

Decision
of the
adjudicatory chamber
of the
FIFA Ethics Committee

Mr Vassilios Skouris [GRE], Chairman
Mr Vinayak Pradhan [MYS], Deputy chairman
Mr Melchior Wathelet [BEL], Member

taken on 16 December 2019

in the case of:

Mr Ariel Alvarado [PAN]

Adj. ref. no. 19/2019

(Ethics 150954)

I. Inferred from the file

1. Mr Ariel Alvarado (hereinafter: "*Mr Alvarado*" or "*the official*"), Panama national, was a high ranking football official, in particular general secretary and president of Federación Panameña de Fútbol (hereinafter "*FEPAFUT*") between 2000 and 2011, as well as a member of the Executive Committee of the Confederation of North, Central American and Caribbean Association Football (hereinafter "*CONCACAF*") between 2011 and 2015, of the FIFA Ethics Committee (2007 – 2012) and of the FIFA Disciplinary Committee (2013 – 2016).
2. On 3 December 2015, the United States Department of Justice issued an official Press Release (hereinafter: "*the Press Release*"), enclosing a superseding indictment (hereinafter: "*the Superseding Indictment*") against several individuals. According to the Press Release, Mr Alvarado appeared as a defendant amongst said individuals.
3. The official press release further indicated that Mr Alvarado had been charged for acts of racketeering conspiracy, wire fraud, wire fraud conspiracy, money laundering and money laundering conspiracy. The infringements referred in the Indictment occurred in or about and between 2009 and 2011. This timeframe coincides with the time in which Mr Alvarado was an official of FEPAFUT and FIFA.
4. Based on the above, the then Chairman of the investigatory chamber of the FIFA Ethics Committee (hereinafter: "*the investigatory chamber*"), determined that there was a *prima facie* case that Mr Alvarado had committed violations of the FIFA Code of Ethics (hereinafter: "*FCE*"). The then Chairman of the investigatory chamber decided to lead the investigation proceedings as the chief of the investigation (cf. art. 65 of the FCE, 2012 edition – "*2012 FCE*"). As such, on 4 December 2015, Mr Alvarado was notified that formal investigation proceedings, pursuant to arts. 63 par. 1 and 64 par. 1 of the 2012 FCE, had been opened against him under referenced 150954, relating to possible violations of arts. 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 25 of the 2012 FCE.
5. With regard to the procedural history before the investigatory chamber, reference is made to the relevant section in the final report.
6. On 5 August 2019, the investigatory chamber informed Mr Alvarado that it had concluded its investigation proceedings and, therefore, it had submitted its final report (hereinafter: "*the final report*") to the attention of the Chairperson of the adjudicatory chamber of the FIFA Ethics Committee (hereinafter: the adjudicatory chamber) in accordance with art. 65 of the 2019 edition of the FCE ("*FCE*").
7. On 6 August 2019, Mr Vassilios Skouris, chairperson of the adjudicatory chamber (hereinafter "*the Chairperson*"), opened adjudicatory proceedings against Mr Alvarado in accordance with art. 68 par. 3 of the FCE. Mr Alvarado was also provided with a copy of the Final report and its enclosures, and informed of the deadlines within which he would have to provide his position on the final report and to request

a hearing. On the same day, Mr Alvarado requested to be provided with the relevant documents pertaining to the proceedings in Spanish.

8. On 7 August 2019, Mr Alvarado was informed that his request was accepted by the chairperson of the adjudicatory chamber, that he would be provided with the final report duly translated into Spanish and that, in the meantime, all relevant deadlines were suspended.
9. On 14 August 2019, Mr Alvarado was informed that the proceedings would be conducted in Spanish, provided with a Spanish translation of the Final report, and informed (in Spanish) of the deadlines within which he would have to provide his position on the final report and to request a hearing.
10. On 21 August 2019, Mr Alvarado submitted procedural requests, by means of which he contested the jurisdiction of FIFA to continue the respective proceedings. In support of his position, he made the following considerations:
 - The Final Report submitted by the investigatory chamber in the scope of the present proceedings concluded that the FIFA Code of Ethics, 2009 edition (2009 FCE) should be applicable, given that Mr Alvarado's conduct covered a period from 2009 until 2011;
 - According to art. 15 par. 2 and 3 of the 2009 FCE, FIFA (and the FIFA Ethics Committee) shall have jurisdiction over the conduct of FIFA officials, as well as of officials in confederations, associations, leagues and clubs, if the case on which the alleged violation is based has international implications (affecting various associations) and is not judged at confederation level.
 - Mr Alvarado was elected/appointed as member of the FIFA Disciplinary Committee at the 2013 FIFA Congress (on 30-31 May 2013), for a term of four years, until 2017. He was then relieved of his duties at the 2016 FIFA Congress (12-13 May 2016). Furthermore, he claims to not have occupied any official function at national level (within FEPAFUT) since 2011 and at confederation level (CONCACAF) since 2013;
 - Since Mr Alvarado is not currently an official of FIFA, or of any other national, international or regional football organization, he claims that FIFA does not have jurisdiction to continue its investigation, judge or sanction him;
 - Allegedly similar ethics proceedings conducted in 2011, on the basis of the 2009 FCE, against Mr Jack Warner were closed for lack of jurisdiction when Mr Warner resigned from all his football positions;
 - According to art. 27 par. 2 of the FCE 2012 edition (which replaced the 2009 FCE), the Ethics Committee shall be entitled to judge the conduct of all persons bound by this Code while performing their duties. In addition to the conduct of persons bound by this Code who are performing their duties, the Ethics Committee shall also judge the conduct of other persons bound by this Code at the same time if a uniform judgement is considered appropriate based on the specific circumstances. Mr Alvarado claims that, from the wording of this provision,

it can be implied that the possibility to investigate or judge the conduct of persons who do not perform their duties was only introduced with the 2012 FCE, which is not the applicable Code in the present proceedings. Therefore, Mr Alvarado argues that FIFA should refrain from continuing with these proceedings, same as the Ethics Committee did in 2011 in the case of Mr Warner;

- Notwithstanding or regardless of the considerations regarding the lack of jurisdiction of FIFA, Mr Alvarado claims that CONCACAF, at its Congress on 12 May 2016, decided to permanently/definitely dismiss him from all football-related activities on a national and international level within the CONCACAF region. In other words, the conduct in relation to which the present ethics proceedings were opened has allegedly already been judged and sanctioned by CONCACAF. Therefore, continuing with the present proceedings would contravene the principle of "*ne bis in idem*" or double jeopardy.
 - In view of the above, Mr Alvarado requested that the adjudicatory chamber take a decision on the preliminary issue of jurisdiction, before proceedings with the adjudication of the matter in application of the 2009 FCE, and consequently close the case.
11. On 22 August 2019, the chairperson of the adjudicatory chamber asked CONCACAF to provide clarifications regarding the nature and scope of the sanction imposed on Mr Alvarado, as well as to provide the respective decision and inform whether it has become final and binding.
 12. On 28 August 2019, CONCACAF informed that:
 - Mr Alvarado was provisionally banned by the CONCACAF Executive Committee on 4 December 2015;
 - In accordance with art. 36 of the CONCACAF Statutes, at the CONCACAF Congress on 12 May 2016, Mr. Alvarado was permanently/definitely dismissed from all football-related activities on a national and international level within the CONCACAF region. Prior to such action, Mr. Alvarado was duly notified of such proposal and given the opportunity to defend himself and oppose such resolution in person at the Congress.
 - Mr. Alvarado appealed the decision of the CONCACAF Congress to CAS and, on 19 May 2017, CAS issued a decision rejecting Mr. Alvarado's appeal.
 - CONCACAF also enclosed the minutes of the CONCACAF Congress of 2016, which mentioned the relevant decision in relation to Mr Alvarado.
 13. On 2 September 2019, Mr Alvarado was informed that his procedural requests would be addressed by the adjudicatory chamber when deciding on the matter, and provided with the correspondences exchanged by the adjudicatory chamber with CONCACAF, in relation to the respective requests. Mr Alvarado was furthermore reminded that the deadline granted to submit his position (previously mentioned in the correspondence of 14 August 2019) had expired, asked to indicate whether his

submission dated 21 August 2019 should be considered as his statement of defence, and, in the negative, to provide any further submission in this respect.

14. On 3 September 2019, Mr Alvarado stated that the adjudicatory chamber should first address and decide on the procedural issues raised in his previous request, in particular the lack of jurisdiction of FIFA or the FIFA Ethics Committee. In this respect, he argued that, should the adjudicatory chamber find that it has no jurisdiction, he would not have to submit his position on the merits, as well as added that, in any case, he vehemently disputed the charges against him in the Final report.
15. On 3 September 2019, Mr Alvarado was informed that his submission/request of 21 August 2019 was related to two preliminary questions affecting the procedural structure of ethics or adjudicatory proceedings (the jurisdiction or competence of the FIFA Ethics Committee and the principle *ne bis in idem*), and that, as mentioned in the correspondence of 2 September 2019, his requests would be duly addressed by the adjudicatory chamber when deciding on the matter. In particular, the adjudicatory chamber would firstly examine its jurisdiction and the question of *ne bis in idem*. Only in case the chamber accepted its jurisdiction and considered that the conditions of *ne bis in idem* were not fulfilled, it would address the merits of the case, without a separate or preliminary decision taken prior. Finally, Mr Alvarado was asked one final time to provide any further submission, containing all arguments in relation to procedural issues as well as on the merits of the case.
16. On 12 September 2019, Mr Alvarado was provided with a letter dated 11 September 2019 from the Chairperson of the investigatory chamber and informed that he was allowed, should he feel the need to do so, to provide an additional submission in respect to the matters addressed in the aforementioned letter.
17. On 17 September 2019, Mr Alvarado was informed on the composition of the Panel.
18. On 18 September 2019, Mr Alvarado provided a supplementary position in relation to the Final report and the charges against him.
19. In the scope of the deliberations in the present proceedings, the Chairperson of the adjudicatory chamber requested CONCACAF to provide the CAS award rendered on 19 May 2017 rejecting Mr. Alvarado's appeal against the decision taken by the CONCACAF Congress on 12 May 2016, as well as to explain its position, as presented in the aforementioned award, in relation to the principle of "*ne bis in idem*". CONCACAF provided both the relevant CAS award and the requested explanation.

II. and considered

A. Applicability of the FCE *ratione materiae* (art. 1 of the FCE)

1. The adjudicatory chamber notes that, according to the final report of the investigatory chamber on the present matter, there are several indications of potential im-

proper conduct in terms of the FCE by the official. In particular, during the investigations, possible violations of the relevant provisions of the FCE related to bribery and corruption (art. 27), as well as its analogous provisions in the 2009 and 2006 editions of the FCE have been identified. The factual circumstances raise, without any doubt, questions of potential misconduct in terms of the FCE.

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

B. Applicability of the FCE *ratione personae* (art. 2 of the FCE)

3. According to art. 2 FCE, the Code shall apply, *inter alia*, to "officials" as per the definitions section in the FCE and FIFA Statutes.
4. By virtue of his various positions within FIFA and FEPAFUT mentioned previously (cf. par. 1.1 above), Mr Alvarado was an official within the meaning of the definition given in no. 13 of the definitions section in the FIFA Statutes during the period presently relevant (2009 – 2011).
5. As a consequence, at the time the relevant actions and events occurred, and in view of Mr Alvarado's position in football at the time, the FCE applies to the official according to art. 2 of the FCE (*ratione personae*).

C. Applicability of the FCE *ratione temporis* (art. 3 of the FCE)

6. The relevant events took place between 2009 and 2011, at a time before the FCE came into force. With regard to the applicability of the FCE in time, art. 3 of the FCE stipulates that the FCE shall apply to conduct whenever it occurred. Accordingly, the material rules of the FCE shall apply, provided that the relevant conduct was sanctionable at the time (with a maximum sanction that was equal or more) and unless the previous editions of the FCE would be more beneficial to the party (*lex mitior*).
7. In this context, following the relevant case law and jurisprudence, the adjudicatory chamber notes that the spirit and intent of the 2009 and 2006 editions of the FCE (which were applicable in the relevant period 2009 – 2011) is duly reflected in art. 27 of the FCE, which has corresponding provisions in the 2009 FCE (art. 11) and 2006 FCE (art. 12).
8. In consideration of all the above, the adjudicatory chamber concludes that the different FCE editions cover the same offence and that the maximum sanctions in the FCE are equal or less. Furthermore, from a material point of view, the adjudicatory chamber considers that none of the provisions would be more beneficial to the accused (principle of "*lex mitior*"), since their application would lead to the same result.
9. Consequently, the FCE is applicable to the case according to art. 3 of the FCE (*ratione temporis*).

D. Jurisdiction of the FIFA Ethics Committee

10. Mr Alvarado claims that the 2009 FCE is applicable to the present matter, including in relation to the jurisdiction of the FIFA Ethics Committee. However, the FCE version in force when the adjudicatory proceedings were initiated on 6 August 2019 is the current (2019) edition.
11. According to art. 88 par. 2 and 3 of the FCE, the procedural rules enacted in this Code shall come into force immediately, and apply to all proceedings for which adjudicatory proceedings have not been formally opened, on the date of the entry into force of the Code – 1 August 2019.
12. In view of the above, the (2019) FCE should apply with respect to procedural rules in the present matter. As the issue of jurisdiction is clearly procedural, it shall be ruled by art. 30 of the FCE (Competence of the FIFA Ethics Committee).
13. According to the aforementioned provision, the Ethics Committee has the exclusive competence to investigate and judge the conduct of all persons bound by this Code where such conduct has been committed by an individual who was elected, appointed or assigned by FIFA to exercise a function. At the time of the conduct in relation to which the present proceedings have been initiated (and are being conducted), which occurred between 2009 – 2011 according to the Final Report and investigatory files, Mr Alvarado was a member of the FIFA Ethics Committee (apart from being president of the Panama Football Association and member of the CONCACAF Executive Committee). Consequently, the FIFA Ethics Committee has the exclusive competence to investigate and judge Mr Alvarado's respective conduct.
14. Notwithstanding the above, and even if the jurisdiction issue would be considered material and not procedural, the current edition of the FCE would still be applicable according to art. 3 of the FCE and based on the considerations presented above with respect to the applicability of the FCE in time (*ratione temporis*).
15. Finally, even if the 2009 FCE was applicable to the present matter, and in particular to the issue of jurisdiction of the FIFA Ethics Committee, the following considerations should be made.
16. First of all, art. 15 par. 2 of the 2009 FCE stipulates that FIFA shall have jurisdiction over the conduct of officials. As mentioned previously, the conduct of Mr Alvarado occurred in the period 2009 - 2011, during which he was a FIFA official (member of the FIFA Ethics Committee). Therefore, even according to art. 15 par. 2 of the 2009 FCE, the FIFA Ethics Committee would have jurisdiction over the conduct of Mr Alvarado, and thus in the scope of the present proceedings.
17. Second, in the case of Mr Warner, that Mr Alvarado has mentioned in his submission, there was no indication that the respective ethics proceedings were closed due to a lack of jurisdiction. In fact, the respective media release does not make any mention to the jurisdiction of FIFA in respect to Mr Warner's conduct. Moreover, it should be mentioned that separate ethics proceeding were conducted by the FIFA

Ethics Committee against Mr Warner in 2015, and that he was sanctioned in the scope of such proceedings by the committee¹.

E. Procedural issue

Ne bis in idem principle

18. Mr Alvarado claims that, since a decision has already been taken against him by the CONCACAF in 2016 in relation to the same conduct that is the object of the present ethics proceedings, the adjudicatory chamber should close the matter in order to respect the principle of *ne bis in idem*.
19. *Ne bis in idem* is a general principle of law (translated literally as “not twice about the same”) that appears in various international laws and regulations, most of which refer to criminal or penal proceedings, which provides that nobody should be judged or sanctioned twice for the same offence. The principle has also been recognized by CAS in its jurisprudence, in particular through the awards in the cases Alexis Enam (CAS 2008/A/1677), Valverde (CAS 2007/A/1396 & 1402) and Fenerbahce (CAS 2013/A/3256).
20. CAS confirmed that there are three specific requirements to be fulfilled for this principle to apply: an identity of object (*eadem res*), of the persons (*eadem personae*) and of the facts or cause (*eadem causa petendi*). Since the identity of the persons is established in the present case - Mr Alvarado was clearly the subject of the CONCACAF decision of 2016, and is as well the party to the present ethics proceedings – the other two requirements need to be analysed.
21. With respect to the first requirement, CAS jurisprudence (CAS 2007/A/1396 & 1402), has established that a suspension rendered by an instance of a National Olympic Committee aimed at the protection of sporting competitions in a specific country did not have the same object as a worldwide ban imposed by an international federation/organisation where the purpose sought was the punishment of an athlete for violation of the (anti-doping) rules of his sport. Using this approach, CAS ruled that the importance of a worldwide ban (in case of an anti-doping violation) would outweigh the fact that an earlier, more limited ban was imposed, found that the *ne bis in idem* principle was not violated and decided to sanction the respective person with a suspension for an anti-doping rule violation.
22. In the present case, it is established that the 2016 CONCACAF Congress decided to dismiss Mr Alvarado permanently and definitely from all football-related activities on a national and international level within the CONCACAF region. This decision was taken on the basis of art. 36 of the CONCACAF Statutes (“*Suspension or dismissal of a person*”), according to which the Congress may dismiss any person (member of the CONCACAF Council, any CONCACAF representative before FIFA, the President, the General Secretary or the chairpersons, deputy chairpersons or members of the

¹ <https://www.fifa.com/about-fifa/who-we-are/news/independent-ethics-committee-bans-jack-warner-from-football-related-ac-2701902>

standing committees and judicial committees) upon a justified motion for dismissal submitted by a CONCACAF Council member.

23. From the wording of the above provision, it appears that the concept of dismissal is administrative and not disciplinary. First, it is taken/imposed by the CONCACAF Congress, which is the legislative, not judiciary body of the respective organization. Secondly, the CONCACAF Statutes clearly establish various judicial bodies, among which the Disciplinary and Ethics Committees (arts. 45-47) which can pronounce sanctions as described in the various relevant regulations (such as Disciplinary or Ethics Codes); however none of these judicial bodies had any competence to deal with dismissals as per art. 36 of the CONCACAF Statutes. Thirdly, while a motion for dismissal has to be justified, it is not specified what form and contents it should have (as art. 79 FCE provides for the decisions of the FIFA Ethics Committee).
24. With respect to the content, or rather wording of the sanction imposed by CONCACAF, it should be pointed out that dismissal is not among the disciplinary measures listed at art. 6 of the CONCACAF Code of Ethics (in force since 2014), whereas the ban on taking part in any football-related activity is mentioned (cf. art. 6 par. 1 lit. h).
25. Therefore, in the Panel's opinion, the decision taken by the CONCACAF Congress in the present matter was aimed at ensuring that football competitions and activities in the region under the remit of the respective confederation would not be distorted by the involvement of people/administrators indicted in relation to corruption and bribery (such as Mr Alvarado in the scope of the US criminal proceedings). According to this approach, the respective decision is completely distinct from (and could not conflict with) ethics proceedings, which are repressive in nature, with the purpose of rendering worldwide sanctions against football officials under the jurisdiction of FIFA.
26. Finally, the scope of CONCACAF's dismissal of Mr Alvarado was clearly limited to the CONCACAF region and jurisdiction. Moreover, since the 2016 decision, CONCACAF did not request the extension of the sanction to have worldwide effect, as required by art. 136 ff of the FIFA Disciplinary Code, 2011 edition (in force at the relevant time) in case of a serious infringement. Therefore, the dismissal of Mr Alvarado had a mere regional scope, restricted to the jurisdiction of CONCACAF, a confederation that is not an affiliated member of FIFA. This would entail that a decision taken by the FIFA Ethics Committee, and the imposition of a sanction such as, for example, a ban from taking part in any football-related activity (administrative, football or any other) – which has a worldwide scope – would not conflict, but effectively complement and expand the scope of the sanction imposed by CONCACAF.
27. The above was formally recognized in the CAS award of 19 May 2017 rejecting the appeal of Mr Alvarado against the CONCACAF decision of 12 May 2016, in the scope of which the appellant (Mr Alvarado) also raised the issue of *ne bis in idem*. In that award, CAS agreed with the argumentation of CONCACAF, who stated it had "*the autonomous authority to decide on the dismissal of a person within the CONCACAF region, independently of any action/process that may be taken by FIFA*

and its judicial bodies" (par. 63 of the award). CAS further mentioned that *"the [CONCACAF] Decision and the other causes of action extant hail from different jurisdictions. And the principle ne bis in idem is always qualified by the notion 'from the same jurisdiction'"*. This has been also stressed in the letter dated 7 October 2019 from CONCACAF: *"the Concacaf Congress may dismiss any person within its jurisdiction from all football-related activities on a national and international level within the Concacaf region (Article 36, paragraph 1) and is not required to subrogate such authority to its judicial bodies. This inherent power is also independent of any process or action that FIFA and its judicial bodies may take with respect to any such person"*.

28. Therefore, the first requirement regarding the identity of object between the CONCACAF decision of 2016 and the present ethics proceedings is not met.
29. Regarding the identity of facts/cause requirement, the current proceedings were initiated in relation to Mr Alvarado's conduct as a football and FIFA official in the period between 2009 and 2011, and the potential violation of various provisions of the FCE. The relevant conduct concerns the acceptance of bribes in connection with various schemes uncovered within the scope of the Superseding Indictment, as well as in the ensuing/related criminal proceedings before US courts.
30. The relevant CONCACAF decision was taken *"in response to the investigation of the United States Department of Justice and given its profound impact and adverse consequences for football"* (as mentioned in the letter dated 19 May 2016 sent by CONCACAF to Mr Alvarado). This indicates that its purpose was clearly not repressive but rather preventive, aimed at protecting the image and integrity of football falling under the remit or jurisdiction of CONCACAF, by excluding from its midst persons who have been involved in corrupt activities. This objective is different from that of FIFA ethics proceedings, which set out to establish the culpability of football officials in relation to potential breaches of FIFA regulations.
31. The same view was shared by CAS in its aforementioned award of 19 May 2017, which stated: *"the Decision addresses a different subject-matter than that addressed by the other causes of action cited by the Appellant [N.B. the FIFA ethics proceedings and the US criminal proceedings]. Whilst the latter relate to the possible existence of bribes, the former is confined to whether Mr Alvarado should be suspended or dismissed from CONCACAF. Albeit the source of the measure is connected, legally, the issues differ. Therefore, the Appellant reliance in said (criminal law) principle is insufficient to validly challenge the legality of the Decision"* (par. 64 of the award).
32. Furthermore, and notwithstanding the above, it should be stressed that extensive evidence presented in the Final Report (testimony from witnesses as well as documentary proof) to sustain the ethics charges against Mr Alvarado are related to the jury trial that was held in the United States District Court in November - December 2017 in the cases of Mr Napout, Mr Burga and Mr Marin. All such means of proof were not available to CONCACAF, at the time the respective decision in relation to Mr Alvarado was taken (May 2016). This would entail that it is entirely possible that the facts or conduct on the basis of which the CONCACAF decision was taken, could be expanded, or reduced in view of the evidence uncovered in the meantime.

33. In view of the above, the identity of facts/cause between the CONCACAF decision and the present ethics proceedings cannot be established.
34. The respective requirements of the *ne bis in idem* principle not being complied with, it ensues that no violation of such principle occurred. Therefore, the adjudicatory chamber considers itself competent to deal with and decide in the present matter.

F. Assessment of potential violations of the FCE committed by Mr Alvarado

Possible violation of art. 27 FCE (Bribery)

1. The relevant facts

35. The official may have violated art. 27 of the FCE in connection with the following schemes:
 - A. *UNCAF Region FIFA World Cup Qualifiers Schemes* [Cf. Final Report p. 6 *et seqq.*]
36. On or about 9 June 2009, the company [Company 1] entered into a contract with FEPAFUT for the media and marketing rights owned by the federation to qualifier matches to the 2014 World Cup. The contract was signed by Mr Enrique Sanz on behalf of [Company 1] and by Mr Alvarado on behalf of FEPAFUT.
37. During the course of the negotiations, it was agreed that [Company 1] would pay a bribe of USD 70,000 to Mr Alvarado in order to obtain FEPAFUT's rights to the 2014 World Cup qualifier matches.
38. The bribe was paid by wire transfer from [Company 1]'s account at [Bank 1] in Miami, Florida. In order to conceal the purpose of the payment, it was agreed that the payment would be made to an account in Panama held in the name of a Panamanian attorney designated by Mr Alvarado. To further conceal the nature of the payment, the conspirators created a sham contract between [Company 1] and the attorney's law firm, which Mr Alvarado emailed to Mr Sanz on or about 29 June 2010, as well as a sham invoice.
39. In furtherance of the scheme, on or about 20 July 2010, Mr Sanz and another person caused USD 70,000 to be wired from [Company 1]'s account at [Bank 1] in Miami, Florida to a bank account in Panama held in the name of the Panamanian attorney designated by Mr Alvarado. Furthermore, on or about 13 December 2013, [Company 1] wired USD 15,000 from the same account at [Bank 1] in Miami, Florida to an account held in the name of FEPAFUT at [Bank 2] in Panama City, Panama pursuant to the contract for the 2014 World Cup qualifier matches.
40. [Company 1] also paid a USD 60,000 bribe to Mr Alvarado to obtain rights owned by FEPAFUT to its 2010 World Cup qualifier matches. As with the 2014 World Cup

qualifier cycle bribe described above, the bribe in connection with the 2010 World Cup qualifier matches was paid by two wire transfers from [Company 1]'s [Bank 1] account in Miami, Florida to a Panamanian account held by the same Panamanian attorney's law firm, as designated by Mr Alvarado. Also similarly, the conspirators created a sham contract between [Company 1] and the law firm to mask the true nature and purpose of the bribe payment.

41. The above bribery scheme was confirmed by the testimony of [A], CEO of [Company 1], in the scope of the US criminal trial related to the acquisition of rights in different tournament events in the CONCACAF region, as follows:

- [Company 1] acquired the media and marketing rights from World Cup qualifiers, from Central American member associations, from Canada and from Caribbean countries;
- Those countries were the following: Panama, El Salvador, Guatemala, Puerto Rico, Belize and Nicaragua;
- During the negotiation with some member associations there were bribe payments being made to the presidents of those member associations;
- Those bribe payments were *"The way that was, it was a part of the price, the cost, to have the rights"* and the same could have gone to the relevant member association;
- A bribe payment to Mr Alvarado was made in the amount of USD 80,000 in connection with this scheme;
- He clarified that the bribe payment *"I remember it was paid for during a law firm in Panama"*.

B. CONCACAF Media and Marketing rights scheme [Cf. Final Report p. 7 et seqq.]

42. In 2011, [B] and [C], owners of the sports marketing company called [Company 2], sought to exploit the change in leadership at CONCACAF and win business with CONCACAF, which had not historically sold media and marketing rights to [B] and [C]'s company, [Company 2]. [B] and [C] asked Mr Miguel Trujillo, who had a close relationship with Mr Alfredo Hawit (the former president of the National Autonomous Federation of Football of Honduras), to assist them in these efforts. [A], who had extensive contacts with the CONCACAF member associations as a result of his work for [Company 3], assisted in this respect and developed a plan, according to which [B] and [C] invited Mr Alvarado, among others officials, to meet with them.

43. In November 2011, [B] and [C] paid for Mr Alvarado, Mr Hawit and Mr Rafael Salguero (the former president of the Guatemala Football Association) to fly to Buenos Aires, and then, on a private jet, to [B] and [C]'s estate in Punta del Este, Uruguay. During meetings held there, Mr Alvarado and the other officials agreed to use their influence to try to cause CONCACAF to sell media marketing rights for CONCACAF

tournaments, including the Gold Cup, to [Company 2]. At the time, Mr Alvarado was a member of the CONCACAF executive committee.

44. In order to induce Mr Alvarado and the other officials to make this agreement, [B] and [C] agreed to pay bribes to them. In particular, Mr Alvarado received from [B] and [C] the amount of USD 100,000 to use his influence at CONCACAF to seek the award of the media and marketing rights for certain football tournaments to [Company 2]. In order to conceal the source and purpose of the payments, an intermediary account at [Bank 1] in Panama City, Panama, controlled by Mr Trujillo was used to transmit the funds to the bribe recipients.
45. In furtherance of this scheme, on or about 1 December 2011, [B] and [C] caused USD 450,000 to be wired from an account they controlled at [Bank 3] in Zurich, Switzerland, to a correspondent account at [Bank 1] in the United States, for credit to a [Bank 1] account in Panama City controlled by Mr Trujillo. Over the course of the next several months, Mr Trujillo caused the funds to be disbursed to Mr Hawit, Mr Alvarado, and Mr Salguero in the amounts previously agreed.
46. Mr Alvarado (and Mr Hawit) attempted to put the topic of awarding the rights [Company 2] sought on the agenda for the CONCACAF executive committee meeting held in Miami, Florida on or about 15 January 2012. For multiple reasons, other CONCACAF officials attempted to block Mr Alvarado's (and Mr Hawit's) efforts. In response, in an email message Mr Alvarado sent to CONCACAF officials on or about 12 January 2012 the topic was taken off the official agenda for the meeting. [C] travelled to Miami for the meeting.
47. Subsequently, on or about 17 April 2012, Mr Alvarado forwarded via email to CONCACAF officials in New York, New York a draft agreement for CONCACAF to sell certain media rights to [Company 2]. His efforts' were unsuccessful and CONCACAF did not award the rights to [Company 2]. Ultimately certain of these rights were sold by CONCACAF to [Company 1].
48. The above bribery scheme was confirmed by various witnesses in their respective testimonies made in the scope of the criminal US proceedings.
49. [A] testified that:
 - He had a meeting with [B] and Mr Trujillo to explain *"the relationship we had with the three officials from CONCACAF and the possibility to put them together in order they discuss the possibility to create a new tournament, the Copa De Los Americas"* and [B] *"asked me and Miguel to arrange one meeting with the officials, that they wanted to bring the officials to Argentina to discuss that possibility"*;
 - The meeting between [A], Mr Trujillo, Mr Alvarado, Mr Salguero and his wife, and Mr Hawit and his wife happened in Buenos Aires at the end of 2011 and [Company 2] paid for all expenses in this respect. The above-mentioned persons

were flown in a private jet of [B] and [C] from Buenos Aires to Punta del Este after spending one day in Buenos Aires;

- In Punta del Este, Mr Alvarado and the other officials had a meeting with [B] and [C] *"where they discussed and agreed to sign a document where the three guys was a commitment to support [Company 2] to be the marketing arm of CONCACAF"*. [Company 2] agreed to pay USD 300,000 for the officials in exchange for the signature of the above mentioned document, amount that were later increased to USD 450,000 due to a request made from Mr Hawit that his share should be higher;
 - Despite the agreement signed between [Company 2] and the above-mentioned officials (including Mr Alvarado), said company did not acquire any rights from CONCACAF.
50. [D], former employee of [Company 2], confirmed that at the end of the year 2011, he met the three above-mentioned officials, Mr Alvarado, Mr Hawit and Mr Salguero, in Buenos Aires, and confirmed to have received from [B] and [C] the agreement signed between those three officials and [Company 2].
51. Mr Trujillo also confirmed the above facts in his guilty plea (in the scope of the US criminal proceedings): *"in around the time period between November 2011 and May 2012, I, together with others, agreed to help facilitate the payment of bribes by two Argentinian sports marketing company executives to three CONCACAF soccer officials [...] In around November 2011, [A] and I travelled from Miami, Florida, to Buenos Aires, Argentina, in furtherance of this conspiracy [...] [A] and I met with the Argentinian executives and the three CONCACAF officials. During the course of these meetings, the three soccer officials agreed to seek to cause CONCACAF to sell those rights to the Argentinians' company, in exchange for bribes totaling hundreds of thousands of dollars. The Argentinians did, in fact, pay these bribes to the officials by wiring funds from a bank account they controlled in Switzerland to the Panamanian bank account of a company controlled. From there, I distributed the money at the direction of the three soccer officials, by wire transfer or by check"*.
52. Mr Salguero confirmed having been invited by Mr Hawit to Argentina *"in the fall of 2011"* and meeting Mr Alvarado and the other persons (Mr Hawit, [A], Mr Trujillo and [B] and [C]) in Argentina and then Uruguay. He also confirmed that the three officials (Mr Alvarado, Mr Hawit and himself) agreed to use their influence at CONCACAF *"to seek to award the media and marketing rights for certain soccer tournaments to the Argentine sports marketing company"* (of [B] and [C]) in exchange for *"hundreds of thousands of dollars in bribes"* from the same company. Finally, he stated to have received a bribe of USD 100,000 from Mr Trujillo *"in furtherance of this scheme"*.
53. Discussing Mr Trujillo's payments to Mr Alvarado and Mr Salguero, Mr Hawit stated that Mr Alvarado received the money in person in Panama.

54. [A] made reference to a spreadsheet he maintained "*that contained the records from Miguel [Mr Trujillo] accounts in Panama*". Such spreadsheet served to control the operations they had and contain both bribe and legitimate payments. The bribe payment to Mr Alvarado (reference to "AL" and "*Pago de cheque Transferido – A. Alvarado*") can be found in the spreadsheet, as well as a summary of all payments to the three CONCACAF officials.
55. Finally, the memorandum of agreement entered into by Mr Alvarado, Mr Hawit and Mr Salguero, and bearing the signature of Mr Alvarado, in favor of [Company 2] was produced as evidence during the US criminal trial, confirming the statements of [A].

C. Summary of the position of the investigatory chamber

56. With regard to the investigatory chamber's position on the above-mentioned agreements, promises and payments, reference is made to the pertinent sections of the Final Report (pp. 6 *et seqq.*), in particular the conclusions according to which:
 - For the signature of the contracts between FEPAFUT and [Company 1] in relation to World Cup Qualifiers bribes to the amount of USD 130,000 have been offered to and accepted by Mr Alvarado; and
 - For the signature of the contract between [Company 2] and CONCACAF officials with respect to CONCACAF media and marketing rights a bribe of USD 100,000 has been offered and accepted by Mr Alvarado.

2. Mr Alvarado's position

57. In his supplementary submission dated 18 September 2019, Mr Alvarado made a series of statements and arguments, most notably:
 - He claimed to be innocent, and that his innocence should be presumed until him being proven guilty in a public trial, adding that the Superseding indictment was based on false premises and inaccuracies, lies and half-truths about the facts;
 - He stated that his name was mentioned in a trial that was unconnected with him, given that the charges against him were completely unrelated to the defendants Mr Napout, Mr Burga and Mr Marin;
 - The witness statements in the US criminal proceedings were given by repentant guilty parties who concluded advantageous deals in return for pleading guilty and implicating others, which makes their testimonies questionable even if they are said to have been given under oath. Furthermore, these testimonies were given in court proceedings to which Mr Alvarado was not a party, and the witnesses were therefore not examined or cross-examined, or their stories refuted;
 - He stated that he was also facing ongoing legal proceedings in the jurisdiction of the Republic of Panama, based on the media publications in relation to the Superseding Indictment;

- He rejected the content of the Final report on the basis that it is completely and absolutely false and that the allegations should in any case have been proven at a public trial, something that has not happened. He denied having received or accepted bribes of any kind in exchange for signing contracts, or having engaged in any unlawful conduct;
 - He also rejected and denied the documentary evidence, on the basis that it is not suitable for proving any bribes in the manner claimed and that it should similarly be brought to and analysed at a public trial;
 - The witnesses neither refer to the circumstances as to time, manner and place required to confirm the assertions made, nor was suitable documentation provided to confirm what was being claimed. [A] and Mr Trujillo have already pleaded guilty to filing false tax returns, which shows that they are prone to lying, and their statements mention non-existent contracts, imprecise figures and spreadsheets prepared by them;
 - The 2004 and 2009 contracts between FEPAFUT and [Company 1] concerning the rights to the 2010 FIFA World Cup South Africa™ and 2014 FIFA World Cup Brazil™ qualifying matches were unanimously approved by the Executive Committee of FEPAFUT, and the President was authorised to sign them, obtaining a profit of 50% and 21.5% respectively over the value of the previous contract. In addition, rights that had been assigned in the prior contract were recovered, which constituted a benefit for FEPAFUT in addition to the increase in the values of the contract. Therefore, Mr Alvarado was never offered or promised any bribes, and did not accept any;
 - The conclusion of a contract between CONCACAF and [Company 2] under which the latter was to become CONCACAF's marketing agent, or for the sale to such party of the audiovisual and marketing rights to CONCACAF competitions, was never submitted to a vote by the Executive Committee of CONCACAF, and therefore no contract for the benefit of [Company 2] was approved or awarded;
 - He rejects the investigatory chamber's conclusion that he committed numerous offences, repeatedly and on an ongoing basis in violation of article 11 of the FCE 2009, which is what must be proven with suitable evidence.
58. The adjudicatory chamber has analysed and reviewed the case file in its entirety. The summary of Mr Alvarado's position does not purport to include every contention put forth. However, the adjudicatory chamber has thoroughly considered in its discussion and deliberations any and all evidence and arguments submitted, even if no specific or detailed reference has been made to those arguments in the outline of Mr Alvarado's position and in the ensuing discussion on the merits.

3. Legal assessment

A. Wording of the relevant provision

59. With regard to the structure of art. 27 of the FCE, the adjudicatory chamber notes that the actual offence of bribery is laid down in the opening sentence of art. 27 par. 1 of the FCE, both with regard to the offerer ("*offer, promise, give*") and the

offeree (“accept, receive, request or solicit”). The second sentence specifies the persons who may be involved in the act of bribery. The third sentence is a further specification of the first sentence in view of art. 322^{ter} and art. 322^{quater} of the Swiss Criminal Code to which there are several analogies.

B. Persons involved

60. The first two elements set out in art. 27 par. 1 FCE are that (i) the person acting must be bound by the FCE and (ii) the counterpart must be a person within or outside FIFA. As has already been shown (cf. par. II.4 above), Mr Alvarado was at the relevant time an official bound by the FCE. As he received the kickbacks from different third parties (including [A], Mr Trujillo and [B] and [C]), the counterpart condition is also fulfilled *in casu*.

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

61. For a violation of art. 27 par. 1 of the FCE to occur, an undue pecuniary or other advantage (see par. II.60 *et seqq.* below) must be accepted, given, offered, promised, received, requested or solicited by the persons involved. Both the acceptance of an offer or a promise on the one hand and of the actual advantage on the other hand constitute acts of bribery and corruption. From a legal perspective, it is therefore not decisive if benefits were actually given (e.g. payments actually made) or received. The exchange of the promise or of the advantage itself does not necessarily have to occur between the offeror and the offeree themselves. CAS has also confirmed this in its jurisprudence: “*the timing of promise, not payment is decisive. Bribery occurs when one enters into an agreement to bribe and payment could be agreed to be paid before but actually paid after the event to which it relates*” (CAS award 2014/A/3537 Vernon Manilal Fernando v. FIFA, par. 85)

UNCAF Region FIFA World Cup Qualifiers Schemes

62. In the adjudicatory chamber’s view, the evidence contained in the Superseding Indictment, in particular the testimony of [A], is sufficient to demonstrate that, for the signature of the contracts between FEPAFUT and [Company 1] in relation to the 2010 and 2014 World Cup Qualifiers, bribes to the amount of USD 130,000 have been offered and accepted by Mr Alvarado.
63. As to Mr Alvarado’s argument that the 2004 and 2009 contracts between FEPAFUT and [Company 1] had been unanimously approved by the Executive Committee of FEPAFUT, that he (as president of the association) was authorised to sign them, and that by such contracts a profit of 50% and 21.5% respectively (over the value of the previous contract) was obtained, the Panel would like to state that such claims are not supported by evidence. Furthermore, even if they were proven, *quod non*, these elements would not contradict or deny the offering and acceptance of bribes to/by Mr Alvarado. Even if the contracts with [Company 1] had been approved by the FEPAFUT Executive Committee, authorizing Mr Alvarado to sign them, and even if

such contracts were advantageous for the respective association, it would not excuse the acceptance of any bribes in this respect.

CONCACAF Media and Marketing rights scheme

64. In the adjudicatory chamber's view, there is equally sufficient evidence that for the signature of the contract between [Company 2] and CONCACAF officials with respect to CONCACAF media and marketing rights a bribe of USD 100,000 has been offered and accepted by Mr Alvarado. Among this evidence are the witness testimonies of [A], [D], Mr Trujillo, Mr Salguero and Mr Hawit, the spreadsheets maintained by [A], as well as the memorandum of agreement signed by Mr Alvarado, produced as evidence during the US criminal trial.
65. The Panel takes note of the various arguments brought forward by Mr Alvarado questioning the quality of the witness testimonies, as well as their credibility, and would like to make the following considerations in this respect.
66. First of all, note shall be taken that all testimonies before the US courts were given under oath. This method is a form of evidence with a high probative value, especially if it was given, as in the present case, in the knowledge that willfully false statements were punishable under the applicable law. Accordingly, strong reasons are needed to disregard this kind of evidence; that could be for example a set of circumstances making the statement very unlikely, a poor credibility of the witness or the testimony (the latter in cases of bad faith).
67. The previous engagement of a witness in previous criminal activities or the prospect to cop a plea does not per se remove the personal credibility. The witness's (sole) obligation is to testify to the best of his or her recollection; the prospect of a potential reduction of the sanction does not automatically mean that the recollection would be influenced. Moreover, the testimonies were given under penalty of perjury. It would thus seem highly unlikely that a person willfully makes wrong accusations to reduce the sanction, risking that, if contradictory evidence is presented during the trial (which is a notorious occurrence), his/her situation would be worse than before.
68. As to Mr Alvarado's argument that he did not have the chance to cross-examine the witnesses in the scope of the aforementioned US courts proceedings, the Panel does not consider that this aspect would affect the credibility of the witnesses, nor the quality of their respective testimonies. This is particularly relevant, since Mr Alvarado was allowed and free to question, summon or examine any of these (or any other) witnesses during the adjudicatory proceedings, or in the scope of a hearing, which Mr Alvarado could have requested (but did not choose to do so).
69. Moreover, it should be stressed that the relevant witnesses were prominently involved in the bribery schemes and could provide first-hand information; it is not as if they only heard of it from hearsay. For example, [A] was the CEO of [Company 1] and one of the architects of the bribe scheme involving his company [Company 1] US, and FEPAFUT in relation to the 2010 and 2014 World Cup Qualifiers, which he

described in detail in his testimony. Furthermore, he was also directly and heavily involved in the second bribery scheme, due to his extensive contacts with the CONCACAF member associations. [D] was working for the company [Company 2] and was not only aware of the second bribe scheme, but participated in the meeting in Argentina and had direct access to the agreement signed between the three CONCACAF officials and [Company 2]. Mr Trujillo was enlisted in the second bribery scheme by [B] and [C] due to his close relationship with Mr Hawit, and also participated in the Argentina and Uruguay meetings. Finally, Mr Salguero and Mr Hawit were presidents of their respective CONCACAF associations (Guatemala and Honduras respectively) directly involved in the second scheme and being offered bribes for their involvement, with the former fully admitting and confirming the bribery as well as the participation of Mr Alvarado. In addition, both Mr Salguero and Mr Hawit have already been found guilty of bribery and sanctioned accordingly by the adjudicatory chamber.

70. Furthermore, it must be stated that all the witnesses testifying in the scope of the proceedings before the US courts were thoroughly questioned, examined separately and that their respective testimonies were consistent with each other and corroborated with evidentiary documentation that was created during the relevant time period.
71. Consequently, there is, to a sufficient degree, certainty that witness and testimony are credible. The Panel would like to stress that the aforementioned degree corresponds to the standard of proof in FIFA ethics proceedings, which, according to art. 48 of the FCE, is comfortable satisfaction. This standard, which has been consistently confirmed by CAS, is considerably lower than the one used in criminal proceedings (such as the US court proceedings in the scope of which various football officials were convicted), which corresponds to the concept of "*beyond any reasonable doubt*".
72. In addition, the Panel considers as highly implausible that all the witnesses mentioned above who testified to Mr Alvarado's participation in the bribe scheme would lie in their respective deposition, going to great lengths as to concoct a very elaborate story, that is both believable and consistent, making sure that each of their respective versions correspond and corroborate, while matching the exact information in the written evidence, just for the sake of incriminating Mr Alvarado (who, as he pointed out, was not even party to the respective criminal trial in the scope of which the witness testimonies were made).
73. With respect to the two bribery schemes, the following procedure was used, as confirmed by the various witness statements of [A], [D], Mr Trujillo and Mr Salguero, as well as the spreadsheets maintained by [A]:
 - The companies who wanted to acquire the relevant media and marketing rights ([Company 1] or [Company 2]) contacted the relevant officials in positions of power with the respective association (in this case the president of FEPAFUT) or confederation (presidents of CONCACAF member associations and/or members of the Executive Committee of said confederation) to negotiate the contracts;

- The officials met the representatives of the companies (in some cases being flown over to South America for such meetings, and even invited to events together with their spouses) and discussed the bribes to be received in exchange for their support and influence in the respective association/confederation so that the companies are sold the relevant media and marketing rights;
 - Payments were made by the companies through an intermediary account in Panama controlled by Mr Trujillo;
 - The bribe amounts were paid by Mr Trujillo either to a bank account in the name of the Panamanian attorney designated by Mr Alvarado (UNCAF Region World Cup Qualifiers Scheme) or to the latter directly, by check (CONCACAF Media and Marketing rights scheme);
 - In the first bribery scheme, a fake contract between [Company 1] and the Panamanian attorney's law firm was created and sent by Mr Alvarado to the aforementioned company, together with a fake invoice.
74. The above *modus operandi* clearly served, in the adjudicatory chamber's view, to conceal the true purpose of the relevant payments and to leave as few trails of wrongdoing as possible, which can be characterised as typical behaviour in corruption schemes (no documents justifying the payments despite considerable sums being transferred; involvement of intermediaries and companies in order to deviate the cash flow and to blur the relevant trails).

Conclusion

75. In view of the above, the adjudicatory chamber concludes that Mr Alvarado systematically/repeatedly accepted the offers and promises of various bribes of approx. USD 230,000 in total, in relation to the aforementioned schemes (UNCAF Region World Cup Qualifiers and CONCACAF Media and Marketing rights scheme).
76. Accordingly, the relevant requirement of art. 27 par. 1 of the FCE (regarding the acceptance, receipt, or acceptance of an advantage) is met in the present case.

D. Personal or undue pecuniary or other advantage

77. Thirdly, a "personal or undue pecuniary or other advantage" must be at stake.
- a. Pecuniary or other advantage*
78. With regard to the term "pecuniary or other advantage", the adjudicatory chamber brings up that this includes any kind of advancement of economic, legal or personal, material or non-material interest.
79. Without any doubt, the various bribes offered and accepted by Mr Alvarado (to an amount of USD 230,000 in total) gave him a pecuniary advantage within the meaning of art. 27 par. 1 of the FCE.

b. Personal or undue advantage

80. Not every kind of pecuniary or other advantage, however, falls under the scope of art. 27 par. 1 of the FCE. Rather, the relevant advantage has to be “personal or undue” one.
81. The pecuniary advantages described previously (cf. par. II.62 above) were all offered to, or accepted/made by or paid to Mr Alvarado personally, and therefore represent personal benefits.
82. Furthermore, the advantage must be “undue” in the light of the provisions of FIFA regulations.
83. Mr Alvarado, in his position as a high-ranking football official, was offered, accepted and/or obtained considerable monetary advantages without legal basis in exchange for using his influence (within FEPAFUT and CONCACAF) in relation to the awarding the media and marketing rights for various football tournaments to a sports marketing company.
84. The adjudicatory chamber notes that in the present case, there are no indications whatsoever of any legal or (proper) contractual basis for the abovementioned payments, and offers and promises of payments, to Mr Alvarado. In fact, the witnesses and other evidence even expressly confirmed that they were bribe payments and promises (see par. II.41 *et seqq.* above and Final Report, p. 7 *et seqq.*).
85. Following the above considerations, it can be concluded that the respective advantages offered to / accepted or received by Mr Alvarado constitute an undue pecuniary advantage within the meaning of art. 27 par. 1 of the FCE.

E. Ratio of equivalence

86. The core element of art. 27 par. 1 of the FCE is the establishment of a “*quid pro quo*” (ratio of equivalence) between the undue advantage and a specific action by the official obtaining it.

aa. Act that is related to official activities

87. Acts of bribery require that they aim at an act which is related to the official activities of the offeree or recipient.
88. *In casu*, the acts of bribery were clearly related to the official activities of the recipient. Mr Alvarado, in his roles as, *inter alia*, member of the FIFA and CONCACAF Executive Committee and former senior official (President) of the FEPAFUT, was (personally) involved in the assigning of the commercial rights for FIFA and CONCACAF competitions (as well as commercial rights of the FEPAFUT) and was without any doubt one of the key decision makers. This is further proven, in relation to the first bribery scheme (concerning the 2010 and 2014 World Cup Qualifiers) by the fact

that FEPAFUT (represented by its president - Mr Alvarado) did sign the relevant contracts with [Company 1] in 2004 and 2009 for the media and marketing rights and, with respect to the second bribery scheme, by the memorandum of agreement in favor of [Company 2], entered into by Mr Alvarado and the other two officials (signed by Mr Alvarado) reflecting the officials' commitment to support [Company 2] to be the marketing arm of CONCACAF.

bb. Act contrary to duties or falling within discretion

89. 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.
90. Officials are expected that their decision shaping and taking be not under any undue or improper influence. In this respect, it is well established in relevant practice and legal doctrine that any kind of reward – *i.e.* a payment to the individual carrying out the acts, resulting in an advantage for the person making the payment – renders the relevant acts contrary to the official's duties, even if the actions *per se* could be considered in line with the relevant duties.
91. As it has already been established (cf. par. II.36 *et seqq.* and II.62 *et seqq.* above), Mr Alvarado accepted several payments from [A] and/or [Company 1], as well as [B] and [C], Mr Trujillo and/or [Company 2] without a proper basis being in place justifying the payments. Consequently, Mr Alvarado's acts must be considered as having been based on illegitimate motives and contrary to his duties.

cc. Incitement of the execution or omission of the act

92. The undue advantage pursuant to art. 27 par. 1 of the FCE must, then, specifically be given in exchange for the execution or omission of the act (*quid pro quo*). Since it is, in many cases, difficult 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.
93. In this respect, the adjudicatory chamber further recalls that CAS has held 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 2014/A/3537, par. 82; CAS 2010/A/2172, par. 21). On the other hand, it must be pointed out that according to the pertinent definition of CAS, a violation must be established to the comfortable satisfaction of the adjudicatory chamber "*bearing in mind the seriousness of the allegation*". Without any doubt, the allegation of bribery is among the most serious ones under FIFA's rules and regulations and the FCE; as a consequence, even if the act of bribery does not have to be proven beyond reasonable doubt, it shall also not be considered as established with levity.

94. Concerning the question whether the promises and offers of payments/bribes to Mr Alvarado were incitements and/or rewards to him, in his capacity as president of FEPAFUT and member of the CONCACAF Executive Committee, to sign or preserve the relevant contracts between CONCACAF or FEPAFUT and the various companies mentioned previously in relation to the CONCACAF media and marketing rights and the 2010 and 2014 World Cup Qualifiers respectively, the adjudicatory chamber has considered the following aspects.
95. Firstly, and most importantly, the witnesses [A], [D], Mr Trujillo and Mr Salguero have consistently testified that these promises and payments were bribes, given in exchange for Mr Alvarado's approval and support of the [Company 1] and [Company 2] contracts with FEPAFUT and CONCACAF respectively. The other documentary evidence, such as the spreadsheets maintained by [A] and the memorandum of understanding signed by Mr Alvarado confirm this finding.
96. In particular, the aforementioned memorandum is explicitly stating that the officials signing it (Mr Alvarado, Mr Salguero and Mr Hawit, all three members of the CONCACAF Executive Committee, the first two also with a right to vote) had *"decided to propose, support, and vote in favor of the appointment of [Company 2] Group as the exclusive Agent of CONCACAF in connection with the use of rights pertaining to broadcasting, organization of the events, use of advertising, marketing, intellectual property [...] and ultimately any other commercial use rights to the Gold Cup and other competitions organized by CONCACAF, on a worldwide basis [...] this involves giving [COMPANY 2] GROUP powers of representation in order to execute agreements jointly with CONCACAF and receive sums of money for the promotion, sale, and marketing of the rights to the Copa de Oro, on behalf and by order of CONCACAF, from the year 2013 until the year 2023. [...] We, the undersigned, intend to respect and honor the agreement reached and memorialized herein. Therefore, we agree to propose, support, and vote as agreed herein on the Executive Committee of CONCACAF."*
97. Moreover, the adjudicatory chamber notes the high amounts of the promises and payments at stake (cf. par. II.75 above). Promises and payments in such amounts demand a clear and proper basis; the lack of such basis, in turn, is an unmistakable indicator of corruption.
98. Furthermore, the timing between the promises and payments on one hand and the acts of Mr Alvarado on the other is as follows: for the first bribery scheme (UNCAF Region World Cup Qualifiers Scheme), the relevant contract (between [Company 1] and FEPAFUT, signed by Mr Alvarado) was concluded in June 2009 and the payments of the bribe of USD 70,000 was made in July 2010 (one month after the fake contract and invoice was sent by Mr Alvarado to the company). The same procedure/modus operandi was used for the bribe of USD 60,000 in relation to the 2010 World Cup qualifier matches. For the second bribery scheme (CONCACAF Media and Marketing Rights), the meeting between the representatives of the company [Company 2] ([B] and [C]), the intermediaries ([A] and Mr Trujillo) and the three

CONCACAF officials (Mr Alvarado, Mr Salguero and Mr Hawit) took place in November 2011, when also the memorandum of agreement was entered into and signed by Mr Alvarado, the payment of the bribe of USD 450,000 (of which the amount of USD 100,000 was Mr Alvarado's share) was made on in December 2011 by [B] and [C] (to Mr Trujillo, who then proceeded to transfer or hand/pay the relevant amounts to the three officials), while the meeting of the CONCACAF Executive Committee during which the topic of awarding the relevant rights to [Company 2] took place in January 2012. Subsequently, in April 2012, Mr Alvarado forwarded via email to CONCACAF officials a draft agreement for CONCACAF to sell certain media rights to [Company 2] (even if this contract was not ultimately concluded between the two entities). All these respective time spans are under the one-year "*période suspecte*" Swiss jurisprudence considers as sufficient (SFT 118 IV 309, consid. 2a) and are thus also a strong indicator of corruption.

99. In conclusion, Mr Alvarado accepted undue advantage in exchange for various acts as described previously (using his influence in relation to the assignment of various media and marketing rights). The adjudicatory chamber believes that Mr Alvarado would not have engaged in all of these arrangements if he were not positive about receiving a financial benefit/profit.
100. Accordingly, the adjudicatory chamber is comfortably satisfied that Mr Alvarado received the benefit in question as a return – *quid pro quo* – and, hence, as an incitement for the execution of an official act within the meaning of art. 27 par. 1 of the FCE.

dd. Intention to obtain or retain business or any other improper advantage

101. Finally, art. 27 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*". This requirement is to be sub-divided into several different elements, the first one being the business and/or advantage sought.
102. With regard to the term "*advantage*", the adjudicatory chamber points 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 (cf. par. II.78 above).
103. In the present case, the advantage lies in Mr Alvarado accepting or receiving bribes from various third parties. This constitutes a personal betterment and thus an "*advantage*".
104. Furthermore, the advantage sought must be "*improper*". Since Mr Alvarado was, as per the relevant FIFA regulations, not allowed to accept/receive bribes, it follows that the advantage sought was improper.

F. Conclusion

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

G. Sanctions and determination of sanctions

106. According to art. 6 par. 1 of the FCE, the Ethics Committee may pronounce the sanctions described in the FCE, the FIFA Disciplinary Code, 2019 edition (FDC) and the FIFA Statutes.

107. When imposing a sanction, the adjudicatory chamber shall take into account all relevant factors in the case, including the nature of the offence, the offender's assistance and cooperation, the motive, the circumstances, the degree of the offender's guilt, the extent to which the offender accepts responsibility and whether the person mitigated his guilt by returning the advantage received (art. 9 par. 1 FCE). It shall decide the scope and duration of any sanction (art. 9 par. 3 FCE).

108. First of all, when evaluating the degree of the official's guilt in the context of sanctioning the violation of art. 27 of the FCE, the seriousness of the violation and the endangerment of the legal interest have to be taken into account. The legal interest protected by this provision refers to the integrity (cf. art. 2 let. e of the FIFA Statutes) and the objectivity of FIFA and its bodies and officials, as well as to the trust of the individuals and institutions subject to FIFA's powers as an association. Endangering this legal interest, in turn, is likely to cause serious damage to the trust in FIFA. Accordingly, FIFA has a legitimate interest to take a tough stance against violations of this provision.

109. In this respect, it should be pointed out that Mr Alvarado has held very prominent and senior positions in association football at national, regional and international level. In these functions, he has a responsibility to serve the football community as a role model. In addition, no acts of mere negligence are at stake here but deliberate actions (see art. 6 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, Mr Alvarado's degree of guilt must be regarded as serious.

110. With regard to the circumstances of the present case, the adjudicatory chamber emphasises that several of its aspects render the case particularly grave: Mr Alvarado is a senior and influential football official, and he personally enriched himself by accepting bribes on several occasions (and for considerable amounts). It must also be borne in mind that Mr Alvarado violated art. 27 of the FCE, which is the most serious offence under the Code.

111. As far as the motive is concerned, the adjudicatory chamber notes that Mr Alvarado actions were led by personal financial interests. He sought to – and eventually did – materially benefit from his actions. In particular, he took advantage (and traded) his

influence and high-ranking functions in exchange for bribes. Accordingly, Mr Alvarado's motive (which was driven by personal gain) in the present case must be qualified as reprehensible and an aggravating factor in the case.

112. Finally, the adjudicatory chamber recalls that Mr Alvarado has been involved in criminal proceedings before courts in the United States, being charged in the Superseding Indictment (cf. par. I.3 above). In addition, it appears that Mr Alvarado has been (or is currently) involved in criminal proceedings in the Republic of Panama.
113. To sum up, the adjudicatory chamber deems that the guilt of Mr Alvarado in the present case is particularly serious, and virtually no elements exist that could mitigate the degree of his guilt.
114. With regard to the type of sanction to be imposed on Mr Alvarado, the adjudicatory chamber deems – in view of the serious nature of his misconduct (cf. par. II.109 *et seqq.* above) – only a ban on taking part in any football-related activity is appropriate in view of the inherent, preventive character of such sanction in terms of potential subsequent misconduct by the official. In the light of this, the adjudicatory chamber has chosen to sanction Mr Alvarado by banning him from taking part in any football-related activity (art. 7 par. 1(j) of the FCE; art. 56 par. 2(f) of the FIFA Statutes; art. 6 par. 2 lit. c) of the FDC).
115. With regard to the scope and duration of a ban (see art. 9 par. 2 and 3 of the FCE), neither the FCE nor the FIFA Statutes nor the FDC set forth any general minimum or maximum limits. According to the well-established case law of CAS, lifetime bans are admissible under the Code (see, e.g., CAS 2014/A/3537). However, when determining the scope and duration of the ban in a specific case, the adjudicatory chamber has to be guided by the principle of proportionality.
116. At this point, the adjudicatory chamber reaffirms its position of zero tolerance against all kinds of corruption. In this context, the adjudicatory chamber refers to the relevant case-law of CAS, which has expressly confirmed that 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 expressly stated that only strong sanctions would set the necessary deterrent signal to officials (cf. CAS 2009/A/1920, par. 116).
117. Finally, the adjudicatory chamber stresses that corruption affects the very core of sports and is nothing less than life threatening for sports and sports organisations. Thus, 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 FEPAFUT, CONCACAF 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.

118. After having taken into account all relevant factors of the case (cf. par. II.108 *et seqq.* above), the adjudicatory chamber deems that nothing short of the maximum sanction under the FCE, *i.e.* a ban on taking part in any football-related activity for life, is adequate for the violation of art. 27 of the FCE committed by Mr Alvarado. With regard to the scope (geographical area, art. 9 par. 4 of the FCE), only a worldwide effect is appropriate since Mr Alvarado committed FCE violations while being a member of various FIFA committees and his misconduct related to international football competitions such as the FIFA World Cup. Limiting the ban to association or confederation level, in turn, would neither prevent him from future misconduct nor adequately reflect the chamber's disapproval of his conduct.
119. In conclusion and in light of the above considerations, Mr Alvarado is hereby banned for life from taking part in any football-related activity (administrative, sports or any other) at national and international level. In accordance with art. 42 par. 1 of the FCE, the ban shall come into force as soon as the decision is communicated.
120. In the present case, the adjudicatory chamber is of the opinion that the imposition of a ban on taking part in any football-related activity is not sufficient to sanction the misconduct of Mr Alvarado adequately, in particular since a personal financial motive and gain were involved. Hence, the adjudicatory chamber considers that the ban imposed on Mr Alvarado should be completed with a fine.
121. The amount of the fine shall not be less than CHF 300 and not more than CHF 1,000,000 (art. 6 par. 2 of the FCE in conjunction with art. 6 par. 4 of the FDC). In the case at hand, in the calculation of the fine, the Panel took into consideration the undue pecuniary advantages offered and accepted by Mr Alvarado as bribes (USD 230,000). In the adjudicatory chamber's view, these amounts alone do not adequately reflect the seriousness of the misconduct displayed by Mr Alvarado, nor the adjudicatory chamber's disapproval of such conduct. Moreover, in order to have a sanctioning and a preventive effect, the fine should be higher than the benefit Mr Alvarado obtained, as otherwise it would only amount to a reclaiming of the respective benefit.
122. In the light of the above, the adjudicatory chamber considers a fine of CHF 500,000 to be proportionate.

H. Procedural costs and procedural compensation

123. The procedural costs are made up of the costs and expenses of the investigation and adjudicatory proceedings (art. 54 of the FCE).

124. Mr Alvarado has been found guilty of violations of art. 27 of the FCE and has been sanctioned accordingly. The adjudicatory chamber deems that no exceptional circumstances apply to the present case that would justify deviating from the general principle regarding the bearing of the costs. Thus, the adjudicatory chamber rules that Mr Alvarado shall bear the procedural costs (art. 56 par. 1 of the FCE).
125. In the present case, the costs and expenses of the investigation and the adjudicatory proceedings add up to [...].
126. According to art. 57 of the FCE, no procedural compensation shall be awarded in proceedings conducted by the Ethics Committee. Consequently, Mr Alvarado shall bear his own legal and other costs incurred in connection with these proceedings.

III. has therefore decided

1. Mr Ariel Alvarado, is found guilty of infringement of art. 27 (Bribery and corruption) of the FIFA Code of Ethics.
 2. Mr Ariel Alvarado, is hereby banned for life from taking part in any kind of football-related activity at national and international level (administrative, sports or any other) as of notification of the present decision, in accordance with art. 7 lit. j) of the FIFA Code of Ethics in conjunction with art. 6 par. 2 of the FIFA Disciplinary Code.
 3. Mr Ariel Alvarado, shall pay a fine in the amount of CHF 500'000 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. "*Adj. ref. no. 19/2019 (Ethics 150954)*" in accordance with art. 7 let. e) of the FIFA Code of Ethics.
 4. Mr Ariel Alvarado shall pay costs of these proceedings in the amount of [...] within 30 days of notification of the present decision, which shall be paid according to the modalities stipulated under point 3. above.
 5. Mr Ariel Alvarado, shall bear his own legal and other costs incurred in connection with the present proceedings.
 6. This decision is sent to Mr Ariel Alvarado. A copy of the decision is sent to the CONCACAF and to FEPAFUT. A copy of the decision is also sent to the Chairperson of the investigatory chamber of the FIFA Ethics Committee, Ms Maria Claudia Rojas.
-

LEGAL ACTION:

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

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Vassilios Skouris
Chairman of the adjudicatory chamber
of the FIFA Ethics Committee