Decision

of the

FIFA Appeal Committee

Mr Thomas Bodström [SWE], Chairman; Mr Alberto Simango [ANG], Member; Mr Salman Al Ansari [QAT], Member

Taken at the Home of FIFA in Zurich, Switzerland

on 7 February 2019

in the case of:

Mr Marco Polo Del Nero [BRA]

(Appeal 150468 BRA ZH)

regarding:

Appeal against the decision taken by the adjudicatory chamber of the FIFA Ethics Committee on 25 April 2018
I. Inferred from the file

1. Mr Marco Polo Del Nero (hereinafter: Mr Del Nero or the official), Brazilian national, has been the President of the Confederação Brasileira de Futebol (CBF), a member association of FIFA, since 16 April 2015. Before being elected President, from 29 June 2012 to 15 April 2015, he was a vice-president of CBF. Apart from that, he was a member of the FIFA Executive Committee and of several Standing Committees of FIFA such as, e.g., the FIFA Beach Soccer Committee or the Organising Committee for the FIFA World Cup™, from 27 March 2012 until his resignation on 24 November 2015. Finally, Mr Del Nero was also a member of the Executive Committee of the Confederação Sudamericana de Fútbol (CONMEBOL), a confederation recognised by FIFA in accordance with art. 22 par. 1 let. a of the FIFA Statutes, from 2012 to 2015.

2. On 27 May 2015, the United States Department of Justice (hereinafter: DOJ) issued a press release relating to the Indictment of the United States District Court, Eastern District of New York also dated 27 May 2015 (hereinafter: the Indictment). In the Indictment, the DOJ charged several international football executives with “racketeering, wire fraud and money laundering conspiracies, among other offenses, in connection with their participation in a twenty-four-year scheme to enrich themselves through the corruption of international soccer”. The Indictment was followed by arrests of various persons accused therein, executed by state authorities in Europe, South America and the United States of America.

3. Based on the information received, the then-Chairperson of the investigatory chamber determined that there was a prima facie case that Mr Del Nero had committed violations of the FIFA Code of Ethics, edition 2012 (hereinafter: FCE). He therefore decided, on 23 November 2015, to open formal investigation proceedings against Mr Del Nero, in accordance with art. 63 par. 1 and art. 64 par. 1 of the FCE. As a consequence, and in accordance with art. 63 par. 2 of the FCE, the investigatory chamber notified Mr Del Nero that same day of the fact that investigation proceedings, referenced 150468 […], had been opened against him relating to possible violations of art. 13, 14, 15, 18, 19, 20, 21 and 22 of the FCE. Mr Del Nero was also informed that the list of possible violations might be supplemented in case additional information should become available.

4. On 3 December 2015, the DOJ published another press release according to which on 25 November 2015, a Superseding Indictment of the United States District Court had followed the Indictment of 27 May 2015 (hereinafter: the Superseding Indictment). The Superseding Indictment charged Mr Del Nero of several criminal offences in relation to the bribery schemes described in the Indictment (racketeering conspiracy, wire fraud conspiracy and money laundering conspiracy).

5. On 13 March 2018, the investigatory chamber completed the investigation proceedings and submitted a Final Report, together with the investigation files, to the adjudicatory chamber, in accordance with art. 28 par. 5 and art. 67 of the FCE.
6. With regard to the procedural history before the investigatory chamber, reference is made to the relevant section in the final report.

7. On 14 March 2018, the Chairperson of the adjudicatory chamber informed Mr Del Nero that after having examined the Final Report and deeming it to be complete, he had decided to proceed with the adjudicatory proceedings in this case and asked for his position on the investigatory chamber’s Final Report (see art. 69 and art. 70 of the FCE) by no later than 29 March 2018. Moreover, Mr Del Nero was informed that he could request an oral hearing (art. 74 par. 2 of the FCE). Finally, the Chairperson informed Mr Del Nero of the composition of the adjudicatory chamber deciding the present case.

8. On 25 April 2018, a hearing before the adjudicatory chamber was held at the Home of FIFA in Zurich. Mr Del Nero did not attend the hearing but was represented by legal counsel. The chief of investigation and the legal representatives of Mr Del Nero made submissions on individual details of the case.

9. By decision of 25 April 2018 (Ethics 150468 BRA ZH), the adjudicatory chamber found Mr Del Nero guilty of infringements of art. 21 (Bribery and corruption), 20 (Offering and accepting gifts and other benefits), 19 (Conflicts of interest), 15 (Loyalty), and 13 (General rules of conduct) of the FCE. As a consequence, Mr Del Nero was banned from taking part in any kind of football-related activity at national and international level (administrative, sports or any other) for life as of notification of the decision, in accordance with art. 6 par. 1 let. h of the FCE in conjunction with art. 22 of the FIFA Disciplinary Code (hereinafter: “FDC”), and was ordered to pay a fine in the amount of CHF 1,000,000 as well as procedural costs in the amount of […] The motivated decision was sent to the appellant, via his legal representative, on 26 July 2018.

10. With regard to the procedural history before the adjudicatory chamber, reference is made to the relevant section in the decision passed by the adjudicatory chamber on 25 April 2018.

11. On 30 July 2018, i.e. within the time limit of three days of notification of the motivated decision (art. 120 par. 1 of the FDC), Mr Del Nero submitted his intention to appeal to the FIFA Appeal Committee (art. 80 par. 1 of the FCE and art. 119 par. 1 of the FDC).

12. On 7 August 2018, i.e. within the time limit of seven days after the first deadline of three days had expired (art. 120 par. 2 of the FDC), the appellant submitted his appeal brief, together with a total of 21 exhibits to the Appeal Committee. In his appeal brief, the appellant requested, among other subsidiarily requests, mainly to (i) uphold the appeal, annul the appealed decision, acquit Mr Del Nero and declare him innocent from all charges put forward in the Final Report, as manifestly unfounded; and (ii) cancel any sanction imposed against Mr Del Nero ab initio, including the provisional ban from taking part in any football-related activities imposed by the chairperson of the adjudicatory chamber. Subsidiarily, in the event the appeal was not upheld in the merits, the appellant requested that any sanction
imposed on Mr Del Nero be limited to a warning, a reprimand and/or a fine, pursuant to article 9 et seq. of the FCE.

13. On 17 August 2018, the secretariat to the FIFA Appeal Committee informed the Chairman of the adjudicatory chamber, Mr Vassilios Skouris, that they had received the appeal of the legal representative of Mr Del Nero in this case and asked him to provide the secretariat to the Appeal Committee with the adjudicatory file. The adjudicatory chamber complied with this request on 20 August 2018.

14. On 17 August 2018, the Chairman of the Appeal Committee acknowledged receipt of the appellant’s appeal brief dated 6 August 2018 as well as of the payment of the appeal fee, transferred on 30 July 2018. Furthermore, the appellant was invited to submit a list of persons that he intended to call to a potential hearing, together with a short explanation why the statements of such person would be of relevance for the present matter. Finally, in respect of the appellant request to be provided with all decisions rendered by the FIFA Ethics and Appeal Committee related to the application of art. 21 and 41/42 of the FCE and the status of any pending ethics proceedings in relation to several individuals, the Chairman of the Appeal Committee informed that proceedings before FIFA’s judicial bodies are confidential, and made reference to the various media releases issued by the FIFA Ethics and/or Appeal Committee, as well as any information published by Court of Arbitration for Sport (CAS) and/or Swiss Federal Tribunal.

15. On 22 August 2018, the appellant insisted in being provided with the relevant jurisprudence in order to allow to properly ascertain and assess the customs, precedents and principles applied by the FIFA Ethics Committee and the FIFA Appeal Committee in cases similar to the one being judged, in accordance with article 4 of the FCE.

16. On 13 September 2018, the appellant informed of the following witnesses that he intended to call in a potential hearing: [A] (Brazilian Senator), [B] (former employee of the Brazilian Senate) and [C] (former president of Clube de Regatas do Flamengo). In addition, the appellant requested to order the investigatory chamber to inform the names of the witnesses it intends to call and to provide a summary of their expected testimonies.

17. On 27 September 2018, the Chairman of the Appeal Committee informed the appellant, firstly, that he had decided to hold a hearing in the present case and that such hearing would take place on 7 December 2018. Secondly, the Chairman asked the appellant to confirm his attendance, as well as the attendance of the witness he would be planning to bring to the hearing, whether in person or by videoconference. Lastly, the Chairman informed that the letter was also sent to the chief of investigation in order to confirm her attendance and if she would call any witness.

18. On 1 October 2018, the chief of investigation confirmed her availability to attend the hearing and informed that no witness will be called by the investigatory chamber for such hearing.
19. On 4 October 2018, the appellant confirmed his availability to participate in the hearing, but due to his age requested to be heard via videoconference. As to the witnesses, the appellant requested that his witnesses be also heard by videoconference. Lastly, the appellant requested for an extension to provide with certain documents of the witnesses. On 8 October 2018, the Chairman of the Appeal Committee granted all requests (e.g. participation in video conference and extension of the deadline).

20. On 22 November 2018, the secretariat to the appeal committee, informed the appellant that the hearing of 7 December 2018 was postponed and that shortly a new hearing date would be communicated.

21. On 26 November 2018, the appellant raised a series of questions over the constitution of the FIFA Ethics Committee and its independence from the FIFA administration due mainly to the fact that one of the panel members of the adjudicatory chamber that took the decision in respect of the case was arrested by the Malaysian Anti-Corruption Commission. Following that reasoning, the appellant requested the FIFA Appeal Committee to (i) stay the proceedings and any pending deadlines in order to properly and timely analyse all issues put forward in the correspondence; and (ii) declare any and all decision rendered in the context of the present proceedings with the involvement of Mr Rajoo as null and void.

22. On 11 December 2018, the Chairman of the Appeal Committee informed that, after thoroughly considering the facts of the case, and bearing in mind that several witnesses were called, he decided to conduct the hearing in two separate days. Thus, the appellant was informed of the new hearing dates: 30 and 31 January 2019. Finally, as to arguments and requests brought forward by the appellant in his letter dated 26 November 2018, the Chairman informed that the same will be examined by the panel when rendering its decision and, as a result, the appellant request “to stay the present proceedings and any pending deadlines in order to properly and timely analyse all issues put forward” was dismissed.

23. On 17 December 2018, the appellant informed that due to other professional commitments previously assumed, he is not available on 30 and 31 January 2019 but proposed that the hearing take place on 7 and 8 February 2019. In addition, the appellant requested to be informed of the name of the members of the FIFA Appeal Committee in charge of the case.

24. On 19 December 2018, the appellant informed that [A] would no longer be called to appear at the hearing.

25. On 5 January 2019, the secretariat to the appeal committee, on behalf of the Chairman, informed that the hearing will take place on 7 February 2019. Later, on 22 January 2019, the Chairman of the Appeal Committee informed the appellant of the order of procedure of the hearing.

26. On 24 January 2019, the appellant reiterated his request to be provided with the name of the members of the FIFA Appeal Committee in charge of the case.
27. On 28 January 2019, the Chairman of the Appeal Committee informed the appellant of the composition of the Panel as follows: Mr Thomas Bodström, Chairman; Mr Salman Al Ansari, member; Mr Alberto Simango, member. In addition, the appellant was informed that the panel would be assisted by the Deputy Secretary to the FIFA Appeal Committee.

28. On 31 January 2019, the appellant informed that [C] was no longer available to participate in the hearing, but [B] confirmed his participation by videoconference. Furthermore, the appellant requested to be arranged for consecutive interpretation (instead of simultaneous interpretation) during [B]'s testimony.

29. On 4 February 2019, the Chairman of the Appeal Committee informed the appellant that he decided to proceed with simultaneous interpretation since the interpreters that FIFA arranged were used to “technical language and/or legal terms” in the context of ethics matters. On the same date, the appellant requested the secretariat to make headphones available in order allow to simultaneously follow all oral statements and witnesses in both languages. In addition, the appellant confirmed that Mr Marcos Motta and Mr Victor Eleuterio would attend the hearing in person in Zurich. Mr Del Nero himself would attend the entire hearing via videoconference along with with Mr Bichara Abidâo Neto in Rio de Janeiro. Finally, as to the hearing schedule, the appellant requested to be informed on how much time the appellant and the chief of investigation would be granted to present the case as well as for the closing statements and rebuttals.

30. On 6 February 2019, the Chairman of the Appeal Committee informed that the time allocated to Mr Del Nero himself and the chief of investigation was not limited to pre-defined slots. However, for organization purposes, the Chairman requested an estimation of the time needed for the closing statement as well as the final remarks of Mr Del Nero.

31. On 7 February 2019, a hearing before the FIFA Appeal Committee took place at the Home of FIFA in Zurich. The appellant was represented by Mr Marcos Motta and Mr Victor Eleuterio, who attended the hearing in situ, and by Mr Bichara Abidâo Neto, who attended the hearing by video-conference, together with the appellant, in Rio de Janeiro.

32. With regard to the facts of the present case, the Appeal Committee notes that the FIFA Ethics Committee has conducted an extensive investigation into Mr Del Nero’s conduct presently relevant. The Appeal Committee will individually address the results of the Ethics Committee’s proceedings, together with the submissions of the appellant in the present proceedings of the Appeal Committee, in the context of the legal and factual considerations to which they are relevant.
II. and considered

A. Admissibility of the appeal and scope of review exercised by the FIFA Appeal Committee

a) Admissibility of the appeal

33. Pursuant to art. 80 par. 1 of the FCE, a concerned party having a legally protected interest justifying amendment or cancellation of the decision may lodge an appeal to the Appeal Committee against any decision passed by the Ethics Committee, unless the sanction pronounced is a warning, a reprimand, a suspension for less than three matches or of up to two months, or a fine of less than CHF 7,500, and provided the FCE does not stipulate that the relevant decision may not be contested.

34. In the present case, the appellant was sanctioned, by way of the decision of the adjudicatory chamber of 25 April 2018, with a ban on taking part in any football-related activity for life and a fine of CHF 1,000,000. Therefore, an appeal against the relevant decision is admissible, in accordance with art. 80 par. 1 of the FCE.

35. Moreover, the appellant was a party to the proceedings no. Ethics 150468 BRA ZH before the Ethics Committee since he was an “accused” within the meaning of art. 38 of the FCE. The appellant is directly concerned by the sanctions imposed on him by way of the Ethics Committee’s decision and thus has a legally protected interest justifying amendment or cancellation of the relevant decision. Therefore, and in accordance with art. 80 par. 1 of the FCE, the appellant is entitled to appeal the Ethics Committee’s decision of 25 April 2018.

36. According to art. 120 and art. 122-123 of the FDC, appeals must, then, comply with specific time limits and meet certain formal requirements (i.e. as to their form and the deposit of the appeal fee). It has already been noted that this was the case with the appeal filed by the appellant.

37. All in all, the appeal lodged by the appellant against the decision of the adjudicatory chamber dated 25 April 2018, communicated with grounds on 26 July 2018, is admissible and shall be examined by the Appeal Committee.

b) Scope of review

38. Pursuant to art. 121 of the FDC (in conjunction with art. 80 par. 4 of the FCE), the appellant may object to inaccurate representation of the facts and/or wrong application of the law (scil. by the first instance). According to art. 124 par. 1 of the FDC, an appeal results in the case being reviewed by the Appeal Committee.

39. In this context, it should be noted, first, that primarily, the Appeal Committee reviews a case submitted to it in the light of the considerations and findings of the decision of the first instance. In this sense, the Appeal Committee focuses on the specific submissions by the appellant vis-à-vis the decision under appeal. It is under
no obligation, in turn, to subject a case to a full, separate and new examination. The Appeal Committee is, however, entitled to carry out such full, separate and new examination of the facts of a case in the light of the applicable legal provisions where it deems appropriate to do so. This can relate both to individual aspects of a particular case or to the case in its entirety. In this event, the Appeal Committee may go beyond simply reviewing the considerations and findings of the decision of the first instance and subject the relevant issues to a full re-examination.

40. In the present case, the appellant made a number of specific submissions in his appeal brief dated 6 August 2018 and in the hearing before the Appeal Committee of 7 February 2019. The Appeal Committee will mainly focus on these submissions and examine them as to their substance, to the extent they are legally relevant, below. A full, separate and new examination of the case by the Appeal Committee will only take place when this proves necessary with regard to specific issues.

B. Submissions by the appellant with regard to the decision of the FIFA Ethics Committee

a) Procedural issues

41. As a preliminary issue, the appellant raises a number of what he considers to be procedural issues in his appeal, in relation to both the investigatory and adjudicatory proceedings in the present matter.

42. Before entering into the relevant submissions, the Appeal Committee recalls that it decides the cases brought before it de novo. Therefore, any possible defects of the proceedings before the lower instances can be remedied in the context of appeal proceedings. Consequently, as a principle, any possible impairments of the appellant’s procedural rights by the Ethics Committee shall be considered cured by the present procedure.

1. Jurisdiction of the FIFA Ethics Committee

Submissions by the Appellant

43. The appellant’s first procedural submission is that the FIFA Ethics Committee lacks jurisdiction to hear and adjudicate this case. Mr Del Nero’s submission is that to the extent that acts have a purely national impact (i.e. within Brazil) or in the South American region only, the jurisdiction of CBF - or CONMEBOL, respectively - shall have precedence. The jurisdiction of the FIFA Ethics Committee for the present matter, in turn, should not be deemed as concurrent with the one of CBF or CONMEBOL, but rather supplementary. In addition, the appellant states that the fact that 1 (one) of the editions of Copa America investigated may involve teams from more than one Confederation (i.e. CONMEBOL and CONCACAF), does not grant automatic jurisdiction for the FIFA Ethics Committee, since the contract for which Mr Del Nero was accused of receiving bribes only involved the CONMEBOL region.
Assessment by the FIFA Appeal Committee

44. The Appeal Committee believes that the jurisdiction of the FIFA Ethics Committee comes clear from the FCE. Firstly, as stated in art. 27 par. 1 of the FCE, the Ethics Committee shall be entitled to handle all cases arising from the application of the Code or any other FIFA rules and regulations. In addition, the relevant conduct of the official, who was the President of CBF and a former member of the Executive Committees of CONMEBOL and FIFA, includes the sale of media and marketing rights for CONMEBOL and CBF competitions, more specifically the approval of the conclusion and extension of the respective contracts. Accordingly, Mr Del Nero was active in the context of football matters within the interpretation of the term “while performing their duties” given under art. 27 par. 2 of the FCE. Consequently, the Ethics Committee is entitled to judge his conduct in the present case according to art. 27 of the FCE.

45. Secondly, pursuant to art. 27 par. 4 of the FCE, the Ethics Committee shall be entitled to investigate and to judge the conduct of all persons bound by the FCE if the case on which the alleged violation is based has international implications. Art. 27 par. 4 of the FCE defines “international implications” as “affecting various associations”. The case at issue concerns Mr Del Nero’s involvement in dealings with media and marketing rights for CONMEBOL and CBF competitions, including one competition jointly held by CONMEBOL and CONCACAF (Copa América Centenario 2016). Conduct in these contexts affects, without any doubt, various associations apart from CBF. Moreover, Mr Del Nero was a member of the CONMEBOL and the FIFA Executive Committee at the time; thus, the case has international implications for this reason as well. Consequently, the present case has international implications pursuant to art. 27 par. 4 of the FCE.

46. As to the submission of Mr Del Nero in this respect, the Appeal Committee concurs with the reasoning stated in the appealed decision: Mr Del Nero used to be a member of the FIFA Executive Committee and of several other Standing Committees of FIFA, which gives the FIFA Ethics Committee competence to assess potential misconduct of the FIFA official. Finally, it appears also that no proceedings opened or pending against Mr Del Nero neither at CBF nor at CONMEBOL level (nor any other member association or confederation).

47. The Appeal Committee notes also that even according to the current FIFA Code of Ethics, 2018 edition and, in particular, its art. 30, the FIFA Ethics Committee still retains jurisdiction in the case of Mr Del Nero, which again shows a consistent approach in this respect, i.e., that the FIFA Ethics Committee shall have exclusive competence to investigate and judge the conduct of all officials elected, appointed or assigned by FIFA to exercise a function.

48. In view of the above considerations, the Appeal Committee determines that the above-mentioned general submission of the appellant in relation to the lack of jurisdiction of the FIFA Ethics Committee should be discarded. Thus, the FIFA Ethics Committee has jurisdiction to investigate and to adjudicate the present case.
2. **Language of the certain evidence**

*Submissions by the Appellant*

49. The appellant’s second procedural submission can be summarized as follows: Mr Del Nero argues that a significant number of enclosures attached to the Final Report were in Portuguese or in Spanish, i.e. not in the language of the proceedings, and not accompanied by a translation into English. Furthermore, none of the members of the FIFA Ethics Committee involved in this case has command of Portuguese and Spanish, which would prevent them from assessing the evidence of the case, accuse the appellant of any wrongdoings and judge and sanction the latter.

*Assessment by the FIFA Appeal Committee*

50. The procedural issue raised by the appellant is that part of the evidence is in Portuguese or Spanish. It must be said that this has not prevented the Appeal Committee to analyse the case as a whole since the majority of the evidence submitted was in English. Furthermore, the Appeal Committee notes the reference to the most relevant documents in the final report that are in Portuguese are duly translated into English. On the other hand, the appellant failed to show what documents that were in Portuguese or Spanish that the Adjudicatory Chamber relied upon to take the appealed decision, which could lead to a violation of Mr Del Nero’s right to be heard.

51. Indeed, Mr Del Nero does not contest that those translations in English (that were for example taken from the transcript in the US proceedings) are not accurate. In addition, it shall be mentioned that Mr Del Nero is a native speaker in Portuguese and it seems that also understands Spanish bearing mind the fact that the appellant was a member of the CONMEBOL Executive Committee, signed minutes of said Committee in Spanish, receipt of payments from CONMEBOL in Spanish and even issued his resignation letter in Spanish.

52. In addition, the FCE contains no obligation to collect evidence in a certain language, or to exclude evidence in certain languages. The rules of the FCE and the FIFA Disciplinary Code on the language of the proceedings (art. 43 of the FCE, art. 101 of the FIFA Disciplinary Code), on the other hand, do not restrict this principle in any way as they solely relate to the language of the proceedings themselves (i.e. for communications with the parties, decisions, hearings, etc.) and not of the evidence collected in them. These considerations apply *mutatis mutandis* to evidence available in the language of the proceedings (i.e. in translation) only and not in the original language.

53. In view of the above considerations, the Appeal Committee determines that the above-mentioned general submission of the appellant in relation to the language of the proceedings should be discarded.
3. Evidence

Submissions by the Appellant

54. The appellant’s third procedural submission relates to the admissibility and evidentiary value of certain evidence. In summary, Mr Del Nero states some evidence was (i) illegally obtained (i.e. [C]’s handwritten and typed notes) or (ii) not tested by him because he had no opportunity to cross-examine the witnesses and experts in a hearing, in violation of his right to be heard.

Assessment by the FIFA Appeal Committee

55. The inadmissibility of evidence is established in article 49 of the FCE. The same states that proof that violates human dignity or obviously does not serve to establish relevant facts shall be rejected. Consequently, the alleged illegality of certain evidence must be assessed in the light of these provisions.

56. The arguments raised by the appellant on the inadmissibility of evidence are not related to a violation of human dignity. The Appeal Committee also notes, as rightly stated in the appealed decision, that CAS has held that interviews secretly recorded by third parties constitute admissible evidence in disciplinary proceedings conducted within a private association (CAS 2011/A/2433, par. 37; CAS 2011/A/2425, par. 82; CAS 2011/A/2426, par. 78). The same applies to interviews openly conducted by state courts and to documents retrieved through a raid by public authorities.

57. Even if those rules of evidence indicated by the appellant would be applicable to the ethics proceedings as wrongly stated by Mr Del Nero, the Appeal Committee notes that [C]’s handwritten and typed notes were indeed admitted within the US proceedings as stated in Enclosures 139, pages 2616-2617 and 101, page 2655-2656 as follows:

Enclosure 139

“However, I do find stronger his explanation about how the search was conducted and then how the documents were in theory preserved and transmitted to the U.S. to be more standard kind of chain-of-custody evidence. That is probably going to be enough”.

(…)

Enclosure 101

“THE COURT: That, I disagree with as well. So, for the reasons set forth in the Government’s letter that I have just articulated, I think there is enough of a basis in the evidence I have seen and the Government will introduce through the recorded conversation to establish the authenticity of the records, namely that they are what the Government claims they are; notes made by Mr. [C] in connection with this alleged conspiracy to pay bribes and that were then stored in his safe or in his office and
were discovered at the time of the search by the Brazilian authorities. I am going to allow in those other exhibits, 305 through 309."

58. As to the fact that Mr Del Nero was not able to cross-examine witnesses, the Appeal Committee fully agrees with the reasoning of the adjudicatory chamber in paragraph 108 of the appealed decision. In fact, the CAS has ruled that even in arbitration proceedings, the statements of persons who were not available for examination should not be rejected in their entirety but that this circumstance should be taken into account when weighing the evidentiary value of such statements (CAS 2011/A/2625, par. 135). This is not a matter of admissibility of evidence, but rather evaluation of evidence. In this respect, art. 50 of the FCE provides an answer to the same: the Ethics Committee shall have absolute discretion regarding proof. This means that the deciding body is free in its evaluation of the evidence.

59. The Appeal Committee is of the opinion that it is appropriate to accept all the witnesses’ testimonies and assess together with all the remaining evidence taking into account: (i) the nature of the conduct in question and the seriousness of the allegations that have been made; (ii) the ethical need to expose and sanction any wrongdoing; (iii) the general consensus among sporting and governmental institutions that corrupt practices are a growing concern in all major sports and that they strike at the heart of sport’s credibility and must thus be fought with the utmost earnestness; and (iv) the limited investigative powers of sports governing bodies in comparison to public authorities.

60. The allegations that the CONMEBOL Executive Committee minutes may have been somehow manipulated or modified shall also be dismissed. Mr Del Nero failed to provide any solid explanation that the same were modified. These are official documents that were provided by CONMEBOL and the Appeal Committee finds no reason not to believe that the same are true and accurate. In addition, no supporting evidence was provided by Mr Del Nero as to the “common practice” of signature in Brazil/South America.

61. In view of the above considerations, the Appeal Committee determines that the above-mentioned general submission of the appellant should be discarded.

4. **Secretariat to the Investigatory Chamber**

   **Submissions by the Appellant**

62. The appellant’s fourth procedural submission concerns the secretariat to the investigatory chamber that acted beyond its powers under the FCE and as a result, the Enclosures 88 and 30 shall be disregarded and excluded from the case file.

   **Assessment by the FIFA Appeal Committee**

63. The Appeal Committee is of the opinion that the members of the secretariat respected the competences foreseen in art. 33 and art. 66 par. 1 of the FCE and precisely performed the tasks assigned to them pursuant to those provisions (assist the
chief of investigation and provide support to the investigatory chamber for the completion of their tasks). As rightly stated in the appealed decision, pursuant to art. 33 and art. 66 par. 1 of the FCE, the secretariat to the Investigatory Chamber they did not take any decision; rather, any decision in the context of the investigation proceedings was taken by the chief of investigation or the Chairperson of the chamber.

64. In addition, in his interview Mr Del Nero objected to neither the secretaries’ participation nor their asking questions. Neither did he, within a reasonable time after the interview, raise the issue with the chief of investigation. These concerns are amplified by the fact that at the beginning of the interview, the chief of investigation introduced the members of the secretariat present with her to Mr Del Nero and his counsels and informed them that they would be assisting her during the interview. Finally, as to the interview to Mr Silveira, the chief of investigation expressly authorised two members of the secretariat to conduct the interview on her behalf.

65. In view of the above considerations, the Appeal Committee determines that the above-mentioned general submission of the appellant should be discarded.

5. Constitution of the FIFA Ethics Committee

Submissions by the Appellant

66. The appellant’s fifth and last procedural submission was made on 26 November 2018. The appellant raised a series of questions over the constitution of the FIFA Ethics Committee and its independence from the FIFA administration due mainly to the fact that one of the panel members of the adjudicatory chamber that took the decision in respect of the case was arrested by the Malaysian Anti-Corruption Commission.

Assessment by the FIFA Appeal Committee

67. The Appeal Committee firstly notes that all the allegations raised by the appellant are based on media without any supporting evidence whatsoever. In addition, the allegations against one of the members of the Panel which rendered the appealed decision doesn’t seem to be related to the case of the appellant. The regular constitution of the FIFA Ethics Committee is governed by the rules of association law and not the Swiss Private International Law as alleged by the appellant. In this respect, the recusal of any member of the Ethics Committee is ruled by art. 35 of the FCE. As per said article, none of those conditions seemed to apply in the current case.

68. Insofar as the appellant argues that its right to be heard was not respected in the proceedings before the Adjudicatory Chamber due to the composition of the relevant Panel, this argument must be dismissed as the appellant failed to substantiate its argument, and even failed to attempt to explain why this lead to a violation of his right to be heard. Moreover, the Appeal Committee notes that, before the first instance, the appellant presented his 80 pages position, presented
evidence, a hearing was held in this respect and a reasoned decision was issued by the relevant judicial body.

69. In any event, such alleged violation of the appellant’s right to be heard can be cured by the de novo competence of the Appeal Committee.

70. In view of the above considerations, the Appeal Committee determines that the above-mentioned general submission of the appellant should be discarded.

b) **Merits**

1. **Preliminary remarks**

71. Before entering into the merits of the case, the Appeal Committee wishes to address two matters raised by the appellant: the applicability of the European Convention on Human Rights (“ECHR”) and the standard of proof of an ethics proceedings.

72. In respect of the first matter, the Appeal Committee fully agrees with the reasoning presented by the Adjudicatory Chamber in its decision. FIFA is a private and autonomous sports governing body incorporated as an association under Swiss law (art. 60 et seqq. of the Swiss Civil Code). According to the relevant case law of the SFT and of CAS, the ECHR does not apply to proceedings in the context of private entities, i.e. to internal disciplinary proceedings of such associations (SFT 4P.64/2001 of 11 June 2001, consid. 2d/dd; SFT 4P.105/2006 of 4 August 2006, consid. 7.3; SFT 4A_448 of 27 March 2014, consid. 3.3; CAS 2011/A/2425, par. 69; CAS 2011/A/2426, par. 65; CAS 2011/A/2625, par. 45). Rather, such proceedings are governed by private law. The proceedings are governed by the FCE and the FIFA Statutes.

73. As to the standard of proof, the appellant submits that personal conviction shall be exceptionally increased in this case to coincide not with a mere comfortable satisfaction, but with the standard of proof beyond reasonable doubt (CAS 2011/A/2362).

74. Firstly, the Appeal Committee notes that the CAS jurisprudence alluded by the appellant is related to cricket and its own regulations. The rules on standard of proof established in the FCE are quite clear and also the CAS jurisprudence in relation to ethics proceedings. The Ethics Committee shall judge and decide on the basis of their comfortable satisfaction. This standard has been confirmed in other cases by the CAS (recently, CAS 2017/A/5086, par. 136, CAS 2011/A/2426, at par. 88, and CAS 2016/A/4501, at para. 122).

75. The CAS has sustained that in integrity related cases, the evidence shall be assessed bearing in mind that “corruption is, by nature, concealed as the parties involved will seek to use evasive means to ensure that they leave no trail of their wrongdoing” (CAS 2010/A/2172 O. v. UEFA, par. 54). In this context, the weighing up of the evidence plays a major role when deciding on a comfortable satisfaction.
standard. Summarily, it is not solely that it is more probable that a fact occurred in a given manner, but the evidence shall internally satisfy the decisional body in the same sense, even accepting that a different and less convincing explanation may also be at stake.

76. Important elements to reach this conclusion are all the relevant circumstances of the case assessed individually and/or combined, what is commonly known as the context (CAS 2013/A/3324 and 3369). As part of this context and for cases dealing with bribery and corruption, special attention shall be given to the paramount importance of fighting corruption of any kind in sport and also to the nature and restricted powers of the investigation authorities of the governing bodies of sport as compared to national formal interrogation authorities (CAS 2009/A/1920).

77. In addition, as mentioned above, it is undeniable that corruption is, by nature, concealed as the parties involved will seek to use evasive means to ensure that they leave no trail of their wrongdoing (CAS 2010/A/2172). Consequently, direct evidence in relation to bribery and corruption activities will be rather the exception and indirect evidence the standard situation.

78. The consideration that single items of circumstantial evidence may each be capable of an innocent explanation but, taken together, they establish guilt in a comfortable satisfaction standard, is entirely appropriate also for cases dealing with bribery and corruption activities, where, as explained above, collusive means are used, where the sporting bodies have restrictive investigative powers and where direct evidence is rare.

79. On a similar note, CAS panels have confirmed that the “personal conviction” standard does not oblige hearing bodies to “establish the objective truth” (CAS 2014/A/3537 Vernon Manilal Fernando v. FIFA, award of 30 March 2015, para. 80 ff). Consequently, the Appeal Committee shall solely decide whether it is comfortably satisfied that the Appellant breached art. 21 of the FCE without the necessity to “establish the objective truth”, particularly through direct evidence.

80. In view of the above, the standard of proof in the present matter shall be comfortable satisfaction, bearing in mind the seriousness of the offence committed and after evaluating all of the evidence cumulatively.

2. Brief summary of the relevant facts

81. With regard to the facts of the present case – which are, if not indicated otherwise below, beyond dispute as far as relevant to the merits of the case –, reference is made to the pertinent findings in the appealed decision and in the Final Report.

82. In the decision presently under appeal, three charges against the appellant were assessed by the adjudicatory chamber, in relation to: 1) CONMEBOL Copa Libertadores; 2) CONMEBOL/CONCACAF Copa América; and 3) CBF Copa do Brasil. The
adjudicatory chamber found the appellant guilty, in connection to said charges, of having violated art. 13 (General rules of conduct), 15 (Loyalty), 19 (conflicts of interest), art. 20 (Offering and accepting gifts and other benefits) and 21 (Bribery and corruption) of the FCE.

CONMEBOL Copa Libertadores

83. From March 2012 to April 2015, Mr José María Marin was the CBF President. Mr Del Nero, in turn, was a vice-president of CBF. He and Mr Marin were running CBF and took the relevant decisions relating to CBF together. In addition, both Mr Marin and Mr Del Nero were members – or meeting participants, respectively – of the Executive Committee of CONMEBOL at the time and used to travel to CONMEBOL and FIFA Executive Committee meetings together.

84. From around 1999 to 2015, the broadcasting company […] (hereinafter: [Company 1]), a subsidiary of a production company named […] (hereinafter: [Company 2]), held – by virtue of several contracts with CONMEBOL – the exclusive worldwide broadcasting rights for the Copa Libertadores, the Copa Sudamericana and the Recopa Sudamericana editions between 2000 and 2020. In or about 2005, [D] had acquired an ownership share in [Company 2] and since then managed the day-to-day operations of the company as its CEO.

85. In April 2012, [D] met with Mr Julio Grondona (at the time the President of the Asociación del Fútbol Argentino), Mr Ricardo Teixeira (CBF President until March 2012), Mr Marin and Mr Del Nero in Buenos Aires. In that meeting, [D] agreed to pay USD 600,000 to Mr Del Nero and Mr Marin in return for their support of the [Company 1]/CONMEBOL contracts for 2012 and the following years.

86. In June 2012, [D] met with Mr Marin and Mr Del Nero in Buenos Aires. In that meeting, Mr Del Nero indicated to [D] that they were going to issue or deliver […] ([E], a long-time employee of [Company 2] responsible for transfer payments) instructions in order to start paying the bribes to them.

87. On 24 October 2012, the CONMEBOL Executive Committee met in Buenos Aires. Mr Del Nero participated in that meeting in his capacity as an Executive Committee member. [D] was also present in this meeting on behalf of [Company 1] and explained to the Executive Committee members his proposal to extend the rights his company had been holding in relation to the Copa Libertadores until 2022. Subsequently, the Executive Committee approved the contract with [Company 1] and extended [Company 1]’s rights for the Copa Libertadores until 2022. Mr Del Nero signed the minutes of this meeting.

88. In December 2012, [D] met with Mr Grondona, Mr Marin and Mr Del Nero in the CONMEBOL offices in Asunción. In that meeting, [D] agreed that the amount of [Company 1]’s annual payments to Mr Del Nero and Mr Marin of USD 600,000 would be increased to USD 900,000 as from the year 2013 on.

89. On 20 December 2012, the CONMEBOL Executive Committee held a meeting in Asunción. At that meeting, the Executive Committee ratified the contract with
[Company 1] for the rights for the Copa Libertadores until 2022 it had approved in the 24 October 2012 meeting. Also in this meeting, Mr Del Nero was present and signed the relevant minutes.

90. In a meeting in London that took place between 23 and 27 May 2013 between [D], Mr Del Nero and Mr Marin, the latter complained that the payment for the year 2013 of USD 900,000 had not yet been effectuated, despite being due by the end of May 2013 (see also the email from [D] to [E] of 29 May 2013: “there’s annoyance already because of the delay”).

91. On 6 June 2013, i.e. shortly after the meeting in London, [E] sent an email to himself from his [Company 2] email account stating: “Call Marco Polo about the transfer”. According to [E]’ witness statement, said email referred to Mr Del Nero and was sent in order to keep track of the bribe payments, inter alia to Mr Del Nero. The payment ledgers of [E] contain an entry dated 7 June 2013 titled “Payment Copa Libertadores to Brazilian” in the amount of USD 900,000. In addition, [E] created a payment sheet, which he described as “a reminder of payments”. This payment sheet contains, in particular, a payment of USD 900,000 to be made to “Brasileiro (MP)” (entry of 7 June 2013). In his witness statement before the US court, [E] confirmed that this expression stood for Mr Del Nero.

92. In October 2014, a meeting between [D], Mr Del Nero and Mr Juan Ángel Napout (at the time President of CONMEBOL) took place in Asunción. On this occasion, Mr Del Nero suggested to [D] that Mr Napout receive a “Presidential treatment”, i.e. an increase of the payment (compared to his predecessor Mr Nicolas Léoz) to USD 1.8 million per year. Furthermore, Mr Del Nero requested from [D] – since Mr Marin was about to finish his mandate as the CBF President (in April 2015) – an increase of his own share of the payments to USD 1.2 million.

93. Based on these discussions, agreements and meetings, the following payments were made:

94. For the year 2012, [Company 1] paid USD 600,000 to Mr Del Nero and Mr Marin, through CONMEBOL funds diverted to […] (hereinafter: [Company 2]). [Company 2] is the owner of the company [Company 2]. The payment was effectuated by [E], following a corresponding instruction from [D].

95. For the year 2013, [Company 1] paid USD 900,000 to Mr Del Nero and Mr Marin. This payment was executed as follows: On 7 June 2013, through [Bank 1], [Company 2] wired USD 900,000 to the company [Company 3]. The owner of [Company 3] is [F]. [F] is a major shareholder of [Company 4], which provides different services to CBF, e.g. in relation to the transportation of football teams that participate in the Brazilian football championship. It consists of a network of around thirty companies, including […] (hereinafter: [Company 5]). [F] is a close friend of Mr Del Nero and was involved in several affairs of CBF. Moreover, Mr Del Nero has been an important business partner for [F] on various occasions.
96. For the year 2014, [Company 1] paid USD 900,000 to Mr Del Nero and Mr Marin. This payment was executed as follows: [G] is the owner of a company named [Company 6]. On 28 May 2014, [Company 6] transferred USD 900,000 to [Company 3]. [E]’s ledger contains an entry of 28 May 2014 with the same amount to “Brazilian” for the Copa Libertadores.

97. In conclusion, for the schemes in relation to the Copa Libertadores, Mr Del Nero received, together with Mr. Marin, USD 2.4 million between the years 2012 and 2014. Mr Del Nero further agreed to receive additional yearly payments for the subsequent editions of said tournament.

CONMEBOL/CONCACAF Copa América

98. Since the late 1980s, a company named […] (hereinafter: [Company 7]) held the exclusive commercial rights for each edition of the Copa América. These rights were assigned to [Company 7] via contracts between [Company 7] and CONMEBOL. In particular, in 2001, CONMEBOL assigned the broadcasting rights for the 2015 edition of the Copa América to [Company 7]. The owner of [Company 7] is [H].

99. In or around June 2010, a company named […] (hereinafter: [Company 8]) – owned and controlled by [I] and [J] – entered into an agreement with CONMEBOL. According to this agreement, [Company 8] became the exclusive agent to commercialise the media and marketing rights for the 2015, 2019 and 2023 editions of the Copa América. When [Company 7] became aware of this agreement, they filed a lawsuit against CONMEBOL, CONMEBOL officials and [Company 8] in the United States.

100. In order to settle this legal dispute, [Company 7], [Company 8] and [Company 2] agreed to acquire the commercial rights for the Copa América jointly. To that end, they created the company […] (hereinafter: [Company 9]) to formally engage with CONMEBOL. [Company 9] was established on 21 May 2013; [Company 7], [Company 8] and [Company 2] each held a one-third interest in the company.

101. Before that, in or around March 2013, [D] ([Company 2]), [I] and [J] ([Company 8]) and [H] ([Company 7]) met in Buenos Aires. At that meeting, [H] was informed by the other meeting participants that [Company 8] and [Company 2] had agreed to make regular bribe payments to CONMEBOL officials in connection with the Copa América rights. Consequently, [Company 7] was asked to contribute USD 10 million towards the costs (which included the bribes) which had incurred to that date, to which [H] agreed. [Company 7] paid the relevant sum as follows: On 17 June 2013, [Company 7] transferred USD 5 million to a company called […], an affiliate of [Company 8]. Also on 17 June 2013, [Company 7] wired USD 5 million to a company named [Company 10], an affiliate of [Company 2]. The respective payments were made under the guise of fictitious “advisory agreements” between these companies.

102. On 25 May 2013 in London, CONMEBOL and [Company 9] concluded a contract regarding the media and marketing rights for the 2015, 2016 (Centenario), 2019 and 2023 editions of the Copa América. Mr Del Nero, together with Mr. Marin, was
present in the meeting where the contract was signed. The purpose of this agreement was to settle the legal dispute between [Company 7] and CONMEBOL regarding these rights (see Enclosure 108 to Final Report, p. 2: item 8 of the agenda of the 24 October 2012 meeting).

103. On 29 May 2013, the CONMEBOL Executive Committee held a meeting in Mauritius. Mr Del Nero participated in that meeting in his capacity as Executive Committee member. In that meeting, the Executive Committee approved the contract between CONMEBOL and [Company 9] regarding the rights for the Copa América concluded on 25 May 2013. According to agenda item 10 of the meeting, the Executive Committee was to approve the contracts for the 2015, 2019 and 2023 editions of the Copa América and for the Copa América Centenario 2016 (see Enclosure 111 to Final Report, p. 3: item 10 of the agenda of the 29 May 2013 meeting). By way of this approval, [Company 9] obtained the exclusive rights for these four editions of the competition.


106. Based on these agreements, the following payment was made:

107. Mr Del Nero and Mr Marin received a payment of USD 3 million for the signing of the Copa América contract with [Company 9], which they shared equally (USD 1.5 million each). This payment was effectuated as follows: On 18 June 2013, via [Bank 1], [Company 7] transferred USD 5 million to [Company 10]. Subsequently, on 5 July 2013, [Company 10] wired USD 3 million to [Company 3], [F]’s company. This is in line with the ledger of [E], according to which on 5 July 2013, [Company 10] transferred USD 3 million, through [Bank 1], labelled “Paid Copa America Brazilian”, which stood, as per [E]’ testimony, for Mr Del Nero and Mr Marin. Moreover, [E]’ payment sheet listed a payment of USD 3 million as well as the remark “Pagar a Brasileiro MP” (“Pay to Brazilian MP”), which [E] confirmed to stand for Mr Del Nero. The same document contains a payment of USD 3 million together with the note: “Pagar a Brasileros”. [E] confirmed that by “Brasileros” (“Brazilians”), he meant Mr Marin and Mr Del Nero. This figure was confirmed by [D] in a (recorded) conversation with [H] of 1 May 2014 in Miami (“we give three to Brazil, three to Argentina, three to the President [of CONMEBOL]”). Later in this conversation, the same amount was mentioned in Brazilian Reais (BRL 40 million). On 12 July, 27 August
and 15 October 2013, [Company 11], also owned by [F], made three payments of USD 500,000 each (totalling USD 1.5 million) to […] (hereinafter: [Company 12]) in Andorra, which is owned by Mr Marin. On 8 November 2013, [Company 3] transferred USD 5 million to [Company 11].

108. In conclusion, for the editions of the Copa América 2015, 2016 (Centenario), 2019 and 2023, Mr Del Nero, together with Mr Marin, agreed to receive payments of USD 3 million per edition. This, in addition to the USD 3 million that Mr Del Nero and Mr Marin jointly agreed to receive, and did receive, for the signing of the [Company 9] agreement.

**CBF Copa do Brasil**

109. From around 1990 to 2014, CBF had assigned the commercial rights in relation to the CBF Copa do Brasil to [H]’s company [Company 7]. On 8 December 2011, however, a competitor of [Company 7] named […] (hereinafter: [Company 13]), owned by [C], concluded a contract with CBF to purchase the commercial rights for the editions of the CBF Copa do Brasil from 2015 to 2022. [C] is, like [F], a close personal friend of Mr Del Nero.

110. The contract between CBF and [Company 13] led to a dispute between [C] and [H]. In order to settle this dispute, [Company 7] and [Company 13] entered, in August 2012, into an agreement to pool their marketing rights for future editions of the Copa do Brasil (i.e. from 2013 to 2022) and to share the profits equally. In this context, around one month later, [C] informed [H] of the bribe payments he used to pay to Mr Teixeira (i.e. BRL 1.5 million). Then, when Mr Del Nero and Mr Marin took over Mr Teixeira’s roles and positions within Brasilian and South American football, the bribe payments needed to be shared among them. Therefore, in 2012, for the Copa do Brasil edition 2013, the payment of BRL 1.5 million was shared equally among the three (i.e. BRL 500,000 each). The same BRL 1.5 million payment was made in 2013 for the 2014 edition of the Copa do Brasil. This amount was then later increased to total yearly amount of BRL 2 million as Mr Marin and Mr Del Nero had taken over Mr Teixeira’s roles and positions. Since the bribe payments had to be shared among three persons, the overall amount was increased as well. Consequently, [H] agreed to participate in these payments of BRL 2 million per year (at that time approx. USD 1 million), starting in 2014 for the 2015 edition. This amount was distributed between Mr Teixeira (BRL 1 million), Mr Marin and Mr Del Nero (the other BRL 1 million).

111. In this sense, on 24 March 2014, after having discussed the payments over the phone with [C], [H] (who referred to the payments as “payoff”) called [K], financial director of [Company 7]. This conversation related to a BRL 2 million payment from [Company 7] and [Company 13] (BRL 1 million each) to Mr Teixeira, Mr Marin and Mr Del Nero. In a (recorded) phone conversation between [C] and [H] of 2 April 2014, they discussed about the payments in connection with the Copa do Brasil contract being BRL 1.5 million or BRL 2 million, and that [C] would give BRL 1 million to Mr Marin who would then share it with Mr Del Nero.

112. On 1 April 2014, [L] (an employee of [Company 13]) sent an email to [K] titled “relevant – payments Copa do Brasil”, attaching the receipts for the payment of the BRL 2 million. More particularly, the following three payments had been made: BRL 200,000 in cash; USD 500,000 (approx. BRL 1 million) from [Company 13] to [Company 14] (hereinafter: [Company 14]), a luxury yacht manufacturer, and BRL 800,000 from [Company 13] to [Company 5], belonging to [F], or his group, respectively.

113. The above agreements and payments are confirmed by the handwritten note of [C] retrieved from his safe in Rio de Janeiro. The note mentions, under the headings “MPM” and “Copa do Brasil”, the amount of BRL 1 million. Another handwritten note of [C] indicates, again under the heading “MPM: “8) Copa do Brasil [...] Period: 2013-2022 MPM: R$1M per year. Estimated total amount: R$9M/approximately us$4,5M” [Final Report, encl. 138].

114. In conclusion, for the editions of the Copa do Brasil from 2013 to 2022, Mr Del Nero, together with Mr Marin and Mr Teixeira, agreed to receive payments of BRL 19 million (approx. USD 9.5 million). Out of this overall amount, Mr Del Nero did receive, for the 2013, 2014 & 2015 editions of the Copa do Brasil, an amount of at least BRL 5 million (approx. USD 2.5 million), which was shared with Mr Teixeira and Mr Marin, out of which Mr Del Nero received personally BRL 500,000 for each of the three aforementioned editions.

3. Summary of the position of the appellant

115. In his appeal brief dated 6 August 2018 and his closing statement in the appeal hearing of 7 February 2019, the appellant submitted a number of arguments against the adjudicatory chamber’s finding according to which Mr Del Nero has not breached art. 21 of the FCE. The Appeal Committee also notes that most of those arguments raised in the appeal proceedings are almost identical as the ones presented within the adjudicatory proceedings. His principal arguments are the following:

Introductory remarks

116. Firstly, Mr Del Nero submits that as a CBF vice-president at the relevant time (2012-2015), he had no powers to sign any type of agreement on behalf of CBF or reach any type of financial compromise with third parties. Only the President of CBF had the power to sign agreements of any nature. Therefore, any alleged supposition that Mr Del Nero contracted, agreed (verbally or in writing), or signed any type of document on behalf of CBF before he took office in April 2015 shall be considered crassly erroneous. In regard to his participation at the CONMEBOL Executive Committee, Mr Del Nero would not have had any powers to sign or negotiate deals on behalf of the Confederation. The mere fact that Mr Del Nero may have responded to one single email cannot be misinterpreted as if meaning that he has somehow bypassing Mr Marin’s orders.

117. Concerning his relationship with [F], Mr Del Nero maintains that they had a friendly relationship, but this could not be used to maliciously construe that Mr Del Nero
ever requested or received any illicit payment to/from [F]. The same would apply to his relationship with [C], to whom Mr Del Nero would only have an “institutional and respectful relationship”.

CONMEBOL Copa Libertadores

118. Mr Del Nero denies having solicited or received any payments, kickbacks or bribes from [Company 2], [Company 1], [D] or anyone in connection with deals related to the CONMEBOL Copa Libertadores. Moreover, there would be no evidence that would demonstrate that he would have received any money into his bank accounts.

119. More specifically, Mr Del Nero submits that his name is not mentioned or contained in the agreement signed on 20 December 2012 between CONMEBOL and [Company 1] for the rights for the Copa Libertadores. He did not participate in the negotiation of any agreements and did not sign any of them. Moreover, Mr Marin could easily have negotiated outside payments directly with [Company 2] on behalf of third parties—including Mr Del Nero—without their knowledge.

120. Furthermore, Mr Del Nero asserts that he was not in Buenos Aires in April or June 2012 and could therefore not have participated in any meetings with [D], [D], in turn, would not have been in Paraguay in October 2014.

CONMEBOL/CONCACAF Copa América

121. Mr Del Nero denies that any money has ever been paid to him as a result of the agreement between [Company 9] and CONMEBOL of 25 May 2013 for the rights for the Copa América, or that he has requested any payments in this regard. There would be no evidence at all that any money had ever been paid to him as a result of this agreement.

122. Further according to Mr Del Nero, the official who signed the above-mentioned agreement on behalf of CBF was only and exclusively Mr Marin. Mr Del Nero did not sign this agreement, his name was not mentioned in it and he was neither a CONMEBOL official at that time. He would also not have been present in the date of signature and neither agreed to the terms, conditions, or to potential verbal or side-agreements eventually reached.

Copa do Brasil

123. Mr Del Nero denies having requested payments, bribes or kickbacks from [H] and having accepted or received any money, benefits or bribes in connection with the contract between CBF and [Company 13] dated 8 December 2011 for Copa do Brasil.

124. More specifically, Mr Del Nero argues that he did not meet with [H] or Mr Marin in the USA in or about April 2014. Therefore, the alleged agreement reached between [H] and Mr Marin for supposed bribes did not include Mr Del Nero’s participation, consent or knowledge.
125. In addition, Mr Del Nero asserts that [C] and/or [H] were not seeking a business or improper advantage, as they had no reason to fear the possibility that Mr Marin and Mr Del Nero, as newcomers, would attempt to challenge, cancel and/or renegotiate the contract signed in December 2011 with [Company 13].

126. In terms of the underlying evidence, Mr Del Nero submits that the wiretaps and recordings produced appear to be incomplete, and that the wiretap of the supposed phone conversation between [H] and [C] on 28 March 2014 was missing. The conversations of 24 March 2014 between [H] and [C] on the one hand and between [H] and [K] on the other, as well as of 2 April 2014 between [H] and [C], could not serve as a basis for any findings related to payments to Mr Del Nero. [C] could also have lied to [H] to further enrich himself, or Mr Marin could have claimed to “represent” Mr Del Nero in order to increase his bargaining powers.

127. Lastly, Mr Del Nero submits that he was not in the meeting of 30 April 2014 between Mr Marin and [H], and that it made no sense that only Mr Marin was there if the relevant bribes should benefit both officials.

4. Assessment by the FIFA Appeal Committee

128. In the present case, the Appeal Committee is tasked with assessing whether Mr Del Nero’s conduct as outlined above violated art. 21 of the FCE on bribery and corruption in relation to all above mentioned schemes. As to the remaining violations committed by the appellant (art. 13, 15, 19 and 20 of the FCE), the Appeal Committee agrees with the findings with the adjudicatory chamber that those violations are materially absorbed by the breach of art. 21 of the FCE.

129. For a violation of the prohibition of bribery and corruption pursuant to art. 21 of the FCE to occur, the following four requirements must be cumulatively met for all above mentioned schemes:

(i) Persons bound by the FCE;

(ii) Offering, promising, giving or accepting an advantage;

(iii) A personal or undue pecuniary or other advantage; and

(iv) Ratio of equivalence.

130. As to the first requirement, the appellant agrees that the same is fulfilled.

131. Thus, the analysis of the remaining requirements has to be performed by the Appeal Committee in relation to the three above mentioned schemes in respect of the findings made by the Adjudicatory Chamber.

Second requirement

132. Starting with the second requirement, the Appeal Committee notes that the acceptance of an advantage (and not actually receiving it) suffices in order to this requirement be met. As rightly stated by CAS “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, par. 85). From a legal perspective, it is therefore not decisive if advantages were actually given (e.g. payments actually made).

133. With this mind, the Appeal Committee could reach the following conclusions in relation to each scheme as to the second requirement:

**CONMEBOL Copa Libertadores**

134. The Appeal Committee agrees with the findings of the Adjudicatory Chamber that indeed, Mr Del Nero accepted payments of USD 600,000 for 2012 and of USD 900,000 each for 2013 (executed through [Company 2] and [Company 3]) and for 2014 (executed through [Company 6] and [Company 3]), of which he himself received half, i.e. USD 1.2 million in total. In addition, Mr Del Nero accepted the offers and promises of another USD 900,000 for each edition of the competition between 2015 and 2022, of which he was to receive half, i.e. USD 3.6 million in total.

135. Not only the witness testimonies of [D], [E] (both directly involved in those schemes) and [M] (IRS special agent) confirmed such findings, the same are also corroborated by documentary evidence, such as ledgers and payment sheets prepared by [E] and emails (“Call Marco Polo about the transfer”).

136. All the payments were being made to [F]’s companies ([Company 3] and [Company 11]), who is Mr Del Nero’s close friend. Moreover, [F] (and his aforementioned companies) is an "intermediary" for Mr Del Nero in the sense of article 21 of the FCE, since he acted as an agent, or representative, respectively, in this case (see no. 1 let. a of the definitions section of the FCE). [F] (and his aforementioned companies) was (and still is) a long-standing business partner of CBF since the presidency of Mr Ricardo Teixeira. In this context, it must be stressed that Mr Del Nero confirmed their friendly and personal relationship. Furthermore, in view of the (i) regular mutual contact with the family and partners of one another (as admitted by Mr Del Nero), (ii) the fact that Mr Del Nero had bought an apartment from [F]’s son, (iii) has travelled from Miami to New York in a private jet that belonged to [F], it can be establish that indeed they actually had a close friendship. In fact, the relationship between Mr Del Nero and [F] is without any doubt a very strong one. As the investigatory chamber puts it in the final report, this relationship could be qualified to "akin to a family relationship", which could also fall within the definition of intermediary and related parties, as the FCE provides for in the definition section. In view of the above, it is clear that [F] is to be considered an "intermediary or related party" as defined in the FCE.

137. In view of the above, the Appeal Committee finds no other reason than to consider that those payments were for the benefit of Mr Del Nero. There is no documents justifying the payments despite considerable sums being transferred; intermediaries, offshore companies and sham contracts put in place in order to deviate the cash flow and to blur the relevant trails; use of abbreviations instead of full names. It is a strong indication that those are illegal payments and were made with the aim of
losing trace on who is really the beneficiary of those payments. With all the witnesses’ statements and documentary evidence submitted, the Appeal Committee could establish that Mr Del Nero accepted those payments.

138. Mr Del Nero’s alleges that he was not in Argentina in April or June 2012. In this respect, the Appeal Committee agrees with the finding of the Adjudicatory Chamber that Mr Del Nero not being present at those meetings [quod non], this in itself would not be suitable to change the fact that he did accept and receive those payments. In any case, the Appeal Committee finds also no reason to doubt the witness testimonies confirming Mr Del Nero’s presence in these meetings in Buenos Aires. Firstly, the Mercosul 2008 agreement allowed Mr Del Nero – as a Brazilian citizen – to enter Argentina without a passport but with an identification card only. Secondly, the document from the Brazilian federal police Mr Del Nero submitted together with his statement of defence states that it was possible that Mr Del Nero had travelled internationally, which would not be found in the consulted systems.

139. Finally, as to Mr Del Nero’s submission about the use of the term “Brazilian” (and not “Brazilians”) in the ledgers of [E] and about missing initials or signatures in the minutes of CONMEBOL Executive Committee meetings. [E] confirmed that the term “Brazilian” in the ledgers refers to Mr Del Nero. On the other hand, it is clear that a company such as [Company 2], that is trying to buy/acquire influence, would need CBF - one of the most important power force within the CONMEBOL. At that time, on the basis of the evidence contained in the relevant file, it is established that two CBF officials - Mr Del Nero and Mr Marin (the former aFIFA and CONMEBOL Executive Committee member, and the latter the CBF President) - were the power forces of this association. As they shared the “power” and had leading positions in association football, the Appeal Committee is comfortably satisfied that those payments would be shared among them.

CONMEBOL/CONCACAF Copa América

140. Again, the Appeal Committee believes there is adequate evidence that in connection with the CONMEBOL/CONCACAF Copa América, Mr Del Nero accepted a payment of USD 1.5 million (from the USD 3 million to be shared equally with Mr Marin) for the signing of the contract between CONMEBOL and [Company 9] in 2013 (executed through [Company 10] and [Company 3]). Moreover, Mr Del Nero accepted the offers and promises of another USD 3 million for the 2015, 2016 Centenario, 2019 and 2023 editions (from the USD 6 million, i.e. USD 1.5 million per edition, to be shared equally with Mr Marin.).

141. Again, there are the witness testimonies of [D], [E], […] (Brazilian policeman) and [M], corroborated not only by documentary evidence (ledgers and payment sheets prepared by [E], emails, notes – e.g. “3.000.000 Brazil. Divided MP 1.500.000. Marin 1.500.000”) but also by recorded meetings and (phone) conversations between several persons involved in this scheme ([H], Mr Marin, [I], [J], [D] and [C]).
142. Once more, the payments were made through [F]’s – Mr Del Nero’s close friend – companies ([Company 3] and [Company 11]). In this respect, the Appeal Committee makes reference to the above mentioned reasoning in the previous scheme.

**CBF Copa do Brasil**

143. In relation to the CBF Copa do Brasil scheme, the Appeal Committee is also comfortably satisfied that Mr Del Nero accepted payments of first BRL 1.5 million (approx. USD 750,000) for each of the editions 2013 and 2014 of the Copa do Brasil, and then an amount of BRL 2 million (approx. USD 1M) amounts which he shared with Mr Teixeira and Mr Marin.

144. This time the payments for the editions of 2013 and 2014 were executed through [Company 13], [Company 14] and [Company 5] (again a company belonging to Mr Abrahao, common denominator of all schemes). Of those amounts, Mr Del Nero received BRL 500,000 (approx. USD 250,000) per edition. Moreover, Mr Del Nero accepted, together with Mr Teixeira and Mr Marin, the offers and promises of another BRL 2 million for each edition of the competition between 2016 and 2022.

145. To corroborate that finding, the Appeal Committee finds of relevance the witness testimonies [H], supported by several recorded (phone) conversations between different people involved in this scheme ([H] and [C]) and also the notes of [C], which make reference to those payments. It is true that [C] did not give any testimony in this respect, however he had the opportunity to present his version of the facts, which he failed to do since, as per the appellant, he was no longer available. Nevertheless, the Appeal Committee finds that those notes did exist and are credible evidence to support that those payments were indeed accepted by Mr Del Nero.

146. In view of all the above, the Appeal Committee is comfortably satisfied that the second requirement is also met for all three schemes.

**Third requirement**

147. With respect of the third requirement, it shall be stated that not every kind of benefit, however, falls under the scope of art. 21 of the FCE. The advantage must be “undue” in the light of the provisions of FIFA regulations or universally accepted legal principles. In particular, an advantage is to be considered undue if it has no proper legal basis.

148. The Appeal Committee accepts the findings of the Adjudicatory Chamber that Mr Del Nero accepted both the offers and promises of payments as well as actual transfers of payments to him totalling USD 11.8 million and USD 3.45 million, respectively. No doubt that such payments constitute pecuniary or other advantages pursuant to art. 21 par. 1 of the FCE. No evidence was submitted to support that those payments had any legal or (proper) contractual basis to Mr Del Nero. By the contrary, the witnesses and documentary evidence prove that they were bribe payments. Accordingly, the relevant payments, offers and promises of payments are undue advantages to Mr Del Nero within the meaning of art. 21 par. 1 of the FCE. The third requirement is also met for all schemes.
Fourth requirement

149. The last requirement, the core element of art. 21 of the FCE is the establishment of a “quid pro quo” (ratio of equivalence) for all schemes as per the following elements:

a) Act that is related to official activities: Acts of bribery require that they aim at an act which is related to the official activities of the offeree or recipient.

b) Act contrary to duties or falling within discretion: The targeted official act must, then, be either contrary to the duties of the official or, despite not being contrary to his duties, be based on illegitimate motives or flawed conduct on his part.

c) Incitement of the execution or omission of the act: The undue advantage must, then, specifically be given in exchange for the execution or omission of the act (quid pro quo).

d) Intention to obtain or retain business or any other improper advantage: With regard to the term “advantage”, it shall be pointed out that it must be interpreted in a broad sense, i.e. any kind of betterment or advancement of economic, legal or personal, material or non-material nature.

a) Act that is related to official activities

150. All the acts of Mr Del Nero, mainly approving and ratifying contracts with media and marketing companies ([Company 1]/[Company 2], [Company 9] and [Company 13]) for the Copa Libertadores, the Copa América and the Copa do Brasil, were made as member of the CONMEBOL Executive Committee and CBF vice-president. It is clear that the acts from Mr Del Nero are to be considered as acts related to official activities pursuant to art. 21 par. 1 of the FCE.

b) Act contrary to duties or falling within discretion

151. The relevant official act(s) must, then, be either contrary to the duties of the official or, despite not being contrary to his duties, be based on illegitimate motives or flawed conduct on his part.

152. As established above, Mr Del Nero accepted several payments, as well as offers and promises of payments, from [D], [C] and [H] (including their companies, subsidiaries and shelf companies) without a proper basis justifying the offers, promises and payments. This renders Mr Del Nero’s acts as having been based on illegitimate motives and flawed conduct and thus meeting the relevant requirement of art. 21 par. 1 of the FCE.

c) Incitement of the execution or omission of the act

153. The undue advantage pursuant to art. 21 par. 1 of the FCE must, then, specifically be given in exchange for the execution or omission of the act as outlined above (quid pro quo between advantage and act). Since it is, in many cases, difficult or even impossible to establish a correlation between a payment and a particular act of an official, the Swiss Federal Court and legal doctrine refer to objective indicators
in such contexts. Of particular relevance are, for instance, the amount of the payment, the timing of the payment and the act of the official, as well as the occurrence and frequency of contacts between the parties involved.

154. Bearing in mind the preliminary remarks made above, the Appeal Committee is of the opinion that the promises and payments to Mr Del Nero were incitements and/or rewards to him to approve new and support existing contracts between CONMEBOL and CBF, on one hand, and the marketing and media rights companies, on the other. All evidence leads to that conclusion. First, the witnesses [D], [E] and [H] have consistently testified that these promises and payments were bribes, given in exchange for Mr Del Nero’s approval and support of their contracts with CONMEBOL and CBF. These statements were then supported by phone conversation recordings, bank transfers, ledgers, handwritten notes.

155. In addition, it is proven that vast payments being made for without any legal basis: for Copa Libertadores, USD 600,000 and USD 900,000 were paid (half for Mr Del Nero); for Copa America, USD 4.5 million were promised (USD 1.5 million paid to Mr Del Nero); for Copa Brasil, approx. USD 2.5 million were promised (USD 750’000 paid to Mr Del Nero). This is enough indication of bribery and corruption activities.

156. Furthermore, the Appeal Committee finds interesting to see that the timing between the promises and payments on one hand and the acts of Mr Del Nero on the other were closely together as stated in the appealed decision.

157. For the CONMEBOL Copa Libertadores, the initial bribery agreement was concluded in April and June 2012 and the first payment of USD 600,000 occurred also in 2012, whereas the approval of the extension of the contract occurred in October and December 2012, i.e. only four months later. The first payment of USD 900,000 took place six months after that approval (7 June 2013) and only a fortnight after the meeting of May 2013 in London.

158. For the CONMEBOL/CONCACAF Copa América, the payment of USD 3 million was made on 5 July 2013, while the respective contract was approved in May 2013, i.e. only two months earlier. Again, this is a strong indicator of corruption. Similarly, the same applies to the payments in relation to the CBF Copa do Brasil scheme (payment per edition of the competition which takes place every year, and promises of future yearly payments for the subsequent competitions).

159. In view of the above, the Appeal Committee is comfortably satisfied that Mr Del Nero received the benefits (payments and promises of payments) as a quid pro quo and hence as an incitement for the execution of official acts within the meaning of art. 21 par. 1 of the FCE.

d) Intention to obtain or retain business or any other improper advantage

160. Finally, art. 21 par. 1 of the FCE states that the undue advantage must be given “in order to obtain or retain business or any other improper advantage“.
161. As already established, the business is clear from all the intervenent in the schemes: companies wished to enter and secure media and marketing rights with CONMEBOL and CBF in relation to the marketing and media rights of competitions held by those entities (Copa Libertadores, Copa America and Copa do Brasil). The issue at stake is the fact that those companies ([Company 1], [Company 7], [Company 13]) were using unlawful means to secure those contracts, by offering bribe payments in this respect to the decisions makers within the relevant organisations (CONMEBOL and CBF), in particular Mr Del Nero. For that reason, it renders the advantage as improper as there is no legal basis for those payments.

162. In view of the above, the Appeal Committee also considers that the last requirement is also met for all schemes.

Conclusion

163. In the light of the foregoing, the Appeal Committee concludes that in connection with the CONMEBOL Copa Libertadores, the CONMEBOL/CONCACAF Copa América and the CBF Copa do Brasil, Mr Del Nero accepted several undue pecuniary advantages from several individuals and their companies for the execution of official acts and thereby breached art. 21 par. 1 of the FCE. He also failed to report the relevant offers to the Ethics Committee, thereby committing a further breach of art. 21 par. 1 of the FCE.

164. In addition, Mr Del Nero failed to refrain from any activity or behaviour that might give rise to the appearance or suspicion of improper conduct as described in art. 21 par. 1 of the FCE, thereby violating art. 21 par. 3 of the FCE.

c) Sanction

1. Summary of the position of the appellant

165. The appellant is of the view that the appealed decision has failed to observe the principle of proportionality as well as its own case law when determining the sanctions applicable in this case. In particular, Mr Del Nero makes reference to several cases where the sanction imposed was much lower compared to the one applied to the appellant (e.g. Mr Blatter, Mr Platini, Mr Valcke, Mr Fusimalohi, Mr Adamu and Mr Diakite).

166. In addition to that, Mr Del Nero also believes that the adjudicatory chamber failed to account several mitigating factors in his respect: the appellant degree of assistance and cooperation and all the valuable activities and services of Mr Del Nero in almost 5 (five) decades of his life dedicated to football. For all those reasons, in the event the Appeal Committee understands that Mr Del Nero has breached any provision of the FCE, Mr Del Nero submitted that any sanction might imposed shall be limited to a warning, a reprimand and/or a fine.

2. Assessment by the FIFA Appeal Committee
167. After having examined the appellant’s above-mentioned arguments, the Appeal Committee considers the sanction is adequate and appropriate for the following reasons:

168. First, with regards to the appellant’s claim concerning the disproportionate nature of the sanction by comparison/referral to the decisions rendered by the adjudicatory chamber in the cases of Mr Platini, Mr Blatter and Mr Valcke, the Appeal Committee would like to stress that the mentioned cases present both factual and legal aspects and particularities that differ significantly. In particular, the cases concerned violations mainly of article 20 (Offering and accepting gifts and other benefits). The Panel therefore considers that any comparison between the aforementioned cases and the present proceedings, which relate to breaches of art. 21 of the FCE (Bribery and corruption) is irrelevant and inadequate.

169. In its decision, the adjudicatory chamber has dealt with all relevant factors of the case, including the aggravating and the mitigating circumstances, including in this latter case the cooperation of Mr Del Nero and his valuable services for football.

170. In the Appeal Committee’s view, the adjudicatory chamber has correctly identified and weighed the individual circumstances of the case.

171. First of all, Mr Del Nero is a senior and influential football official at several levels; he personally and massively enriched himself through the acceptance of bribe payments amounting to several million dollars; the bribe payments related to very renowned and popular competitions worldwide, and in particular in Brazil and South America; Mr Del Nero’s conduct was highly detrimental to his association, the confederation that his association is affiliated with, and association football at large.

172. In addition, Mr Del Nero violated art. 21 of the FCE on bribery and corruption which is among the most serious offences under the Code. On top of that, he committed the offence of bribery and corruption on numerous occasions and over a course of several years.

173. In respect of 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 as the President of CBF, Mr Del Nero is the highest representative of a FIFA member association, whose senior men’s team is a record five-time FIFA World Cup™ champion. In addition, he was formerly a vice-president of CBF and a member of the Executive Committees of FIFA and CONMEBOL.

174. As such, Mr Del Nero holds (or held, respectively) several of the most prominent and senior positions in association football both at national and international level. In these functions, he has 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 bribery and corruption on multiple occasions. He accepted bribe payments and promises of such payments of several million dollars, money which could otherwise have been invested into the development of football in Brazil and South America. In addition, no acts of mere negligence are at stake.
here but deliberate actions (see art. 5 par. 2 of the FCE). By the same token, the relevant acts are not merely attempted acts but have been completed. In view of these findings, the official’s degree of guilt must be regarded as of utmost seriousness.

175. The Appeal Committee also notes that, according to the case law of FIFA’s judicial bodies, another circumstance suited to mitigate the culpability of an offender is remorse or confession, which Mr Del NERO failed to demonstrate during the proceedings and in spite of the overwhelming evidence against him, awareness of wrongdoing.

176. In addition, it is essential for sporting regulators like FIFA to impose sanctions sufficient to serve as an effective deterrent to individuals who might otherwise be tempted to consider involvement in such criminal activities, and that it is vital that the integrity of sport is maintained (cf. CAS 2010/A/2172, par. 80 et seqq.). In the respective context, CAS found a lifetime ban from any football-related activities against the accused concerned to be a proportionate sanction. In another relevant decision, CAS expressively stated that only strong sanctions would set the necessary deterrent signal to officials (cf. CAS 2009/A/1920, par. 116).

177. Finally, no doubt that the corruption affects the very core of sports and is nothing less than life threatening for sports and sports organisations. If officials who are found guilty of corruption remained within the sports structures, this would cause irreparable damage to sports and football in general and to CBF, CONMEBOL and FIFA in particular. In cases like the present one, the only means to save sports from enormous reputational damage is a determined and resolute sanctioning of the persons concerned. In addition, it must be noted that corruption offences are to be rated in every respect as reprehensible and that respective allegations cause grave external effects and a corresponding media response. Consequently, FIFA has a direct and pressing interest in barring the persons concerned from sports and sports governance effectively.

178. Consequently, the Appeal Committee, after carefully analysing and taking into consideration the above circumstances, deems a ban on taking part in any football-related activity for life to be appropriate for the violation of art. 21 of the FCE committed by the appellant.

179. With regard to the scope, the Appeal Committee fully agrees with the adjudicatory chamber’s opinion that only a worldwide effect is appropriate, since the appellant committed the violations while seated in the FIFA Executive Committee, and since, as a President of a member association, the international implications of the sanction are of highly relevance in daily working business of such high position. Limiting the scope to association or confederation level, in turn, would neither prevent the appellant from future misconduct nor adequately reflect the Appeal Committee’s disapproval of his conduct.

180. Furthermore, the Appeal Committee concurs with the adjudicatory chamber that the mere imposition of a ban on taking part in any football-related activity is not
sufficient to sanction the misconduct of the appellant adequately, and considers the imposition of an additional fine as being justified (cf. art. 6 of the FCE). In this respect, and taking into account the millions of dollars in bribes that Mr Del Nero accepted, at the clear detriment of football, the Appeal Committee concurs with the adjudicatory chamber that a fine of CHF 1,000,000 is appropriate.

C. Costs and expenses

1. Costs of the Ethics Committee’s proceedings

181. In the appealed decision, the adjudicatory chamber determined that the appellant should pay costs of the Ethics Committee’s proceedings in the amount of […].

182. By way of the present decision, the Appeal Committee has decided to confirm the adjudicatory chamber’s decision and to sanction Mr Del Nero. In view of this, also the adjudicatory chamber’s ruling on the bearing of the procedural costs stands (see art. 59 par. 1 of the FCE). Accordingly, the procedural costs of the Ethics Committee’s proceedings, amounting to […], shall be borne by the appellant.

2. Costs of the Appeal Committee’s proceedings

183. Pursuant to art. 105 par. 4 of the FDC, which is also applicable in appeal proceedings (art. 125 par. 1 of the FDC), the body that rules on the substance of the matter decides how costs and expenses shall be allocated. The principles which apply to this allocation are laid down in art. 105 par. 1 and 2 and art. 123 par. 3 of the FDC.

184. According to art. 105 par. 1 of the FDC, costs and expenses shall be paid by the unsuccessful party. If there is no unsuccessful party, they shall be borne by FIFA (art. 105 par. 2 of the FDC). With regard to the deposit (appeal fee), art. 123 par. 3 of the FDC sets forth that the appeal fee will be reimbursed to the appellant if he wins the case. Costs and expenses payable by an appellant who loses the case are deducted from this amount. Any remaining amount is reimbursed to him.

185. In the present case, the Appeal Committee has confirmed that the appellant is found guilty of infringements to art. 13, 15, 19, 20 and 21 of the FCE and to confirm the fine of CHF 1,000,000. In view of these findings, the appeal of the appellant has been entirely unsuccessful. The Panel therefore deems it appropriate that he shall bear the costs of the appeal proceedings, in accordance with art. 105 par. 1 of the FDC. The costs and expenses of these proceedings, which included an oral hearing, equal the amount of the appeal fee already paid by the appellant, which is CHF 3,000. Accordingly, the procedural costs of […] are set off against the appeal fee already paid by the appellant, in accordance with art. 123 par. 3 of the FDC.

186. No procedural compensation (legal costs) shall be awarded in proceedings of the Appeal Committee (art. 105 par. 6 of the FDC). Accordingly, no procedural compensation shall be awarded to the appellant for these proceedings.
III. has therefore decided

1. The appeal filed by Mr Marco Polo Del Nero against the decision 150468 BRA ZH taken by the adjudicatory chamber of the FIFA Ethics Committee on 7 August 2018 is dismissed.

2. The decision 150468 BRA ZH taken by the adjudicatory chamber of the FIFA Ethics Committee on 25 April 2018 is confirmed.

3. Mr Marco Polo Del Nero is found guilty of infringements of art. 21 (Bribery and corruption), 20 (Offering and accepting gifts and other benefits), 19 (Conflicts of interest), 15 (Loyalty), and 13 (General rules of conduct) of the FCE.

4. Mr Marco Polo Del Nero is banned from taking part in any football-related activity (administrative, sports or any other) at national and international level for life, in accordance with art. 6 par. 1 let. h of the FIFA Code of Ethics in conjunction with art. 22 of the FIFA Disciplinary Code.

5. Mr Marco Polo Del Nero shall pay a fine in the amount of CHF 1,000,000 within 30 days of notification of the present decision. Payment can be made either in Swiss francs (CHF) to account no. [...] or in US dollars (USD) to account no. [...] with reference to case no. 150468.

6. Mr Marco Polo Del Nero shall pay costs of the proceedings of the FIFA Ethics Committee in the amount of [...] within 30 days of notification of the present decision, which shall be paid according to the modalities stipulated under point 5 above.

7. The costs of the present proceedings are established in the amount of [...] and shall be borne by Mr Marco Polo Del Nero. This amount is set off against the appeal fee of CHF 3,000 already paid by Mr Marco Polo Del Nero.

8. Mr Marco Polo Del Nero shall bear his own legal and other costs incurred in connection with the present proceedings.

9. This decision is sent to Mr. Marco Polo Del Nero via his legal representative Bichara e Motta Advogados. A copy of the decision is sent to the Confederation of South America (CONMEBOL) and to the Brazilian Confederation (CBF). A copy of the decision is sent to the chief of the investigation, Ms Janet Katisya.
LEGAL ACTION:

According to art. 58 par. 1 of the FIFA Statutes, this decision may be appealed to the Court of Arbitration for Sport (CAS). The statement of appeal must be sent directly to the CAS within 21 days 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 with the CAS a brief stating the facts and legal arguments giving rise to the appeal (see art. R51 of the Code of Sports-related Arbitration).

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FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION

Mr Thomas Bodström
Chairman of the FIFA Appeal Committee