez saying: "if not, later we don't have a chance to charge any ... do you understand me?", must be translated as: "if not, later you don't have a chance to charge any ... do you understand me".
107. Another point raised by Mr. Valdez is that, being unaware that he was secretly recorded, he should have felt comfortable enough during those private meetings to explicitly discuss the details of the alleged bribes. The absence of such discussions, it is argued, proves Mr. Valdez's innocence.
108. Turning to the alleged violations of the FCE, the statement of defense presented before the adjudicatory chamber reads:

*"There is no evidence of it in the entire file, no document supporting the allegations of [A], that cannot be held reliable due to the witness character, his hate against Valdez and the contradictions in his different statements".*

109. Mr. Valdez claims to have never accepted, even less requested, any bribe in more than one hour of illegally recorded conversations and hundreds of emails and messages.
110. As for the potential breach of art. 17 of the FCE, Mr. Valdez argues that he has not failed to comply with his duty to report since there was nothing to report because even though he was under the impression that the bid for the facial recognition system was rigged, he had no evidence in this respect.
111. In regard to art. 16 of the FCE and his potential breach of duty of confidentiality, Mr. Valdez argues that there was not a single piece of evidence indicating any wrongdoing. Mr. Valdez specifies that it was Mr. Ignacio Alonso who was sharing information with the bidders, and he did so in full compliance with the applicable regulations.
112. Together with his written position, Mr. Valdez submitted numerous files, mainly consisting of audio recordings and other documents from the Uruguayan criminal proceedings. Only one of those recordings, named Celular [A] AUDIO5 ("Audio 5"), captured a new conversation between Messrs. Valdez and [A].

#### Audio 5

113. Audio 5 is a 5-minute recording of a meeting between [A] and Mr. Valdez. During the recorded conversation, [A] seemed to present a draft of a call for bids to Mr. Valdez. In that sense, [A] said:

*"They tell me that if you at any time, you want to add whatever you want, there's no problem [...] what matters is the points that are ... the points that are ... that we ... that help us a lot."*

114. Mr. Valdez replied:

*"I am leaving for Rio de Janeiro tomorrow, I present it on Friday or Monday."*

115. Later in the recording, [A] described how a payment will go through a construction company and explained that the people involved are [C], Mr. Valdez, and himself:

*"When we spoke about this first, they had spoken when I spoke with well... Wilmar, it's [C] [...] and you, and me. Now they told me I want to help you. I mean. They gave me that, but not that they send it to me, but they tell me please, don't let us get stuck for months, right? The construction company, they are going to finance, but the construction company, everything, the architects, that is, the whole, is where it will arrive and they will help us. It's going to be fast, and just make the call for tenders, just make the call and that, I have the possibility of being told how much you need for that, take it, for the [medical] treatment, help yourself, then, it's about my life, you understand me?"*

116. To which Mr. Valdez replied: *"I understand you."*

117. The adjudicatory chamber has analyzed and reviewed the case file in its entirety. This summary of Mr. Valdez's position does not purport to include every contention put forth. However, the adjudicatory chamber 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 outline of Mr. Valdez's position and in the ensuing discussion on the merits.

### **c) The hearing**

118. On 21 January 2020, the adjudicatory chamber informed Mr. Valdez that the hearing would take place on 19 February 2020 at 9:30 a.m., at the Home of FIFA, Zurich. Said correspondence provided Mr. Valdez with the composition of the Panel and the procedural outline. It also reminded Mr. Valdez of the content of art. 35 par. 4 of the FCE and his right to recuse any member of the Panel.

119. On 19 February 2020, the hearing was held at the FIFA HQ, in Zurich. The deputy chairperson of the adjudicatory chamber opened the hearing, acknowledged the



presence of the persons attending and set out the procedural outline. Both Mr. Valdez and his legal representative attended the hearing.

#### Witness Statement of Ms. Lanfranco

120. Ms. Andrea Lanfranco, current member of AUF Executive Committee and former General Secretary, testified via telephone conference to provide clarifications on the facts. First, she explained that she joined AUF in March/April 2015, in her capacity as General Secretary. At that time, she became acquainted with [A] who worked for a car rental company dealing with the federation. Later on, [A] started coming to AUF to discuss potential deals with companies he would bring, including a bank and a project related to the refurbishment of the Centenario stadium.
121. Regarding the exclusive right granted to [A] for the negotiation of a sponsorship deal with [Bank 1], a Chinese bank, Ms. Lanfranco stated that it occurred after AUF recovered its image rights on 1 January 2017. AUF was looking for new sponsors and due to its lack of access to foreign markets the federation would grant exclusive negotiation rights to intermediaries, for a limited period of time. It was argued that this was a common practice in the federation and it was not only done with [Bank 1], but also with other sponsors such as [Company 15] or [Company 16].
122. In relation to the tender of the facial recognition project, Ms. Lanfranco explained that AUF, together with the government, decided to conduct a new tender in August 2016.
123. The first bid had emerged following violent episodes related to football games in 2014. Five companies had presented their offers, which were reviewed by [Company 11]. A year later, two companies were selected but the costs were too high for the federation, therefore the contract was never awarded and the entire process was cancelled.
124. In 2016, following a new surge in violence, all football activities were canceled and an agreement was entered into with [State entity 1] to launch a second call for tenders with more flexible conditions. In that new round, forty companies applied.
125. In relation to the confidentiality of the documents sent to [A], Ms. Lanfranco alleged that neither the call for tenders nor the offers of the 2014 bid were confidential. Ms. Lanfranco argued that [A] was not given any preferential treatment in the sense that all companies were provided with the same amount of information.
126. Specifically referring to art. 4 of the second invitation to tender which stipulates that AUF will not provide any clarifications nor respond any query, she mentioned that same document further specifies that AUF was allowed to conduct parallel negotiations with pre-qualified companies in the tender offer. Ms. Lanfranco explained that AUF worked closely with the prequalified companies to lower the costs. Ms. Lanfranco stated that only [Company 2] and [Company 13] prequalified

to the second call for tenders, while the companies represented by [A] did not reach that stage.

127. Concerning the rumors that [Company 2] had been favored by [State entity 1], Ms. Lanfranco explained that the facial recognition system was meant to be operated by the technical staff of [State entity 1], not by AUF personnel. That is the reason why, the technical assessment was delegated to [State entity 1], which opted for [Company 2]'s offer due to technical requirements. Although there had been rumors of improprieties, there was no proof whatsoever supporting those rumors. Since the decision-making process involved members of different political parties, including the opposition, those people would have reported any wrongdoing if presented with an opportunity to do so.
128. In January 2016, eight months before the opening of the bid for the second tender, Ms. Lanfranco sent the conditions of the 2014 call for tenders to [A]. She clarified that since the 2014 offers were deemed too expensive, it was decided to send [A] and other companies the terms and conditions of the previous tender to help them lower their costs. Those terms and conditions were sent to a president of a club, to [Company 17], another bidder, and were handed over physically to others so that they could offer a similar product. All the offers were published on AUF website and were therefore in the public domain.

#### Closing statements of the investigatory chamber

129. In particular, Ms. Rojas, the Chairperson of the investigatory chamber stated that:
  - a. The Ethics Committee was competent to investigate Mr. Valdez's conduct based on his function as FIFA Council member at the time of the facts, as per art. 30 par. 1 of the FCE;
  - b. The standard of comfortable satisfaction was applicable to the case;
  - c. The authenticity of the audio recordings was undisputed;
  - d. FIFA funds were used in the facial recognition project and AUF had the authority to select the winning company;
  - e. Mr. Valdez was involved in the awarding of said project to [Company 2], a company he knew was probably linked to corrupt government officials;
  - f. With respect to the awarding of the contract for the renovation of the Centenario stadium, Mr. Valdez did start negotiations with [Company 1], and in Audio 1, [A] is heard saying "in the first payment the three of you are included".

130. In view of the above, Ms. Rojas reiterated that Mr. Valdez violated arts. 13, 15, 16, 18 and 21 of the 2012 FCE and requested that an appropriate sanction be imposed upon him.

Closing statements of Mr. Valdez's legal representative

131. Mr. Valdez, through his legal representative, made the following oral submissions, in particular:

- a. FIFA only has jurisdiction over facts involving FIFA funds, which are, the lighting of the Luis Franzini stadium and the facial recognition system.
- b. The investigatory chamber failed to prove the facts under the relevant standard of proof.
- c. In other cases such as CAS 2011/A/2426 Amos Adamu v/ FIFA, people in private discussions clearly used incriminating remarks since they tended to adopt a more casual tone and talk freely about their unethical aims. That was not the case of Mr. Valdez.
- d. The Uruguayan justice did not find anything against Mr. Valdez.
- e. The recorded conversations happened in the streets, which are by essence a public space.
- f. The operators of the facial recognition system were technical staff of [State entity 1], which had the possibility to veto the awarding of the project. Mr. Valdez said to [A] that the bid was already granted to [Company 2], because he was speaking in confidence, in a private environment.
- g. The only evidence in the (case) file is derived from statements made by [A]. There were more than 30 sponsorship agreements and several construction contracts awarded during the tenure of Mr. Valdez, none of which was tainted by similar accusations.
- h. The bidding information for the facial recognition project was confidential only before the opening of the bid and art. 7 of the bid regulations authorized parallel negotiations.

Final statements of Mr. Valdez

132. In particular, Mr. Valdez stated that:

- a. There was no commissions nor kickbacks taken in relation to AUF projects;

- b. He had no proof of the alleged corruption within [State entity 1] concerning the facial recognition project and it was inconceivable to report anything due to the potential consequences of filing an unfounded claim;
- c. The procedure established to reach an agreement for the sponsorship deal was strict; however, the companies represented by [A] never presented a formal offer;
- d. He stepped down because when he met with Mr. Del Campo and [B] before the interview on *Punto Penal* to reach a political agreement, they framed him. Now he regretted having taken such decision.

## II. LEGAL ANALYSIS

### A. Applicability of the FCE and jurisdiction

#### a) Applicability of the FCE *ratione materiae*

133. The adjudicatory chamber notes that, according to the Final Report of the investigatory chamber on the present matter, there are several indications of potential improper conduct in terms of the FCE by the official. In particular, during the investigations, possible violations of the relevant provisions of the FCE have been identified: breaches of arts. 13, 15, 16 para 1, 18 para. 1 and 21 para. 1 of the 2012 FCE. The factual circumstances raise, without any doubt, questions of potential misconduct in terms of the FCE.

134. Consequently, the FCE is applicable to the case according to art. 1 FCE (*ratione materiae*).

#### b) Applicability of the FCE *ratione personae*

135. According to art. 2 FCE of the 2019, the Code shall apply, *inter alia*, to “officials” as per the definitions section in the 2019 FCE and in the FIFA Statutes.

136. By virtue of his various position in football, most significantly as AUF President and FIFA Council member, Mr. Valdez was an official within the meaning of the definition given in no. 13 of the definitions section in the FIFA Statutes during the period presently relevant (2016 – 2018).

137. As a consequence, at the time the relevant actions and events occurred, and in view of Mr. Valdez’s position in football at the time, the FCE applies to the official according to art. 2 of the FCE (*ratione personae*).

### **c) Applicability of the FCE *ratione temporis***

138. The relevant events took place between 2016 and 2018, at a time before the 2019 edition of the FCE came into force. With regard to the applicability of the FCE in time, art. 3 of the FCE stipulates that the (current) FCE shall apply to conduct whenever it occurred. Accordingly, the material rules of the FCE shall apply, provided that the relevant conduct was sanctionable at the time (with a maximum sanction that was equal or more) and unless the previous editions of the FCE would be more beneficial to the party (*lex mitior*).
139. In this context, following the relevant case law and jurisprudence, the adjudicatory chamber notes that the spirit and intent of the 2012 and 2018 editions of the FCE (which were applicable in the relevant period 2016 – 2018) is duly reflected in the 2019 FCE:
- a. Art. 13 of the FCE has a corresponding provision in the 2012 FCE (art. 13) and the 2018 FCE (art. 13). The first paragraph of the 2019 provision specifies that officials must act diligently in “finance-related matters”, however this does not create any additional obligation. The second paragraph of art. 13 provides that officials must respect FIFA’s regulatory framework and is similar in the 2012 and the 2019 editions of the FCE. The Third paragraph is also similar in both editions. Paragraph four of same article reminds that officials must refrain from any activity or behaviour that would give rise to the appearance of a misconduct. This provision was already established in the 2012 FCE albeit not generally but specifically for certain articles (e.g. gifts, corruption). In any case, this does not affect the assessment of Mr. Valdez’s conduct. The last paragraph of art. 13 concerns the sanction and establishes a minimum fine and maximum ban. As per art. 3 of the FCE, only a sanction that would be superior to the maximum sanction of the Code in force at the time of the facts would be considered contrary to the principle of *lex mitior*. Considering that the 2012 FCE did not set out any specific sanction, contrarily to the 2019 FCE, the latter is deemed more favourable under the aegis of the principle of legal certainty. Although the wording of the respective provisions may differ, there is no element rendering the provisions of the 2012 FCE more favourable in the present case.
  - b. Art. 15 of the FCE has a corresponding provision in the 2012 FCE (art. 15). Both provisions are identical, with one in the 2019 FCE merely clarifying the sanction corresponding to the breach, once again, in the interest of the Party and legal certainty.
  - c. Art. 16 of the FCE has a corresponding provision in the 2012 FCE (art. 16). Both provisions are almost identical, the only difference being the omission of the duty of confidentiality as an “expression of loyalty” in the 2019 FCE. Although the wording of the respective provisions may differ, there is no element rendering the provision of the 2012 FCE more favourable in the present case.

- d. Art. 17 of the FCE has a corresponding provision in the 2012 FCE (art. 18). The first paragraph of the article is more stringent in the 2019 edition which specifies that any breach of the Code must be reported "*in writing*" to the investigatory chamber. However, *in casu*, this difference does not negatively affect Mr. Valdez. Although the wording of the respective provisions may differ, there is no element rendering the provisions of the 2012 FCE more favourable in the present case.
- e. Art. 27 of the FCE has a corresponding provision in the 2012 FCE (art. 21). The main addition of the 2019 FCE is the prohibition to "*request*" or "*solicit*" bribe payments. The negotiation of bribes was covered by the 2012 edition already forbidding officials to offer, promise, give or accept such payments. However, in the present case, this difference has no bearing on the assessment of Mr. Valdez's conduct. On the contrary, it could be argued that the 2012 edition was less favourable to the Party since it contained as an additional obligation the duty to report any attempt of corruption to the Ethics Committee (see art. 21 par. 1 of the 2012 FCE). Although the wording of the respective provisions may differ, there is no element rendering the provision of the 2012 FCE more favourable in the present case.

140. In consideration of all the above, the adjudicatory chamber concludes that the different FCE editions cover the same offence and that the maximum sanctions in the current FCE are equal or less. Furthermore, from a material point of view, the adjudicatory chamber considers that none of the provisions would be more beneficial to the accused (principle of "*lex mitior*"), since their application would lead to the same result.

141. Consequently, the current edition (2019) of the FCE is applicable to the case according to art. 3 of the FCE (*ratione temporis*).

#### **d) Jurisdiction of the FIFA Ethics Committee**

142. The scope of jurisdiction of the FIFA Ethics Committee is defined in art. 30 of the 2019 FCE, which is more restrictive compared to the equivalent provisions in the previous editions of the FCE.

143. Art. 30 of the FCE defines a primary (par. 1) and subsidiary (par. 2) competence of the FIFA Ethics Committee.

144. The adjudicatory chamber notes that Mr. Valdez was a member of the FIFA Council at the time of the relevant facts (2016 – 2018), which places him under the exclusive jurisdiction of the FIFA Ethics Committee as per art. 30 par. 1 of the 2019 FCE.

145. In addition, and as a subsidiary basis, the CONMEBOL agreed to transfer its case file and defer its competence to investigate/judge the matter to FIFA, which further strengthens FIFA's competence to prosecute the case.

## **B. Procedural issues regarding the standard and the burden of proof**

146. The adjudicatory chamber notes that the FIFA Code of Ethics in its articles 48 and 49 clearly establishes the applicable standard of proof and the burden of proof. In this regard, according to art. 48 of the FCE, the members of the Ethics Committee shall judge and decide on the basis of their comfortable satisfaction. Further and according to art. 49 of the FCE, the burden of proof regarding breaches of provisions of the Code rests on the Ethics Committee.
147. Mr. Valdez, claimed that the investigatory chamber erred in applying the lower standard of proof on balance of probabilities, which prevails in non-disciplinary civil proceedings.
148. The Panel acknowledges the fact that Mr. Valdez concurs in that the standard of proof in the current proceedings is that of "comfortable satisfaction", which is in line with constant CAS jurisprudence considering that such proceedings such as the ones at stake are considered to be civil rather than criminal in nature (CAS 2005/C/976&986, §127).

## **C. Assessment of potential violations of the FCE committed by Mr. Valdez**

### **a) Possible violation of art. 27 of the 2019 FCE (Bribery and corruption)**

149. Art. 27, par. 1 of the 2019 FCE reads as follows:

*"Persons bound by this Code shall not accept, give, offer, promise, receive, request or solicit any personal or undue pecuniary or other advantage in order to obtain or retain business or any other improper advantage to or from anyone within or outside FIFA. Such acts are prohibited regardless of whether carried out directly or indirectly through, or in conjunction with, third parties. In particular, persons bound by this Code shall not accept, give, offer, promise, receive, request or solicit any personal or undue pecuniary or other advantage for the execution or omission of an act that is related to their official activities and is contrary to their duties or falls within their discretion."*

150. With regard to the structure of art. 27 of the FCE, the adjudicatory chamber notes that the actual offence of bribery is laid down in the opening sentence of art. 27 par. 1 of the FCE, both with regard to the offeror ("*offer, promise, give*") and the offeree ("*accept, receive, request or solicit*"). The second sentence specifies the persons who may be involved in the act of bribery. The third sentence is a further specification of the first sentence in view of art. 322<sup>ter</sup> and art. 322<sup>quater</sup> of the Swiss Criminal Code to which there are several analogies.

### Persons involved

151. The first two elements set out in art. 27 par. 1 FCE are that (i) the person acting must be bound by the FCE and (ii) the counterpart must be a person within or outside FIFA. As has already been shown, Mr. Valdez was at the relevant time an official bound by the FCE, therefore the first two elements are met in the present case.

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

152. A third requirement for a violation of art. 27 par. 1 of the FCE to occur is that an undue pecuniary or other advantage must be accepted, given, offered, promised, received, requested or solicited by the persons involved.
153. Both the acceptance of an offer or a promise on the one hand and of the actual advantage on the other hand constitute acts of bribery and corruption. From a legal perspective, it is therefore not decisive if benefits were actually given (e.g. payments actually made) or received. The exchange of the promise or of the advantage itself does not necessarily have to occur between the offeror and the offeree themselves. CAS has also confirmed this in its jurisprudence: *"the timing of promise, not payment is decisive. Bribery occurs when one enters into an agreement to bribe and payment could be agreed to be paid before but actually paid after the event to which it relates"* (CAS award 2014/A/3537 Vernon Manilal Fernando v. FIFA, par. 85)

### Lighting of the Luis Franzini stadium

154. In the adjudicatory chamber's view, the evidence set out in the casefile, is insufficient to demonstrate that bribes to the amount of USD 35,000 have been received or accepted by Mr. Valdez.
155. In that sense, the adjudicatory chamber took into consideration the conclusion of the Final Report on that point, which reads as follows:

*"Even though [A] stated that Mr. Valdez received a commission, after a careful analysis of the provided information, there is no sufficient evidence to establish that Mr. Valdez obtained a benefit for allocating funds to this project. There are not recordings or documentation that allows us to corroborate such conduct."*

156. The Panel has also taken note that [A] claimed that Mr. Valdez requested a 10% commission on the deal (USD 35 000), which was allegedly paid in cash through a currency dealer. [A] also alleged that there were some recordings in which said bribe



payment was established. However, apart from [A]'s declarations, no convincing piece of evidence has been submitted to support this allegation.

#### Renovation of the Centenario Stadium

157. In the adjudicatory chamber's view, there is insufficient evidence to establish to the standard of comfortable satisfaction that Mr. Valdez received or accepted to receive any bribe payment in relation to the renovation of the Centenario Stadium.
158. In particular, the content of the Recordings, described previously, does not establish Mr. Valdez's acceptance to receive any payment in relation to the renovation of the Centenario stadium. [A]'s use of "we" in his discussions with [A] could indicate that the payments he is referring to include the person he is talking to (i.e., Mr. Valdez). However, it could also refer to other participants. The Panel is not satisfied to establish that Mr. Valdez included himself as a recipient of any payment in connection to the renovation of the Centenario stadium, in his discussions with [A].
159. Finally, the Panel did not find that [A]'s statements according to which Mr. Valdez accepted to receive USD 1 000 000 in relation to the renovation of the Centenario stadium project were substantiated, nor were they corroborated by any documentary evidence.

#### Facial Recognition System

160. It is argued that Mr. Valdez was aware that someone in [State entity 1] had possibly taken a bribe in relation to the awarding of the facial recognition project based on the various comments he made to [A] dissuading him from presenting an offer for said project.
161. Nonetheless, the Panel could not find any evidence corroborating Mr. Valdez's comments to [A] according to which the facial recognition project involved bribe payments on the side of [State entity 1].
162. It should be stressed that the [A] was prominently involved in the alleged bribery schemes having participated in the negotiations of all four projects, hence he was in a position to provide first-hand information.
163. In addition, the Panel weighted that no corroborating witness came forward to support [A]'s accusations.

#### The Sponsorship of the Uruguayan National Team

164. As far as the sponsorship deal is concerned, Mr. Valdez and [A] never reached a final agreement.

165. It is noted that Mr. Valdez may have provided [A] with significant information about the sponsorship deal. To that respect [A] testified that in Audio 3 when Mr. Valdez told him that he would pick him up to explain him how to present “it”, he referred to the sponsorship deal.
166. However, similarly to the other projects previously discussed, the Panel did not find sufficient evidence that Mr. Valdez accepted, received, requested or solicited any advantage (financial or otherwise) in relation to the sponsorship of the Uruguayan national team.

### Conclusion

167. In view of the above, the adjudicatory chamber concludes that the evidence at hand does not suffice to conclude, within the standard of comfortable satisfaction, that Mr. Valdez accepted, received, requested or solicited any advantage in relation to the tenders conducted by the AUF.
168. Taking into account that the first requirement of art. 27 par. 1 of the FCE (regarding the acceptance, receipt or solicitation of an advantage) is not met in the present case and that the remaining requirements of the said article are cumulative rather than alternative, the Panel concludes that Mr. Valdez’s conduct did not breach art. 27 of the 2019 FCE.

### **b) Possible violation of art. 15 (Duty of Loyalty)**

169. Art. 15 par. 1 of the 2019 FCE provides that persons bound by the FCE shall have a fiduciary duty to FIFA, the confederations, associations, leagues and clubs.
170. The first element set out in art. 15 par. 1 of the 2019 FCE is that the person acting must be bound by the FCE. Mr. Valdez was bound by the FCE at the time of the alleged conduct, by virtue of his positions as a FIFA football official as already discussed, therefore the first requirement of art. 15 of the 2019 FCE is fulfilled.
171. The second element establishes a “fiduciary duty” on persons bound by the FCE to various bodies (FIFA, the confederations, associations, leagues and clubs).
172. In general terms, a fiduciary duty is defined as a legal obligation by which one person (the fiduciary) must protect and promote the interests of another (the beneficiary). Conversely, a breach of fiduciary duty occurs when someone who is placed in a position of trust, acts in a way that is detrimental to the interests of the beneficiary.
173. Is it established that Mr. Valdez, by virtue of his role as President of AUF and as an official of FIFA and CONMEBOL, held a position of trust and was therefore expected to act with loyalty towards the aforementioned organizations, as well as ethically, when performing his functions.
174. In the present case, Mr. Valdez had the obligation to protect and promote the best interests of AUF and its parent football entities (CONMEBOL and FIFA) in his dealings

with private bidders and their representatives, such as [A]. Specifically, Mr. Valdez should have let the bidders compete fairly and should have ensured that they had been selected solely based on the competitiveness of their respective offers.

175. The Panel found that Mr. Valdez has violated his fiduciary duties towards AUF in connection with the following conduct.
176. First, Mr. Valdez met privately with [A] on several occasions including in the streets (Audio 1) and in a car (Audio 3, Audio 4), to discuss issues directly related to AUF's tenders. This fact has not been disputed by the Party.
177. In Mr. Valdez's opinion, those meetings were acceptable since they occurred in public places (in the streets) or were justified by the fact that [A] offered to drive him to and from the airport.
178. This argument is contradicted by the evidence provided. In Audio 4, [A] asked twice if Mr. Valdez wanted him to get out of the car; once when Mr. Valdez received a call, and later on when [A] told him that he was going to his office but that Valdez could drop him anywhere. Lastly, at the end of Audio 4, one can hear [A] getting out of the car, while Mr. Valdez, who appeared to be the driver, stayed inside. It can therefore be concluded that, in this precise case, Mr. Valdez was the one driving [A], not the opposite. This is in direct contradiction with Mr. Valdez's justification according to which when they met in a car it was because [A] would facilitate Mr. Valdez's trips to/from the airport.
179. In any case, the reason why Mr Valdez and [A] met is of little relevance, the crux of the matter is that those meetings were private in the sense that no one except Mr. Valdez and [A] was in a position to know about their content and existence.
180. Further, there are strong reasons to believe that that those meetings were intentionally kept from persons involved in the decision-making process of the tenders. This is emphasized by Mr. Valdez in Audio 1 saying that because some people at CAFO might ask commissions ("*puntitas*" in Spanish), he and [A] should meet only in a certain type of places. [A] agreed to such secrecy by responding "in the car only, on the streets". The places where they chose to meet (i.e., in the streets or in cars), differed from the places where they would have normally been expected to meet in order to discuss AUF-related matters (e.g., AUF's premises or any other official location) in only one aspect, which was the possibility to keep the existence and the content of the meetings between the participants only.
181. Given that [A] was representing various companies involved in four projects tendered by the AUF that were valued millions of dollars, regardless of their content, the mere existence of those private meetings was likely to damage AUF's image due to the appearance of collusion they inherently conveyed. There is no indication that other bidders had the same access to information nor the ability to meet privately with Mr. Valdez outside of AUF's HQ.

182. Further, Mr. Valdez explained that he would occasionally be driven by [A] to and from the airport. This clearly shows that they had a special relationship extending beyond their respective professional functions. In that regard, it is noted that [A] was not Mr. Valdez's driver and that, based on the Recordings, their meetings were aimed at discussing both personal issues (mainly [A]'s health and financial problems) and business matters.
183. Mr. Valdez, as AUF President, had a decisive role in the awarding of those projects. Similarly, [A] was unambiguously lobbying for various companies involved in the bidding ([Company 10], [Company 1], [Bank 1]), at the time he met privately with Mr. Valdez.
184. As a representative of AUF, Mr. Valdez had the duty to make sure and to show that all bidders were treated in the same manner and that AUF or its officials were devoid of any kind of bias or nepotism. Mr. Valdez was expected to treat the bidders equally and choose the best offer based on price and quality, not on personal preferences and relationships with the companies' officials or their intermediaries, such as [A].
185. Thus, by accepting to meet [A] repeatedly in private and secretive meetings, while the latter was simultaneously involved in various tenders conducted by the AUF, Mr. Valdez breached his fiduciary duty towards the football association he was representing.
186. Second, the content of the Recordings indicates that Mr. Valdez gave a large amount of material information to [A] in relation to the tenders. For instance, he repeatedly discouraged [A] from submitting an offer for the facial recognition project telling him – before the call for tenders was issued – that said project was already granted to [Company 2], a company reportedly favored by [State entity 1]. There is no element in the file indicating that any other bidder was provided with this information, which in any case is highly disturbing since it shows that Mr. Valdez knew [Company 2] would be the winning company since at least July 2016 (the date of Audio 1), which was prior to the official call for tenders of mid-August 2016.
187. Third, Mr. Valdez allowed [A] to exert an undue influence over the tenders. This is evidenced by the fact that [A] told Mr. Valdez in Audio 1 that he was preparing the draft of a call for tender, which he would later give to Mr. Valdez in order for him to present it as his own. Mr. Valdez explicitly agreed to this by confirming that as soon as [A] would pass it to him, he would take it as his and move forward.
188. Along the same lines, in Audio 5, [A] was heard presenting a document to Mr. Valdez to whom he explained that some points were important because he said: "they help us", adding that Mr. Valdez should feel free to add whatever he wanted to the document. Later on, in the discussion, [A] asked Mr. Valdez when he would present it and tell the other decision-makers: "Look, this is what I've done, fellas, let's make the call." To which Mr. Valdez replied: "I'm off to Rio de Janeiro tomorrow. I'll present it on Friday or Monday." From those facts, it appears that Mr. Valdez let [A] influence him and the call for tenders by preparing and submitting a

document, most likely the draft of a call for tender that Mr. Valdez was expected to later present as his own to other persons involved in the organization of the tender.

189. In Audio 1, [A] was heard recommending that the period to submit offers be short and Mr. Valdez agreed to it. The timeframe to present the offers for the facial recognition project lasted a week, from 15 to 22 August 2016.

190. Fourth, Mr. Valdez also breached his fiduciary duty by failing to take action in order to prevent the allocation of FIFA Forward funds totaling USD 750 000 to a project involving potential acts of corruption.

191. Mr. Valdez unambiguously expressed in Audio 1 and 2 that he believed [State entity 1]'s support for [Company 2] was fueled by corruption within the government. In audio 1, [A] reminded him that [Company 2]'s offer was USD 600 000 more expensive than his; to which Mr. Valdez simply replied: "Yes, sure, sure". In other words, Mr. Valdez knew he was potentially losing to corruption funds amounting to USD 600 000 and entrusted to him by FIFA, CONMEBOL and AUF.

192. One obligation traditionally assimilated to the duty of a fiduciary is the duty of care, which is the obligation to seek and critically analyze the information potentially affecting the interests of the beneficiary, in this case AUF, FIFA and CONMEBOL.

193. However, in the present case Mr. Valdez affirmed repeatedly, and up until the hearing before FIFA, that he knew about rumors according to which the facial recognition project was tainted by corruption.

194. In his position to the adjudicatory chamber Mr. Valdez stated: "

*"he had no evidence of anything illegal, but widespread rumors were that there was something suspicious with the whole process.*

*The [State entity 1] pushed for the installation of the system*

*The agreement gave a governmental agency the final technical decision*

*A year before the bid a previous tender process was carried on and [Company 2] won*

*When another company won, [State entity 1] objected the bid for technical reasons*

*At the same time [Company 2] lowered its initial budget*

*With all these hints and elements is possible to think something is rigged and to express that in a private conversation but having evidence or knowing for sure is a totally different issue."*

195. Mr. Valdez justified his inaction with the alleged lack of evidence. However, there is virtually no evidence indicating that Mr. Valdez took any action to verify those

allegations and to ensure the proper use of the entrusted funds and their proper allocation in the context of tender of the facial recognition project.

196. Based on the above considerations, the Panel found that Mr. Valdez failed to abide by his fiduciary duty on several occasions and in various ways. Mr. Valdez not only compromised the appearance of the fairness of the tenders through his secretive behavior with one of the bidders' representative, but he also released material information during those private conversations that appeared to favor the companies ([Company 10], [Company 1], [Bank 1]) that [A] represented. Moreover, Mr. Valdez also let [A] exert an undue influence on the tender process of various projects and failed to proactively verify the widespread rumors of corruption within [State entity 1] in a project partially financed by FIFA. Consequently, the Panel is comfortably satisfied that Mr. Valdez breached art. 15 of the 2019 FCE.

#### **c) Possible violations of arts. 13, 16, 17 of the FCE**

197. With regard to the obligations set forth in the above articles, the Panel found that those potential breaches were either already sufficiently consumed by the breach of art. 15 of the FCE, or not established to the required standard of proof.

#### **d) Conclusion**

198. Overall, and in the light of the considerations and findings above, the adjudicatory chamber holds that Mr. Valdez by his conduct presently relevant, has violated art. 15 (Duty of loyalty).

### **D. Sanctions and determination of sanctions**

199. According to art. 6 par. 1 of the FCE, the Ethics Committee may pronounce the sanctions described in the FCE, the FIFA Disciplinary Code, 2019 edition ("FDC") and the FIFA Statutes.
200. When imposing a sanction, the adjudicatory chamber shall take into account all relevant factors in the case, including the nature of the offence, the offender's assistance and cooperation, the motive, the circumstances, the degree of the offender's guilt, the extent to which the offender accepts responsibility and whether the person mitigated his guilt by returning the advantage received (art. 9 par. 1 of the FCE). It shall decide the scope and duration of any sanction (art. 9 par. 3 of the FCE).
201. When evaluating, first of all, the degree of the offender's guilt, the seriousness of the violation and the endangerment of the legal interest protected by the relevant provisions of the FCE need to be taken into account. In this respect, it is important to note that Mr. Valdez was not only the president of AUF, but also a member of the FIFA Council and CONMEBOL Executive Committee, and had, as such, a responsibility to serve the football community as a role model. Yet, his conduct

revealed a pattern of blunt disrespect for core values of the FCE, violating the provision on loyalty (towards the AUF, CONEMBOL and FIFA) repeatedly.

202. With regard to the circumstances of the case, the adjudicatory chamber emphasizes that several aspects render the case at hand to be serious. In that sense, it is worth reminding that Mr. Valdez's resignation, even if he denied it initially, was caused by the content of the Recordings. It follows that, Mr. Valdez himself considered that the conversations captured by the Recordings, or the conversations that he supposed had been captured, were harmful enough to justify his departure from the highest office of Uruguayan football.
203. The Panel also notes that Mr. Valdez has not expressed, at any point during these proceedings, awareness of wrongdoing or remorse for his actions (a circumstance that is suited to mitigate the culpability of an offender, according to the case law of FIFA's judicial bodies).
204. With regard to the type of sanction to be imposed on Mr. Valdez, the adjudicatory chamber deems that only a ban on taking part in any football-related activity is appropriate in view of the inherent, preventive character of such sanction in terms of potential subsequent misconduct. In the light of this, the adjudicatory chamber has chosen to sanction Mr. Valdez by banning him from taking part in any football-related activity (art. 7 par. 1(j) of the FCE; art. 56 par. 2(f) of the FIFA Statutes; art. 11(f) and art. 6 par. 2 lit. c) of the FDC).
205. With regard to the scope and duration of a ban (see art. 9 par. 2 and 3 of the FCE), the adjudicatory chamber points out that art. 15 par. 2 of the FCE (Duty of loyalty) establishes a maximum ban duration of two years for the respective violation.
206. In view of the above, and taking into account all the respective circumstances of the matter, the Panel finds that a ban duration of one year would be proportionate in the present case. Mr. Valdez is therefore banned on taking part in any football-related activity (administrative, sports or any other) at national and international level for a period of one year. In accordance with art. 42 par. 1 of the FCE, the ban shall come into force as soon as the decision is communicated.
207. Furthermore, art. 15 par. 2 of the FCE stipulates a financial sanction, represented by a minimum fine of CHF 10,000, in addition to the sportive sanction (ban).
208. In the present case, the adjudicatory chamber is of the opinion that the imposition of a ban on taking part in any football-related activity is not sufficient to sanction the misconduct of Mr. Valdez and that the additional minimum fine is warranted by the circumstances of the case (in particular the fact that Mr. Valdez held very prominent official positions in association football). Accordingly, Mr. Valdez shall pay a fine of CHF 10,000.

## **E. Procedural costs and procedural compensation**

209. The procedural costs are made up of the costs and expenses of the investigation and adjudicatory proceedings (art. 54 of the FCE).
210. Mr. Valdez has been found guilty of a violation of art. 15 and has been sanctioned accordingly. The adjudicatory chamber deems that no exceptional circumstances apply to the present case that would justify deviating from the general principle regarding the bearing of the costs. Thus, the adjudicatory chamber rules that Mr. Valdez shall bear the procedural costs (art. 56 par. 1 of the FCE).
211. In the present case, the costs and expenses of the investigation and the adjudicatory proceedings – including a hearing before the adjudicatory chamber – add up to [...].
212. According to art. 57 of the FCE, no procedural compensation shall be awarded in proceedings conducted by the Ethics Committee. Consequently, Mr. Valdez shall bear his own legal and other costs incurred in connection with these proceedings.



### III. DECISION

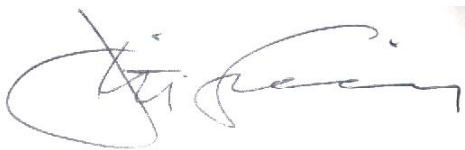
1. Mr. Wilmar Valdez is found guilty of an infringement of art. 15 (Duty of loyalty) of the FIFA Code of Ethics, in relation to various projects and tenders conducted by the AUF and, in particular, to conversations related to these tenders involving Mr. Valdez which took place in 2016.
2. Mr. Wilmar Valdez is hereby banned from taking part in any kind of football-related activity at national and international level (administrative, sports or any other) for a period of 1 year, as of notification of the present decision, in accordance with article 7 lit. j) of the FIFA Code of Ethics in conjunction with art. 6 par. 2 lit. c) of the FIFA Disciplinary Code.
3. Mr. Wilmar Valdez shall pay a fine in the amount of CHF 10,000 within 30 days of notification of the present decision. Payment can be made either in Swiss francs (CHF) to account [...] or in US dollars (USD) to account [...], with reference to case no. "*Adj. ref. no. 27/2019 (Ethics E19-00007)*" in accordance with art. 7 let. e) of the FIFA Code of Ethics.
4. Mr. Wilmar Valdez shall pay costs of these proceedings in the amount of [...] within 30 days of notification of the present decision, which shall be paid according to the modalities stipulated under point 3. above.
5. Mr. Wilmar Valdez shall bear his own legal and other costs incurred in connection with the present proceedings.
6. This decision is sent to Mr. Wilmar Valdez. A copy of the decision is sent to the AUF, the CONMEBOL and to the chairperson of the investigatory chamber of the FIFA Ethics Committee, Ms. Maria Claudia Rojas.

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## LEGAL ACTION

In accordance with art. 82 par. 1 of the FCE and art. 58 par. 1 of the FIFA Statutes, this decision can be appealed against to the Court of Arbitration of Sport ("CAS") in Lausanne, Switzerland ([www.tas-cas.org](http://www.tas-cas.org)). The statement of appeal must be sent directly to CAS within 21 days of notification of this decision. Within another ten (10) days following the expiry of the time limit for filing the statement of appeal, the appellant shall file with CAS a brief stating the facts and legal arguments giving rise to the appeal (see art. R51 of the Code of Sports-related Arbitration).

FÉDÉRATION INTERNATIONALE  
DE FOOTBALL ASSOCIATION

A handwritten signature in black ink, appearing to read 'Fiti Sunia', written over a light blue grid background.

Fiti Sunia  
Deputy Chairman of the adjudicatory chamber  
FIFA Ethics Committee