TAS 2022/A/9175 Federación Peruana de Fútbol c. Federación Ecuatoriana de Fútbol & FIFA
TAS 2022/A/9176 Federación de Fútbol de Chile c. Federación Ecuatoriana de Fútbol, Byron Castillo Segura & FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President:	Mr Massimo Coccia, Law Professor and Attorney-at-law, Rome, Italy
Arbitrators:	Mr Romano F. Subiotto KC, Avocat in Brussels, Belgium and Solicitor-Advocate in London, United Kingdom
	Mr José María Alonso, Attorney-at-law in Madrid, Spain
Ad hoc clerk:	Mr Francisco Larios, Attorney-at-law in Miami, United States of America

in the arbitration between

Federación Peruana de Fútbol, Perú
Represented by Mr Lucas Ferrer, Mr Luis Torres and Ms Nicole Santiago, Attorneys-at-law, Barcelona, Spain

and

Federación de Fútbol de Chile, Chile
Represented by Mr Eduardo Carlezzo, Attorney-at-law, São Paulo, Brazil

- Appellants -

v.

Federación Ecuatoriana de Fútbol, Ecuador
Represented by Mr Javier Ferrero, Mr Iñigo de Lacalle, Attorneys-at-law, Madrid, Spain, and Mr Gonzalo Mayo Nader, Attorney-at law, Buenos Aires, Argentina

Byron Castillo Segura, Ecuador
Represented by Mr Andrés Holguín Martínez, Attorney-at-law, Guayaquil, Ecuador

and

Fédération Internationale de Football Association (FIFA), Switzerland
Represented by Messrs Miguel Liétard and Carlos Schneider, FIFA Internal Counsel, Zurich, Switzerland

- Respondents -

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I. INTRODUCTION

1. This arbitration deals with two consolidated cases arising from the appeals separately filed by the football federations of Peru and Chile against the decision of the FIFA Appeal Committee dated 15 September 2022 and notified on 16 September 2022 (the "Appealed Decision"), which held that the football association of Ecuador did not breach Articles 11, 21 or 22 of the FIFA Disciplinary Code in connection with some matches played for the Ecuadorian national team by the footballer Byron Castillo Segura on the occasion of the South American tournament qualifying to the final stage of the FIFA World Cup 2022 to be played in Qatar (hereinafter the "FIFA World Cup 2022").

2. The Panel has elected to write this Award in English, considering that the present arbitration is bilingual Spanish-English – as indicated in the letters from the CAS Court Office dated 29 September 2022 and consented by the parties – and that the Appealed Decision is in English.

II. PARTIES

A. The Appellants

3. The Federación Peruana de Fútbol (the "FPF"), the Appellant in the case docketed as TAS 2022/A/9175 (hereinafter "TAS 9175"), is the football governing body in Peru. It has been a member of FIFA since 1924 and has its headquarters in Lima, Peru.

4. The Federación de Fútbol de Chile (the "FFC"), the Appellant in the case docketed as TAS 2022/A/9176 (hereinafter "TAS 9176"), is the football governing body in Chile. It has been a member of FIFA since 1913 and has its headquarters in Santiago, Chile.

B. The Respondents

5. The Federación Ecuatoriana de Fútbol (the "FEF"), respondent in both TAS 9175 and TAS 9176, is the football governing body in Ecuador. It has been a member of FIFA since 1926 and has its headquarters in Quito, Ecuador.

6. Byron Castillo Segura (the "Player"), respondent only in TAS 9176, is a professional footballer who played for the FEF's national team in some of the matches qualifying for the FIFA World Cup 2022.

7. The Fédération Internationale de Football Association ("FIFA"), respondent in both TAS 9175 and TAS 9176, is the international governing body of football at worldwide level, with headquarters in Zurich, Switzerland.

8. The Appellants and the Respondents are collectively referred to as the "Parties".

III. BACKGROUND

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

A. Facts leading up to the Appealed Decision

10. During the qualifying tournament organized within the South American football confederation CONMEBOL for the FIFA World Cup 2022 (hereinafter the "World Cup Qualifiers"), regulated by the FIFA Regulations for the FIFA World Cup 2022 Preliminary Competition (hereinafter the "WC Preliminary Competition Regulations"), the Player was fielded by the Ecuadorian national team in the following 8 matches (two of them, in the 6th and 14th round of the tournament, played against the Chilean national team):

Round	Date	Home Team	Away Team	Result
6	2 September 2021	Ecuador	Chile	2-0
9	5 September 2021	Ecuador	Paraguay	0-0
10	9 September 2021	Uruguay	Ecuador	1-0
11	7 October 2021	Ecuador	Bolivia	3-0
13	11 November 2021	Ecuador	Venezuela	1-0
14	16 November 2021	Chile	Ecuador	0-2
17	24 March 2022	Paraguay	Ecuador	3-1
18	29 March 2022	Ecuador	Argentina	1-1

11. Pursuant to Article 10, para. 4, of the Regulations for the FIFA World Cup 2022 (hereinafter the "FIFA World Cup 2022 Regulations"), CONMEBOL is attributed 4.5 slots in the FIFA World Cup 2022 for its member federations. This means that the top four CONMEBOL teams in the standings of the World Cup Qualifiers are directly qualified to the FIFA World Cup 2022, while the fifth-placed team must try to qualify through a single play-off match against a team from the Asian Football Confederation ("AFC"). At the end of the World Cup Qualifiers – played in a tournament of home-and-away round-robin matches from 8 October 2020 to 29 March 2022 – the final standings of the CONMEBOL member federations were as follows (with the federations of Brazil, Argentina, Uruguay and Ecuador directly qualified to the FIFA World Cup 2022, while the FPF had to play the AFC-CONMEBOL play-off, eventually losing against Australia on 13 June 2022):

CONMEBOL World Cup Qualifiers			
Position	**Football Federation**	**Points**	**Result**
1	Brazil	45	Qualified
2	Argentina	39	Qualified
3	Uruguay	28	Qualified

4	Ecuador	26	Qualified
5	Peru	24	Play-Off against AFC team
6	Colombia	23	Eliminated
7	Chile	19	Eliminated
8	Paraguay	16	Eliminated
9	Bolivia	15	Eliminated
10	Venezuela	10	Eliminated

12. On 5 May 2022, the FFC filed a complaint with FIFA pursuant to Article 52 of the FIFA Disciplinary Code ("FDC"), requesting the FIFA Disciplinary Committee to investigate and open disciplinary proceedings against the Player and the FEF for the alleged forgery and use of documents that falsely attested to the Player's place of birth, age and Ecuadorian nationality and for his alleged ineligibility in the aforementioned matches. The FFC claimed that the Player was Colombian, not Ecuadorian, and that, therefore, he was ineligible to play for the FEF's national team. The FFC requested that the FIFA Disciplinary Committee, "*due to the use of false birth certificate, fake age and false nationality*", (i) ban the Player from any football-related activity, (ii) declare that the Player was ineligible to participate in the aforementioned matches, (iii) impose a forfeit on the FEF in said matches due to the Player's ineligibility, (iv) declare the FFC as the 4th place finisher in the World Cup Qualifiers, (v) exclude the FEF from the FIFA World Cup 2026 and (vi) apply a fine of CHF 1,000,000.

13. On 11 May 2022, the FIFA Disciplinary Committee, on the basis of the FFC's complaint, opened a disciplinary proceeding against the FEF for a potential violation of Articles 11 ("*Offensive behavior and violations of the principles of fair play*"), 21 ("*Forgery and falsification*") and 22 ("*Forfeit*") of the FDC. The FIFA Disciplinary Committee considered the FPF as a party directly affected by the proceeding and invited it to submit its position on the matter raised by the FFC's complaint ("*la Federación Peruana de Fútbol se considera parte directamente afectada en este procedimiento y se le invita a presentar su posición*"). The FIFA Disciplinary Committee did not call the Player as a defendant in this disciplinary proceeding; the parties to the case were thus the FFC, the FPF and the FEF.

14. On 10 June 2022, the FIFA Disciplinary Committee dismissed all charges against the FEF and closed the disciplinary proceeding (hereinafter the "DC Decision"). The operative part of the DC Decision reads:

> "*1. The FIFA Disciplinary Committee has decided to dismiss all charges against the Ecuadorian Football Association.*
>
> *2. The disciplinary proceedings initiated against the Ecuadorian Football Association are hereby closed*";

as translated from the Spanish original:

> "*1. La Comisión Disciplinaria de la FIFA ha decidido desestimar todos los cargos en contra de la Federación Ecuatoriana de Fútbol.*

2. El procedimiento disciplinario iniciado en contra de la Federación Ecuatoriana de Fútbol se declara cerrado mediante la presente".

15. On 24 June 2022, FIFA notified the grounds of the DC Decision and, on 24 and 27 June 2022, respectively, the FFC and FPF notified FIFA – within the three-day time limit provided by Article 56, para. 3, of the FDC – of their intention to appeal such decision.

16. On 2 July 2022 and 4 July 2022, respectively, the FFC and FPF filed an appeal to the FIFA Appeal Committee against the DC Decision.

17. On 31 August 2022 and 2 September 2022, the FIFA Appeal Committee, requested the FEF to ensure, to the best extent possible, that the Player attend the hearing.

18. On 15 September 2022, the FIFA Appeal Committee held a hearing which the Player did not attend.

19. On 15 September 2022, the FIFA Appeal Committee issued the operative part of its decision (which was notified on 16 September 2022) dismissing the appeals of the FFC and FPF. The FIFA Appeal Committee ruled in the Appealed Decision as follows:

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

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

20. The grounds of the Appealed Decision were communicated on 28 September 2022. In summary, the FIFA Appeal Committee held:

- The FFC and FPF did not have standing to appeal under Articles 21 or 22 FDC because they did not show a concrete, legitimate and personal interest in the appeal. The FFC and FPF did not establish the necessary causal link between the potential breach of said articles and their (subsequent) sporting interest in replacing the FEF in the FIFA World Cup 2022. In other words, the FFC and FPF did not show how they would "directly replace" the FEF should the latter be excluded from the FIFA World Cup or how they would have a legal interest in the appeal other than a hypothetical qualification to the competition. In reaching its conclusion, The FIFA Appeal Committee relied *inter alia* on the CAS 2017/A/5001 & 5002 and asserted that said decision ruled that, in cases opened by a complaint (as opposed to protest), the complainant does not have any procedural rights, including the right to appeal.
- The FIFA Disciplinary Committee was competent to open a disciplinary proceeding *ex officio* based on Article 52 FDC. The FFC and FPF were not required to file a formal protest under Article 46 FDC.
- The FEF did not violate Article 21 FDC because it was not established to the comfortable satisfaction of the FIFA Appeal Committee that the FEF used a forged or falsified document. There is in fact no "cogent evidence" that the Colombian birth

certificate of "Bayron Javier Castillo Segura" born in Colombia 25 June 1995 and other documents linked to this individual relate to the Player who was born "Byron David Castillo Segura" in Ecuador on 10 November 1998 according to his Ecuadorian passport, i.e. there is no sufficient proof that they are one and the same person. No court or state authority in Ecuador or in Colombia ever decided that the Colombian documents actually relate to the Player, that the Player's Ecuadorian documents contain falsified information, or that any of the Ecuadorian documents on file have been falsified. To the contrary, the Ecuadorian authorities issued various documents confirming the Player's Ecuadorian nationality. More fundamentally, the Ecuadorian passport and ID were issued by the competent national authorities and were thus authentic (i.e. not forged), and contain the same personal identification information on the Player that has been confirmed by the Ecuadorian courts. In any case, the FFC and FPF used the "wrong forum" to claim a forgery/falsification, as such claim should be dealt with the competent national courts of Ecuador.

– The FEF did not breach Article 22 FDC because the Player was eligible to play for the FEF national team in the World Cup Qualifiers. The Player is eligible under Article 5.1 of the FIFA Rules Governing Eligibility to Participate for Representative Teams ("FIFA Eligibility Rules") because he holds permanent Ecuadorian nationality as evident from his genuine passport and the decisions of the Ecuadorian courts confirming his nationality.

B. Facts related to the Player's history

21. On 8 May 2012, the Player was registered for the first time in Ecuador by the club C.S. Norteamérica ("Norteamérica"). During his period at Norteamérica, the Player was loaned to several clubs in Ecuador, until he was permanently transferred in 2017 to the Ecuadorian club Barcelona S.C., based in Guayaquil, where he played for five seasons until he moved in 2022 to the Mexican club León FC.

22. On 19 May 2015, the Directorate General of the Civil Registry (hereinafter, the "Ecuadorian Civil Registry") and the FEF signed an "Interinstitutional Technical Cooperation Agreement" ("*Convenio de Cooperación Técnica Interinstitucional*") with the objective of "*guaranteeing the reliability of the information declared for the registration of players in the FEF*" (as translated from the Spanish original: "*garantizar la confiabilidad de la información declarada para el registro de jugadores en la FEF*"). Among other things, it was agreed that the parties would collaborate with the aim of verifying, validating and authenticating the identity of the players registered with the FEF, with a view – as stated in a press release of the Ecuadorian Civil Registry– to detecting electronic or physical frauds in the public registries ("*el objetivo de este acuerdo es … detectar fraudes electrónicos o físicos, en los registros públicos que se custodian por mandato constitucional y lega*l") given the past occurrence of serious issues related to the true identity and personal data of several players registered with the FEF.

23. On 31 July 2015, the Ecuadorian club C.S. Emelec – to which the Player had been loaned on 8 May 2015 – terminated the Player's loan contract and returned him to Norteamérica, because he had not passed the club's integrity screening process. C.S. Emelec explained

in a press release that it would not use a player involved in a situation that could affect its sporting interests.

24. On 31 August 2015, on the basis of the aforementioned Cooperation Agreement signed in May 2015, the Directorate General of the Ecuadorian Civil Registry studied the information related to Mr Byron David Castillo Segura and made the following findings, which were set out in the report entitled "*Informe Técnico-Jurídico no. 1252*":

- The birth of "Castillo Segura Byron David" is registered in volume 9, page 53, act 799 of the Provincial Civil Registry of Guayas.
- However, upon requesting a copy of said birth registration in volume 9, page 53, act 799, the National Civil Registry indicated that it did not belong to "Castillo Segura Byron David", but to another user, a "Pinargote Mejía Ana Cecibel".
- In checking the data of Pinargote Mejía Ana Cecibel, the system indicated that her birth registration is found at volume 10, page 1, act 799. However, upon request of that registration, a certificate was issued declaring that said registration did not exist.
- When the Colombian Civil Registry was requested by the Ecuadorian Civil Registry to search for "Castillo Segura Byron David" in its archives, it replied that no such person was registered. However, it found a "*Castillo Segura Bayron Javier, son of Castillo Ortiz Harrison Javier and Segura Ortiz Olga Eugenia born on 25 June 1995*" (translated from the Spanish original "*Castillo Segura Bayron Javier, hijo de Castillo Ortiz Harrison Javier y Segura Ortiz Olga Eugenia nacido el 25 de junio 1995*"). Bayron Javier Castillo Segura had no Colombian identification document and, therefore, no fingerprints in the system, with the consequence that a fingerprint match could not be made.
- In an interview conducted with the Player, he declared that his parents were of Colombian nationality, like his sister named María Eugenia and his brother named Bayron Javier, and that he had no contacts whatsoever with the latter ("*se ha realizado una entrevista al usuario Castillo Segura [Byron David], quien indica que sus padres son de nacionalidad colombiana al igual que sus dos hermanos, María Eugenia y Bayron Javier. Con este último, indica no tener contacto alguno*").

25. Based on these findings, the Ecuadorian Civil Registry concluded that the block which had been placed on the Player's registration during the period of investigation had to be lifted, since it could not be determined using a fingerprint match that the Player possessed another birth registration or affiliation different from the one in the Ecuadorian records.

26. On 19 January 2017, the FEF removed the Player and another player from the U-20 national team due to suspicion of irregularity in their documentation. The FEF issued the following press release:

> "*The Ecuadorian Football Federation and the Technical Staff of the National Under-20 Team, decided this morning to release the players John Pereira and Byron Castillo, who had initially been included in the roster of the tricolor team that tonight begins its participation in the South American Championship against Brazil.*

> *The decision adopted by the highest body of Ecuadorian football follows its policy of transparency and rectitude of procedures. The decision was taken due to the complaint filed by the Council of Citizen Participation and Social Control about the identity and documentation of both players, who will be excluded from the national team until the corresponding investigations are carried out by the institutions in charge of this issue*";

as translated from the Spanish original:

> "*La Federación Ecuatoriana de Fútbol y el Cuerpo Técnico de la Selección Nacional Sub. 20, resolvieron esta mañana la desvinculación de los jugadores John Pereira y Byron Castillo, quienes inicialmente habían sido considerados en la nómina del combinado tricolor que esta noche inicia su participación en el Campeonato Sudamericano, frente a su similar de Brasil. La decisión adoptada por el máximo organismo del fútbol ecuatoriano obedece a su política de transparencia y rectitud de procedimientos. La decisión fue tomada en virtud de la denuncia presentada por el Consejo de Participación Ciudadana y Control Social, sobre la identidad y documentación de ambos jugadores, quienes estarán excluidos de la Tri hasta que se realicen las investigaciones correspondientes por parte de las instituciones encargadas de este tema"*.

27. On 4 January 2018, the FEF decided to suspend the club Norteamérica due to its involvement in several cases of falsification of the identity of players. In this respect, the then Head of the FEF Investigations Commission, Colonel Jaime Jara, stated publicly, as reported by El Universo (a newspaper in Ecuador), the following:

> "*The reports are well substantiated. We have the agreement with the Civil Registry that is on the right track. We have six thousand cases. The irregularities of players will continue to be reported. Once we clarify the cases, it goes to the Disciplinary Committee and from there to the Public Prosecutors Office ... Many bad officials have been revealed from the Civil Registry. From the club Norteamérica. We have many cases of forgery. The origin of everything is in the Norteamérica club. From there the cases spread to other clubs. Norteamérica was suspended due to the cases of falsification we found*;

as translated from the Spanish original:

> "*Los informes están bien sustentados. Tenemos el convenio con el Registro Civil que va en buen camino. Tenemos seis mil casos. Las irregularidades de jugadores se seguirán dando a conocer. Una vez que clarificamos los casos, pasa a Comisión de Disciplina y de ahí a la Fiscalía … Han salido muchos malos funcionarios del Registro Civil. Del club Norteamérica. Tenemos muchos casos de falsificación. El origen de todo está en el club Norteamérica. De ahí se despliegan los casos a más clubes. Norteamérica fue suspendido por los casos de falsificación encontrados*".

28. In December 2018, again on the basis of the aforementioned Cooperation Agreement signed in May 2015, the Directorate General of the Ecuadorian Civil Registry studied the information related to the individual known as "Castillo Segura Byron David", but this time concluded that the Player's birth registration was "*forged*" and that he could not be

given an identification document (hereinafter "ID") because he did not have a "*document to back up his identity*". The conclusions of the Ecuadorian Civil Registry's report entitled "*Informe Técnico-Juridico no. 1996*" (hereinafter "Report no. 1996") read as follows:

> "*5.1 Having reviewed the institutional computer system, it is evident that the NUI [Unique Identification Number] 094243702-1 is registered under the name of Mr. Castillo Segura Byron David; entry made on 13 January 2012 at 10:04:10 am by the former employee .... from the work station ...*
>
> *5.2 The provincial archive of Guayas sent us the birth registration of Mr. Castillo Segura Byron David, born in 1998 in Guayes-Playas-General Villamil in volume 9, page 53, act 799.*
>
> *5.3 The National Archive sent us a document with a response of a non-existent record of the birth registration of Mr. Castillo Segura Byron David.*
>
> *5.4 It is presumed that the birth registration of the user Castillo Segura Byron David is out of records. As for the closing act of the 1996 births book, it is found to be forged.*
>
> *5.5 To forward this Technical-Legal Report to the Zonal Coordination 9, so that an updater can be arranged to add in the field OBSERVATION "Technical Legal Report No. 1996"; PPN, in the database corresponding to Mr. CASTILLO SEGURA BYRON DAVID.*
>
> *5.6 Notify the Civil Registry Corporation of Guayaquil to take into account the actions and corrective measures taken in the case of Mr. Castillo Segura Byron David with NUI 094243702-1 so that he cannot receive an ID because he does not have a document to support his identity.*
>
> *5.7 Send the technical legal report to the FEF, so that they are aware of the proceedings in this case.*
>
> *5.8 Send this report to the Directorate of Sponsorship and Regulations, with the purpose of informing the Public Prosecutor's Office, so that this case may be investigated and responsibilities may be determined.*
>
> *5.9 Send the file to the General Secretariat of the DIGERCIC for its knowledge, filing and custody*";

as translated from the Spanish original:

> "*5.1 Revisado el Sistema informático institucional, se puede evidenciar que el NUI 094243702-1 consta a nombre del señor Castillo Segura Byron David; ingreso realizado el 13 de enero 2012 a las 10:04:10, por el ex servidor … desde la estación de trabajo …*
>
> *5.2 El archivo provincial de Guayas nos remiten la inscripción de Nacimiento del señor Castillo Segura Byron David nacido en el año 1998 in Guayes-Playas-General Villamil en el tomo 9, página 53, acta 799.*
>
> *5.3 El Archivo Nacional nos remiten un documento de respuesta de acta inexistente de la inscripción de nacimiento del señor Castillo Segura Byron David.*

5.4 Se presume que la inscripción de nacimiento del usuario Castillo Segura Byron David se encuentra fuera de actas. En cuanto al acta de clausura del libro de nacimiento del año 1996 se encuentra forjada.

5.5 Remitir el presente Informe Técnico Jurídico a la Coordinación Zonal 9, a fin de que se disponga a un actualizador, para que se agregue en el campo OBSERVACIÓN "Informe Técnico Jurídico No. 1996"; PPN. En la base de datos correspondiente al señor CASTILLO SEGURA BYRON DAVID.

5.6 Notificar a la Corporación de Registro Civil de Guayaquil para que tengan en cuenta de las acciones y correctivos tomados en el caso del señor Castillo Segura Byron David con NUI 094243702-1 con la finalidad que no pueda cedularse porque no tiene un documento que respalde su identidad.

5.7 Remitir el informe técnico jurídico a la Federación Ecuatoriana de Fútbol, a fin de que tengan conocimiento de las diligencias dispuestas en este caso.

5.8 Enviar el presente informe a la Dirección de Patrocinio y Normativa, con la finalidad de que se ponga en conocimiento de la Fiscalía, a fin de que se investigue este caso y se determine responsabilidades.

5.9 Remitir el expediente a Secretaría General de la DIGERCIC, para su conocimiento, archivo y custodia".

29. On 26 December 2018, Colonel Jaime Jara, in his then capacity as Head of the FEF Investigations Commission, issued a report (hereinafter the "Jara Report") in which he concluded that the Player was not named Byron David, was not born in Ecuador in 1998 and did not hold Ecuadorian nationality. The report reached the following conclusions:

"• *That the Civil Registry of Ecuador, by means of Technical-Juridical Report No. 1996 on Castillo Segura Byron David, subscribed by the Director of Civil Investigation and Monitoring of the DIGERCIC; concludes that the birth registration of the player in mention, only exists in the Provincial Archive of Guayas, Playas Villamil in volume 9, page 53, act 799; since the Civil Registry sent feedback pointing out the inexistence of the birth registration of Mr. Castillo Segura Byron David; in addition*

  - *It is presumed that the birth registration of the user Castillo Segura Byron David is out of records. As for the closing act of the book of birth of the year 1998, it is found to be forged.*
  - *The Civil Registry of Guayaquil is notified so that they take into account the actions and corrective measures taken in this case with the purpose of NOT BESTOWING HIM AN ID BECAUSE HE DOES NOT HAVE A DOCUMENT CORROBORATING HIS IDENTITY.*
  - *The General Public Prosecutors Office should be informed, so that this case may be investigated and responsibilities may be determined.*

• *There are irregularities in the birth registration of the player Castillo Segura Byron David, of Ecuadorian nationality born in the province of Guayas, City of General Villamil Playas, with date of birth 10 November 1998 (currently 20*

years old); since his real name is Castillo Segura Byron Javier, son of Castillo Ortiz Harrison Javier and Segura Ortiz Olga Eugenia, with date of birth 25 June 1995, born in Tumaco – Nariño (currently 23 years old).

- *Consulting the Colombian Civil Registry, they indicate that in their computer system is registered the citizen Castillo Segura Bayron Javier, son of Castillo Ortiz Harrison Javier and Segura Ortiz Olga Eugenia, of Colombian nationality, 'being the same parents of the player Castillo Segura Byron David'.*
- *It is determined that we are in front of a series of irregularities, such as: double identity, adulteration of nationality and age*";

as translated from the Spanish original:

"• *Que el Registro Civil del Ecuador, mediante informe Técnico-Juridico Nro. 1996 de Castillo Segura Byron David, suscrito por la Directora de Investigación Civil y Monitoreo de la DIGERCIC; concluye que la inscripción de nacimiento del jugador en mención, solo existe en el Archivo Provincial del Guayas, Playas Villamil en el torno 9, página 53, acta 799; ya que en el Archivo Nacional les remite un documento de respuesta de acta inexistente de la inscripción de nacimiento del señor Castillo Segura Byron David; además:*

  - *Se presume que la inscripción de nacimiento del usuario Castillo Segura Byron David se encuentra fuera de actas. En cuanto al acta de clausura del libro de nacimiento del año 1998 se encuentra forjada.*
  - *Notifican a la Corporación de Registro Civil de Guayaquil para que tengan en cuenta de las acciones y correctivos tomados en este caso con la finalidad que NO PUEDA CEDULARSE PORQUE NO TIENE UN DOCUMENTO QUE RESPALDE SU IDENTIDAD.*
  - *Se ponga en conocimiento de la Fiscalía General del Estado, a fin de que se investigue este caso y se determine responsabilidades.*

- *Existen irregularidades en la inscripción de nacimiento del jugador Castillo Segura Byron David, de nacionalidad ecuatoriana nacido en la provincia del Guayas, Cuidad de General Villamil Playas, con fecha de nacimiento 10 de noviembre de 1998, (actualmente 20 años); ya que su verdadero nombre es Castillo Segura Byron Javier, hijo de Castillo Ortiz Harrison Javier y Segura Ortiz Olga Eugenia, con fecha de nacimiento 25 de junio de 1995, nacido en Tumaco – Nariño (actualmente 23 años).*
- *Consultando a la registraduría de Colombia, indican que en su sistema informático se encuentre registrado el ciudadano Castillo Segura Bayron Javier, hijo de Castillo Ortiz Harrison Javier y Segura Ortiz Olga Eugenia de nacionalidad colombiana, "siendo los mismos padres del jugador Castillo Segura Byron David".*
- *Determinándose que estamos al frente de una serie de irregularidades, como: doble identidad, adulteración de nacionalidad y de la edad*".

30. In reaching those conclusions, Colonel Jara relied *inter alia* on (i) the Report no. 1996, (ii) documents provided by the Colombian authorities stating that a person identified as "Castillo Segura Bayron Javier" and born on 25 June 1995 was registered in the civil registry of Colombia, and (iii) an audio recording of an interview with the Player ("*entrevista con el Jugador (audio)*"). The Jara Report, addressed to the President of the FEF and to the President of the FEF Disciplinary Commission, indicated that it annexed certain documents and the aforementioned audio ("*adjunto documentos y audio*").

31. On 26 December 2018, Colonel Jara submitted the Jara Report to the FEF Secretariat and FEF Disciplinary Commission, which on 26 December 2018 decided to initiate disciplinary proceedings, docketed as case no. 073-2018, against the Player. The FEF Disciplinary Commission called the Player and Colonel Jara to appear at a hearing on 9 January 2019 to present their respective positions.

32. The Player, who had filed a request for deferral the previous day, did not appear at the hearing on 9 January 2019, which was thus reconvened for 28 January 2019.

33. On 11 January 2019, the FEF Disciplinary Commission summoned the Player for the new hearing scheduled for 28 January 2019. The FEF Disciplinary Commission also informed the Player that he would be temporarily suspended until the case was resolved.

34. On 28 January 2019, a hearing took place before the FEF Disciplinary Commission. The Player was not present, but his lawyer was.

35. The Player then proceeded to file a "Protective Action" ("*Acción de Protección*", provided by the Ecuadorian Constitution) with an Ecuadorian State court to lift the FEF's temporary suspension against him. On 7 February 2019, the Southern Judicial Division for Families, Women, Children and Adolescents issued its decision on that action. It found that the Player's right to due process, to the presumption of innocence, to defense, to work, to effective judicial protection and to legal certainty had been violated since he was not given the opportunity to be heard and to present his arguments before the FEF Disciplinary Commission provisionally suspended him on 11 January 2019.

36. On November 17, 2020, the FEF Disciplinary Commission closed the proceedings against the Player, declaring the following:

> "*In merit of the reason given by the secretary of this Disciplinary Commission, and in consideration of the petition presented by Mr. Byron Castillo and his counsel Mr. Andres Holguín, having exceeded the statute of limitations, as provided in art. 253 and 255 of the Disciplinary Commission's regulations, the statute of limitations of the action is declared expired in the present case. It was expressly stated in the constitutional process No. 0920201900372, in the resolution issued by the constitutional judge, that: "... The action filed by Mr. BYRON DAVID CASTILLO SEGURA, against the FEF, is admitted, and therefore, as a measure of full reparation, the resolution issued on January 11, 2019, in the city of Guayaquil by the FEF Disciplinary Commission is annulled, and it is provided as full reparation that no sanction of any nature can be imposed on Mr. BYRON DAVID CASTILLO*

> *SEGURA, for the alleged infraction of adulteration of his birth certificate until a criminal judge within the due process has determined his guilt and has issued a judgment which must be enforced in order to proceed and [impose] any administrative sanction to the aforementioned citizen*";

as translated from the Spanish original:

> "*En mérito de la razón sentada por la señorita secretaria de esta Comisión Disciplinaria, y en atención a la petición presentada por el señor Byron Castillo y su patrocinador el Ab. Andrés Holguín, habiendo transcurrido con exceso el plazo para la declaración de la prescripción, conforme lo ordenado en el art. 253 y 255 del Reglamento de la Comisión Disciplinaria, se declara la prescripción de la acción dentro del presente expediente. Se deja expresa constancia dentro del proceso constitucional No. 09208201900372, en la resolución dictada por la jueza constitucional, se dispuso lo siguiente: '…Se admite la acción presentada por el señor BYRON DAVID CASTILLO SEGURA, en contra de la FEDERACIÓN ECUATORIANA DE FUTBOL, y por lo tanto como medida de reparación integral se deja sin efecto la resolución dictada firmada el 11 de enero de 2019, en la cuidad de Guayaquil por la Comisión Disciplinaria de la FEF, y se dispone como reparación integral que no se le puede imponer ninguna sanción de ninguna naturaleza el señor BYRON DAVID CASTILLO SEGURA, de la supuesto infracciona de adulteración de su partida de nacimiento hasta que un juez de Garantías Penales dentro del debido proceso haya determinado su culpabilidad y haya dictado sentencia la misma que deberá ejecutoriarse para que se pueda proceder y [imponer] cualquier sanción administrativa al ciudadano antes mencionado*".

37. On 20 January 2021, the Player filed a "Habeas Data Action" before the Criminal Judicial Unit North 2 ("*Unidad Judicial Norte 2 Penal*") in Guayaquil, Ecuador against the Civil Registry of Ecuador to unblock his ID, as the block was preventing the Player from accessing fundamental things such as access to his bank account, records, or the right to vote.

38. On 4 February 2021, judgment no. 09286-2021-00180 was issued which accepted the Habeas Data Action and ordered that a "*new birth registration certificate be generated for the [Player]*". This judgment, *inter alia*, held the following (at page 6):

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

as translated from the Spanish original:

> "*De lo expuesto anteriormente se desprende que inscripción de nacimiento objeto de la presente demanda no contiene errores respecto a la identidad del accionante BYRON DAVID CASTILLO SEGURA, con esto se concluye, que mediante la prueba practicada ha quedado demostrada la afectación a su derecho constitucional a la identidad personal, al tener informes jurídicos emitidos por el registro civil en los cuales se insinúan presunta irregularidades en los datos de nacimiento del accionante, datos que cabe indicar fueron inscritos por la propia institución registro civil en su momento tal como consta en el acta de nacimiento del señor CASTILLO SEGURA BYRON*".

39. This judgment of 4 February 2021, upon the appeal filed by the Ecuadorian Civil Registry, was confirmed by the Provincial Court of Justice of Guayas on 24 April 2021, which *inter alia* held as follows (at p. 13 of the judgment):

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

as translated from the Spanish original:

> "*En la especie, al surgir inconsistencias dentro de la propia entidad accionada sobre los archivos de datos del accionante, se tiene su documento de identidad como inválido, al tenor de la razón que consta en la página del Registro Civil; sin embargo, existe una inscripción con los datos de filiación del accionante, por la cual, se torna necesaria la actualización de la información constante en el banco de datos públicos y la eliminación de información relacionada a la invalidez de su documento personal o cédula de ciudadanía*".

40. On 9 March 2021, the FEF Vice-President, Mr. Carlos Manzur, revealed in an interview with the press that if it were up to him he would not call the Player to the national team because of the risk involved. More specifically, he stated:

> "*I think it's a matter of playing it safe, avoiding problems. I think he is a good player. If it were up to me, I would not make him play for the national team, I would not take that risk, I would not risk everything we are doing, but I insist, it is not up to me, the one who has to decide whether to call him up or not is professor Gustavo Alfaro. If he calls him up, the necessary consultations will be made, but in my personal opinion, I would not take the risk*";

as translated from the Spanish original:

> "*Yo creo que es un tema de jugar sobre seguro, evitar que haya problemas. Creo que es un buen jugador. Si de mí dependiese, yo no lo haría jugar por la Selección, no correría ese riesgo, no arriesgaría todo lo que estamos haciendo, pero insisto, no depende de mí, quien tiene que decidir si lo convoca o no, es el profesor Gustavo*

Alfaro. Si lo convoca, se harán las consultas necesarias, pero en mi opinión personal, yo no corro el riesgo".

41. On 13 May 2022, the *Dirección General del Registro Civil* issued a certificate (hereinafter the "2022 Certificate from the Ecuadorian Civil Registry") confirming his personal data:

> "*Once verified the registry information that rests in the physical and digital files of the DIGERCIC, it is evident that the unique identity number No. 0942437021, corresponds to the following user:*
>
> - *Name: BYRON DAVID CASTILLO SEGURA*
> - *Place of birth: Ecuador, Province of Guayas, canton General Villamil (Playas), parish General Villamil.*
> - *Date of birth: November 10, 1998.*
> - *NUI 0942437021*
>
> *The information detailed in the preceding lines corresponds to the data contained in the birth registration record with sequential code N-735-000104-85.*
>
> *In consideration of the information contained in the above mentioned registry record and, in accordance with the provisions of Article No. 7 of the Constitution of Ecuador, it can be confirmed that the user is Ecuadorian for all legal purposes*";

as translated from the Spanish original:

> "*Una vez verificada la información registral que reposa en los archivos físicos y digitales de la DIGERCIC, se evidencia que el número único de identidad No. 0942437021, corresponde al siguiente usuario:*
>
> - *Nombres: BYRON DAVID CASTILLO SEGURA*
> - *Lugar de nacimiento: Ecuador, Provincia de Guayas, cantón General Villamil (Playas), parroquia General Villamil.*
> - *Fecha de nacimiento: 10 de noviembre de 1998.*
> - *NUI. 0942437021*
>
> *La información detallada en líneas precedentes, corresponde a los datos que constan en el acta registral de inscripción de nacimiento con código secuencial N-735-000104-85.*
>
> *En consideración de la información que consta en el acta registral indicada anteriormente y, de acuerdo a lo establecido en el artículo No.7 de la Constitución del Ecuador, se puede confirmar que el usuario es ecuatoriano para todos los efectos legales*".

C. The audio recording

42. On 12 September 2022, the Daily Mail published an audio recording between Colonel Jaime Jara, the Head of the FEF Investigations Commission, in which the Player admitted

several facts concerning his personal status (hereinafter the "Audio"). The relevant part of the interview went as follows (as translated into English from the Spanish original):

Colonel Jara: *But what did he tell you, like, what did he tell you?*

The Player: *I came in not knowing anything about how to do things like that. I didn't know anything. They told me this and that, we are going to do this, this way we are going to help you and, I mean, I needed help because I came to help my family, and all that, you know what the situation is like there in Tumaco* [town in Colombia]. *I arrived and well, I started to play without any problems and it's now that I have seen all the problems come up.*

Colonel Jara: *But who did that with Marcos Zambrano? Do you know the person who took you to get the papers, to get the ID card?*

The Player: *I had always been in the complex, that is to say, a person what would take me somewhere else, no, never - that took me to do this, no, nothing. I think they work with other people, I don't know how they work.*

Colonel Jara: *But Marcos Zambrano did all that for you... in the beginning?*

The Player: *He talked to me all about how he was going to help me with this and that and so on.*

Colonel Jara: *But when exactly were you born?*

The Player: *In 95.*

Colonel Jara: *95?*

The Player: *Yes.*

Colonel Jara: *And what year do you have on your ID?*

The Player: *98.*

Colonel Jara: *98. ¿What's your real name?*

The Player: *Bayron Javier*

Colonel Jara: *Bayron Javier.*

The Player: *Castillo Segura*

Colonel Jara: *Castillo Segura. Ok. How many siblings?*

The Player: *Two*

Colonel Jara: *You and?*

The Player: *A sister.*

Colonel Jara: *Your sister?*

The Player: *Yes.*

Colonel Jara: *And nobody else?*

The Player: *Nobody else.*

Colonel Jara: *And what's your sister's name?*

The Player: *María Eugenia.*

Colonel Jara: *Ok. Of the same father and mother?*

The Player: *Same father and mother.*

Colonel Jara: *Ok. And what's your dad's name?*

The Player: *Harrinson Javier.*

Colonel Jara: *Harrinson Javier. And your mom?*

The Player: *Olga Eugenia Ortiz Ortiz, no, Segura Ortiz.*

Colonel Jara: *Segura Ortiz, ok. And do they know about this situation with Zambrano?*

The Player: *Of course they know everything because at the beginning I played there and we played, we played. We crossed the border because we had our team… because the teams from Tumaco cross the border to play in San Lorenzo. Everyone crosses the border. We had tryouts in San Lorenzo, I remember that much. But in those tryouts that were done there in San Lorenzo I didn't stay with any team and the teammate that stayed with me, he didn't show up so they told me that I had to go.*

Colonel Jara: *And who was it that didn't show up?*

The Player: *It was another player and I had to go. I arrived home, I told my father that I had to go, but at that time there was no money in the house - I remember that much: that there was no money. I was going to start crying because I wanted to go and then my dad told me no, not right now, another day. My mother was also worried - no, she didn't want to do this and that. I was worried. My dad left around 7:00 and arrived home at 12:00. He arrived with money, with 20 thousand Colombian pesos. With that I went to San Lorenzo and have stayed there since.*

Colonel Jara: *And then Marcos Zambrano's people were there?*

The Player: *Yes, all of them.*

Colonel Jara: *The one's that went there and watched?*

The Player: *Yes, they watched the players.*

Colonel Jara: *And then?*

The Player: *And then I came here, to [club] America*;

as translated from the Spanish original:

Coronel Jara: *¿Pero que te dijo él, como, que te dijo?*

The Player: *Yo llegué no sabía nada de eso de cómo arreglar cosas así. No sabía nada. Me dijeron ya esto y lo otro, te vamos a hacer esto, por aquí te vamos a ayudar y, o sea, necesitaba ayuda porque yo venía a querer ayudar a mi familia, todo eso, sabes cómo es la situación allá en Tumaco, todo eso. Yo llegué y bueno comencé a jugar sin ningún problema borrado de todo y así ahora es que he visto que han subido todos los problemas.*

Coronel Jara: *¿Pero quién hacía eso con Marcos Zambrano? ¿Tú sabes la persona a que te llevó a sacar los papeles, a sacar la cédula?*

The Player: *Yo estuve siempre en el complejo o sea ya persona así que me llevaban a otro lado, no nunca – me llevaron a ser esto, no, nada. yo creo que ellos trabajan con otra gente no sé cómo trabajan ellos.*

Coronel Jara: *¿Pero Marcos Zambrano te hizo todo eso… al principio?*

The Player: *Él habló conmigo todo que me iba a ayudar esto y lo otro y eso.*

Coronel Jara: *¿Pero tú exactamente cuando eres nacido?*

The Player: *En el 95.*

Coronel Jara: *95?*

The Player: *Sí.*

Coronel Jara: *¿Y en la cédula de que año tienes?*

The Player: *98.*

Coronel Jara: *98. ¿Tus nombres verdaderos cuáles son?*

The Player: *Bayron Javier*

Coronel Jara: *Bayron Javier.*

The Player: *Castillo Segura*

Coronel Jara: *Castillo Segura. Ya. ¿Cuántos hermanos son?*

The Player. *Dos.*

Coronel Jara: *¿Tu y?*

The Player: *Una hermana.*

Coronel Jara: *¿Una hermana tuya?*

The Player: *Sí*

Coronel Jara: *¿Y nadie más?*

The Player: *Nadie más.*

Coronel Jara: *¿Y cómo se llama tu hermana?*

The Player: *María Eugenia.*

Coronel Jara: *Ya. ¿Igual del mismo papá y misma mamá?*

The Player: *Mismo papá y misma mamá.*

Coronel Jara: *Ya. ¿Y tu papá cómo se llama?*

The Player: *Harrinson Javier*

Coronel Jara: *Harrinson Javier. ¿Y tu mamá?*

The Player: *Olga Eugenia Ortiz Ortiz, no, Segura Ortiz.*

Coronel Jara: *Segura Ortiz, ya. ¿Y ellos saben de la situación esta que te hizo Zambrano?*

The Player: *Claro ellos saben todo porque yo a un principio yo jugaba allá y jugábamos, jugábamos. Cruzamos la frontera porque el equipo de nosotros teníamos porque cruzan los equipos de ahí de Tumaco a jugar a San Lorenzo. Todos cruzan, cruzan. Nosotros teníamos unas pruebas en San Lorenzo, me acuerdo tanto. Pero en esas pruebas que se hacían allí en San Lorenzo yo no me quedaba en ningún equipo y el compañero que se quedaba mío, él no se presentó entonces me dijeron que tenía que venir yo.*

Coronel Jara: *¿Y quién era él que no se presentó?*

The Player: *Era otro jugador y me tenía que quedar yo. Yo llegué a la casa, le dije a mi padre que tenía que venir, pero en ese tiempo en la casa no había dinero – me acuerdo tanto no había dinero. Iba comenzar a llorar porque quería y entonces mi papá me dijo no, que ahorita no, que otro día. Mi mamá también preocupada – que no, que no me quería hacer esto y lo otro. Yo preocupado. Mi papá salió eso de las 7:00 llego a la casa a las 12:00. Llego con dinero con 20 mil pesos colombianos. Con eso llega a San Lorenzo y hasta ahora me quede acá.*

Coronel Jara: *¿Y entonces allí estaba la gente de Marcos Zambrano?*

The Player: *Sí todos.*

Coronel Jara: *¿Los que iban allá y veían…?*

The Player: *Sí, miraban los jugadores.*

Coronel Jara: *¿Y ahí?*

The Player: *Y ahí ya llegué acá, al [club] América.*

43. The Parties dispute the admissibility, authenticity and reliability of this Audio.

D. The Colombian birth certificate and baptism certificate

44. The Appellants have submitted a birth certificate issued by the Colombian Civil Registry ("*Registro Civil de Nacimiento*") of "Castillo Segura Bayron Javier", born in Tumaco, Colombia on 25 July 1995, son of Mr. Harrinson Javier Castillo and Mrs. Olga Eugenia Segura, both Colombian citizens.

45. They also submitted a baptism certificate issued by the Parish of Nuestra Señora del Carmen in Tumaco, Colombia, and authenticated by the Vicar General – *i.e.*, in the Catholic Church ranks, the main deputy of the Bishop – of the Diocese of Tumaco, Colombia, attesting that the baptism of "Castillo Segura Bayron Javier", born on 25 July 1995, son of Harrinson Javier Castillo and Olga Eugenia Segura, occurred on 25 December 1996.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

46. On 28 September 2022, in accordance with Articles R47 and R48 of the Code of Sport-related Arbitration (the "CAS Code"), the FPF and FFC filed separate Statements of Appeals (the FPF in TAS 9175 and the FFC in TAS 9176). The FPF requested *inter alia* in its Statement of Appeal that the arbitration be conducted as an expedited procedure pursuant to Article R44.4 of the CAS Code. The FFC requested *inter alia* in its Statement of Appeal to be permitted to present the oral testimony of an anonymous witness, by allowing such witness to anonymously testify by videoconference in a protected private session with the Panel only and without the presence of the Parties, or alternatively in some other format that could allow the oral evidence without revealing the identity of the proposed witness.

47. On 29 September 2022, the CAS Court Office acknowledged receipt of both Statements of Appeal. The CAS Court Office informed the Parties of both appeals that the proceedings would be bilingual (English and Spanish) and, accordingly, the Parties would be allowed to use either or both languages in their written submissions and oral pleadings. The CAS Court office also invited the Parties to both cases to indicate whether they agreed to consolidate the two arbitration proceedings, adding that, in the absence of an agreement, the President of the Appeal Division would decide on whether to consolidate or not.

48. On 29 September 2022, the FFC agreed with the consolidation of the arbitration proceedings and filed its Appeal Brief in accordance with Article R51 of the CAS Code.

49. On 30 September 2022, the FPF filed its Appeal Brief in accordance with Article R51 of the CAS Code and withdrew its request for an expedite procedure. Nevertheless, the FPF underscored the urgency of the matter – given the imminent start of the FIFA World Cup in Qatar on 20 November 2022 and, more specifically, the requirement that national associations submit their final rosters for the FIFA World Cup by 14 November 2022 – and requested that (i) the Appeal Brief be immediately notified to the Respondents, (ii) the Respondents be given a 20-day deadline to submit their respective Answers pursuant to Article R55 of the CAS Code, (iii) a hearing be held between 24 October and 7 November 2022, and (iv) the operative part of the award be notified two days after the hearing and in any case before 10 November 2022.

50. On 30 September 2022, the FEF informed the CAS Court Office that (i) it rejected the FPF's request to expedite the arbitration proceedings, but (ii) it agreed to consolidate said proceedings, provided that, if the FEF decided to file its own appeal against the Appealed Decision, it would also be consolidated.

51. On 30 September 2022, the CAS Court Office notified the Parties that, in view of the FEF's objection, the arbitration proceedings TAS 9175 and TAS 9176 would not be expedited under Article R44.4 of the CAS Code.

52. On 3 October 2022, the Player and FIFA each informed the CAS Court Office that they did not object to the consolidation of the arbitration proceedings.

53. On 5 October 2022, the Player sent a letter to the CAS Court Office requesting it to withdraw him as party to TAS 9176. The Player argued that he did not have standing to be sued since he was not a party to the proceedings before FIFA and did not have the opportunity to defend himself and submit his position therein. In the Player's view, it would be a violation of his right to due process and right of defense if he were not withdrawn as a party to this appeal proceeding. The Player also declared that he was born in Ecuador and, thus, an Ecuadorian citizen by birth – his citizenship having never been invalidated by the State of Ecuador and the judicial authorities of Ecuador having confirmed his nationality – and that neither FIFA nor the CAS could rule on his nationality, as such a matter would fall within the exclusive responsibility of the competent internal bodies of the State of Ecuador.

54. On 6 October 2022, the CAS Court Office informed the Player that it could only remove him from the proceeding TAS 9176 if the Appellant, the FFC, dropped the appeal against him. Accordingly, the CAS Court Office invited the FFC to indicate whether it agreed to drop the appeal against the Player. The CAS Court Office added that, notwithstanding the foregoing, the issue of the Player's standing to be sued was one on the merits and, as such, would be dealt with by the Panel once constituted.

55. On 6 October 2022, the FFC (i) informed the CAS Court Office that it disagreed with the Player's request to have him withdrawn from TAS 9176 and (ii) requested that the Player not be permitted to file further requests or arguments pursuant to Article R56 of the CAS Code since his letter of 5 October 2022 should have been considered as his Answer under Article R55 of the CAS Code.

56. On 7 October 2022, the CAS Court Office, taking note of the FFC's refusal to drop the appeal against the Player, declared that the Player would continue to be a party in case TAS 9176. In addition, the CAS Court Office rejected the FFC's request to consider the Player's letter of 5 October 2022 as his Answer under Article R55 of the CAS Code.

57. On 12 October 2022, the CAS Court Office notified the Parties that, pursuant to Article R54 of the CAS Code and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the Panel appointed to decide the consolidated appeals TAS 9175 and TAS 9176 would be composed by Messrs Massimo Coccia, as President of the Panel, Romano F. Subiotto KC, designated by the Appellants, and José María Alonso, designated by the Respondents. None of the appointed arbitrators were challenged by the Parties pursuant to Article R34 of the CAS Code. The CAS Court Office also notified the Parties that Mr. Francisco A. Larios, Esq. had been appointed as *ad hoc* clerk.

58. On 13 October 2022, the CAS Court Office informed the Parties that the Panel, having revised the case files, deemed it necessary to hold a hearing, which it scheduled to be held in Lausanne on 4 and 5 November 2022 (the "Hearing"), summoning the Parties to be present therein with any witness or expert they wished to hear.

59. Also on 13 October 2022, the FEF informed the CAS that it had filed an appeal "*ad cautelam*" against the Appealed Decision (docketed as TAS 2022/A/9206), soliciting (i) the consolidation of that appeal with the present appeal proceedings TAS 9175 and TAS 9176 and (ii) the suspension of the Hearing until the end of the written phase of TAS 2022/A/9206.

60. On 14 October 2022, the FFC wrote a letter to the CAS by which it (i) objected to the FEF's request to suspend the Hearing and to consolidate the FEF's appeal with the present appeal proceedings, (ii) drew "*the attention of the Panel about the absolute lack of any legal interest from FEF in appealing since the Appeal Committee's decision stood in full defence of the FEF's position*" (emphasis in the original), and (iii) characterized the FEF's appeal as "*a clear tactic to buy time* [as] *clearly FEF does not want a decision before the kick-off of the World Cup*" (emphasis in the original).

61. On 15 October 2022, the CAS Court Office informed the Parties that the Panel had rejected the FEF's request to suspend the Hearing.

62. Also on 15 October 2022, FIFA informed the CAS Court Office that it was unavailable for the Hearing and requested to postpone it to 9-10 or 10-11 November 2022 because the internal counsel working on the case, Messrs Miguel Liétard and Carlos Schneider "*will be travelling abroad on those days. In particular, [Mr Liétard] will be in Madrid from 4-7 November 2022, for previously arranged meetings and appointments, and Mr Schneider will be travelling to Egypt in the context of the FIFA Diploma in Football Law and meetings in CAF*".

63. Also on 15 October 2022, the Player's counsel wrote to the CAS Court Office and (i) underlined that the Player did not have any standing to be sued because he had not been part of the FIFA disciplinary proceedings, (ii) asked to suspend the time limit for the Player's Answer until receipt of the FIFA case file, (iii) asked to postpone the Hearing of 4-5 November because he was not available due to two CAS hearings he had on 20 October and 1 November 2022 and an appointment he had at the United States Consulate in Ecuador on 14 November 2022.

64. On 17 October 2022:

– The CAS Court Office informed the Parties that the Panel had decided:

(a) to confirm the date and location of the Hearing and reject the requests of FIFA and the Player to postpone it because (i) the operative part of the award had to be issued urgently considering that the FIFA World Cup was set to commence on 20 November 2022, (ii) FIFA had multiple lawyers on its legal team and the means to be properly represented at the Hearing even if some of them were not

available on 4-5 November, and (iii) none of the Player's counsel cited commitments would prevent him from attending the Hearing; and

(b) to reject the Player's request to suspend the deadline to file his Answer until receipt of the FIFA case file, given that the Player had been properly notified the FFC's Statement of Appeal and Appeal Brief and, therefore, was in a position to submit his Answer thereto.

– The CAS Court Office requested FIFA to submit the case file without delay, and FIFA correctly complied with this request on the same day.

– The FEF requested (i) a 10-day extension to file its Answer, (ii) the consolidation of TAS 2022/A/9206 with the appeals TAS 9175 and TAS 9176 and (iii) the reconsideration of the Panel's decision not to suspend the Hearing. In the FEF's view, the Hearing had to be suspended until the exchange of written submissions in TAS 2022/A/9206 was completed because otherwise the FEF's right to due process, right of defense and right to be heard would be violated. The FEF pointed out that, in its letter of 30 September 2022, it had accepted consolidation of TAS 9175 and TAS 9176, provided that, if it decided to file its own appeal against the Appealed Decision, it would also be consolidated. Since it did file its own appeal, the FEF believed that it had to be consolidated with the other proceedings and that the Hearing had to be suspended until the written exchange of TAS 2022/A/9206 was completed. The FEF complained about the Panel "*granting priority and urgency*" to the appeals TAS 9175 and TAS 9176 by dealing with them swiftly in light of the impending FIFA World Cup and, in particular, by sending communications on non-business days and setting the hearing on a Saturday and without considering the agendas of the Parties. The FEF argued that a case should not be dealt with expeditiously when it detriments the procedural guarantees of one party. The FEF reserved its right to appeal the final decision of the Panel to the Swiss Federal Tribunal.

– FIFA requested a 10-day extension to file its Answer.

65. On 18 October 2022:

– The FPF sent a letter to the CAS Court Office in response to the FEF's letter of 17 October 2022 and expressed *inter alia* that (i) it was surprised by the FEF's complaint that the Panel was dealing with the appeals proceedings in an expeditious manner, since sending communications on non-business days for urgent cases is normal practice at the CAS, and (ii) the FEF's tactic was clearly to artificially delay the appeals proceedings in order to prevent the Panel from issuing its decision before the FIFA World Cup 2022 and, in turn, to ensure that the FEF holds its place in said competition.

– The CAS Court Office informed the Parties that the Panel had:

(a) indicated that, for the time being, it could not and would not take a decision on the consolidation of the new appeal TAS 2022/A/9206 with the proceedings TAS 9175 and TAS 9176 since it had not yet been named and constituted as the Panel in charge of TAS 2022/A/9206.

(b) decided to grant the FEF and FIFA an extension until 25 October 2022 to file their respective Answers; in reaching its decision not to grant the full 10-day extension requested, the Panel considered that (i) the FIFA disciplinary proceedings had lasted more than 4 months and the FEF had been part of them from the beginning, (ii) it was foreseeable that any of the parties involved in the FIFA proceedings would appeal to the CAS, and (iii) the Panel and the Parties needed sufficient time to study the Answers in preparation for the Hearing.

– The CAS Court Office informed the Parties that the Panel had also decided to reject FIFA's request made on that same day for an additional two-day extension to file its Answer.

66. On 19 October 2022, the CAS Court Office requested, on behalf of the Panel, that FIFA: (i) inform it if a disciplinary proceeding against the Player had been opened and, if so, what stage it was in, and (ii) submit the decisions referred to in the Appeal Brief of the FFC in which FIFA sanctioned the Football Federation of Equatorial Guinea ("FEGF") with expulsion from the FIFA Women's World Cup France 2019 and a fine of CHF 100,000 for fielding ineligible players during the preliminary competition of the Women's Olympic Football Tournament in Rio 2016 (on the basis of Article 55 of the FDC, 2011 edition) and for use of a forged and falsified document by two of its players (on the basis of Article 61, para. 4 of the FDC, 2011 edition) (hereinafter the "Equatoguinean FIFA Decisions").

67. Also on 19 October 2022, the CAS Court Office requested the FFC to confidentially inform the Panel only, with regard to: (i) the identity of the requested anonymous witness, (ii) the position held in the past within the FEF and the position currently held (whether in the FEF or in another institution and/or company) by such witness, and (iii) the specific risks that this person could suffer if the identity were to be revealed. The same day, the FFC provided the information requested. As to the risks, the FFC explained *inter alia* (i) that there was extreme violence in the streets of Ecuador caused by organized crime, (ii) that, considering the information to be shared, the witness would be "*pretty sure to be turned into a target*", and (iii) that there was a huge campaign of threats against the FFC's counsel, so an unimaginable level of threats would target the witness in case of disclosure of this person's identity. Previously, in its submissions, the FFC had also indicated that South America was a "*very violent society*", that "*several times football fans cross the border of civility and respect*", and that in the event of an open testimony the witness "*would be a target*" and "*would face severe risks*".

68. On 20 October 2022, FIFA informed the CAS that the opening of disciplinary proceedings against the Player was "*still being considered by the FIFA Disciplinary Committee*", which would decide on that matter in "*due course*". FIFA also submitted, as requested, the Equatoguinean FIFA Decisions, i.e. Decision 150902 of March 2016 and Decision 160249 of 28 September 2016, both without grounds as "*the grounds of these decisions were never requested, and they were therefore never appealed*".

69. On 24 October 2022, the Player sent a letter to the CAS in which he declared that he could not be considered a party to the appeal proceeding TAS 9176, since he did not have standing to be sued, and informed the CAS that, accordingly, he would neither submit his Answer to the appeal nor participate in the Hearing.

70. On 25 October 2022:

- FIFA objected to the FFC's request to present the testimony of an anonymous witness.
- the FPF reiterated the request already made in its Appeal Brief that the Panel order the FEF, pursuant to Article R44.3 of the CAS Code, to have both the Player and Colonel Jaime Jara appear as witnesses at the Hearing.
- FIFA and the FEF filed their respective Answers in accordance with Article R55 of the CAS Code. In its Answer, the FEF objected to the jurisdiction of the CAS.

71. On 26 October 2022, the CAS Court Office invited the FPF and FFC to comment on the FEF's objection to CAS jurisdiction.

72. On 28 October 2022:

- The FFC submitted its comments on the FEF's jurisdictional objection, pointing out that the CAS did have jurisdiction to hear the case.
- The CAS Court Office informed the Parties that the Panel had rejected the FFC's request to hear the anonymous witness for reasons that would be provided in the final award.
- The Panel, which on 27 October 2022 had been constituted with the same membership as the Panel in TAS 2022/A/9206, issued a reasoned order in that arbitration rejecting the FEF's requests to consolidate that case with the present proceedings TAS 9175 and TAS 9176 and to suspend the Hearing.

73. On 30 October 2022, the FFC submitted two letters to the attention of the Panel:

- In the first letter, the FFC requested (i) to be informed whether FIFA had revealed to the Panel the name of the anonymous witness ("Request 1"), (ii) that FIFA be ordered to produce the letters sent to the FEGF to start the disciplinary proceedings that resulted in the sanctions imposed in the Equatoguinean FIFA Decisions, in order to understand the grounds taken into consideration in applying said sanctions ("Request 2"), and (iii) that the FEF be ordered, with reference to Exhibit 5 (copy of the Player's Biometrics Certificate from the Civil Registry of Ecuador) to provide information as to the date in which the Player's fingerprints were collected ("Request 3").
- In the second letter, the FFC claimed that the first page of the copy of the Jara Report submitted by the FEF in its Answer was forged or falsified as it contained a handwritten note that the document was accompanied by "15 pages and no audio" ("*adjunto 15 fojas no audio*"). The FFC requested that the Panel order the FEF to present said document in its original form ("Request 4") and to explain who added the handwritten note ("Request 5").

74. On 31 October 2022, the CAS Court Office, on behalf of the Panel, communicated to the Parties the following:

With reference to both TAS 9175 and TAS 9176:

– The Panel accepted the FEF's request, set forth in its Answer, to examine at the Hearing the legal representatives of the FPF, FFC and FEF.

– The Panel accepted to hear all factual and expert witnesses requested by the Parties, namely: Messrs Carlos Manzur and Iván Coveña Antón as factual witnesses called by the FEF, Mr José Luis Jurjo as expert witness called by the FPF, and Messrs Hernán Salgado Pesantes and Jean Marguerat as expert witnesses called by the FEF.

With reference to TAS 9175:

– the Panel ordered the FEF to use its best efforts to have the Player testify at the Hearing. The Panel indicated that, should the Player not testify, it could draw adverse inferences against the FEF.

– the Panel rejected the FPF's request to order the FEF to compel the appearance of Colonel Jaime Jara since, based on the information before the Panel, Colonel Jara did not currently hold a position within the FEF. Notwithstanding, the Panel invited all Parties to use their best efforts to bring Colonel Jaime Jara to testify at the hearing, deeming his testimony relevant.

With reference to TAS 9176:

– The Panel noted that the question of whether the Player had standing to be sued was a merits issue under Swiss law, and, therefore, it would deal with it in the final award.

– The Panel directed the Player, pursuant to Article R57 of the CAS Code, to attend the Hearing so that he could be examined in his capacity as a party to this case. The Panel indicated that it could draw adverse inferences should the Player not attend the Hearing and not be available to be questioned.

75. On 31 October 2022, the FPF submitted its comments on the FEF's objection to CAS jurisdiction.

76. On 1 November, the CAS Court Office sent the Parties the Order of Procedure, which was signed and returned by FIFA on 1 November 2022, by the FPF and FEF on 2 November 2022, and by the FFC on 3 November 2022. The Order of Procedure specified, inter alia, that the Panel would authorize all factual and expert witnesses to attend the Hearing by videoconference if they could not be physically present.

77. On 2 November 2022, the CAS Court Office informed the Parties that the Panel had decided for reasons that it would explain in the final award, with regard to the procedural requests made by the FFC on 30 October 2022 (see *supra* at para. 73), to reject the Requests nos. 3, 4 and 5, but to accept Request 2, thus ordering FIFA to produce the letters sent to the FEGF to open disciplinary proceedings which led to the FIFA Equatoguinean Decisions no. 150902 and 160249.

78. Also on 2 November 2022:

– the Player sent a letter in which he declined to appear at the Hearing and be examined as a witness in TAS 9175 and as a party in TAS 9176. In this respect, the Player argued that he could not be compelled to testify in this capacity, because he was not and could not be deemed a party to the appeal since he had not been a party to the underlying proceeding before FIFA. In the Player's view, drawing adverse inferences or holding the Player as a party to the arbitration proceeding TAS 9176 would be a violation of his due process rights and right of defense.

– FIFA complied with the Panel's directions and submitted the opening letters of the disciplinary proceedings which led to the FIFA Equatoguinean Decisions no. 150902 and 160249 (see *supra* at para. 77).

79. On 3 November 2022, the CAS Court Office informed the Parties that the Panel had decided to reject the FFC's Request 1 (see *supra* at para. 73), because the relevant letter from FIFA was only addressed to the Panel and expressly sent on a confidential basis.

80. Also on 3 November 2022, the FEF:

– requested that Mr Esteban Polo Pazmiño testify in the place of Dr Hernán Salgado Pesantes, who for personal reasons would be unable to attend the hearing, pointing out that Mr Pasmiño was the co-author of the expert report on Ecuadorian law that had already been submitted as annex to its Answer;

– withdrew Dr Carlos Manzur as a witness; and

– informed the CAS Court Office that it had used its best efforts to have the Player testify at the hearing; in support, the FEF submitted a letter it had sent to the Player on 1 November 2022 in which it solicited his appearance at the Hearing as a witness ("*en atención a lo requerido por el Tribunal Arbitral del TAS, en su comunicación de 31 de octubre, por medio del presente, solicitamos a Usted, se sirva participar en la citada audiencia en calidad de testigo*").

81. On 4 and 5 November 2022, the Hearing was held at the CAS headquarters in Lausanne, Switzerland.

82. In attendance at the Hearing were:

– The Panel, assisted by Mr Francisco A. Larios (*ad hoc* clerk) and Mr Antonio De Quesada (CAS Head of Arbitration).

– For the FPF: Mr Lucas Ferrer, Ms Nicole Santiago and Mr Luis Torres (all as counsel), and Sabrina Martín (Deputy Secretary General of the FPF).

– For the FFC: Mr Eduardo Carlezzo (counsel) and, by video conference, Messrs Eduardo Diamante and Rodrigo Marrubia (both as counsel) as well as Mr Jorge Yunge Williams and Ms Sandra Kemp (respectively Secretary General and Executive Secretary of the FFC).

– For the FEF: Messrs Javier Ferrero Iñigo De Lacalle, Gonzalo Mayo Nader and Juan Prieto (all as counsel) as well as Mr Nicolás Solines (Secretary General of the FEF).

– For FIFA: Messrs Miguel Liétard, Carlos Schneider and Roberto Nájera as well as Ms Julien Deux (all as counsel).

83. At the outset of the Hearing, on 4 November 2022, the Parties confirmed that they had no objections to the constitution and composition of the Panel and presented their opening statements. In the subsequent part of the Hearing, devoted to oral evidence, the FEF waived its earlier request to examine the representatives of the FPF and FFC and confirmed its withdrawal of the witness Dr Carlos Manzur, without any objections from the other Parties. The FEF also attempted to withdraw the examination of its Secretary General, Mr Solines; however, pursuant to objections raised by the Appellants, who wished to cross-examine him, the Panel ordered Mr Solines to testify, reasoning that the FEF could not unilaterally withdraw at the Hearing an offer of testimony of its representative to which the other Parties had already consented. Therefore, the following individuals testified: Mr Nicolás Solines (FEF Secretary General, examined in his capacity as party representative), Mr Iván Coveña Antón (current President of the FEF Disciplinary Commission), and Colonel Jaime Jara (former Head of the FEF Investigations Commission). The following experts also presented their oral evidence: Dr Jean Marguerat (expert on Swiss law), Mr José Luis Jurjo (acoustic-forensic expert), and Mr Esteban Polo Pazmiño (expert on Ecuadorian constitutional law).

84. The FFC then went on to make three procedural remarks. First, the FFC objected to the FEF's request to have Mr Polo Pazmiño testify as an expert on Ecuadorian constitutional law in the place of Mr Hernán Salgado Pesantes, who was the original expert witness called by the FEF in its Answer. The Panel rejected this objection and agreed to hear Mr Polo Pazmiño since he was a co-author with Mr Salgado Pesantes of the expert report submitted by the FEF. Second, the FFC requested to understand whether Mr Marguerat would be testifying as an independent expert on Swiss law. The Panel explained that Mr Marguerat was a party-appointed expert and that, if the FFC had any doubts as to his impartiality, it could raise the issue during cross-examination. Third, the FFC objected to certain FIFA arguments. The Panel also rejected this objection explaining that FIFA was entitled to argue what it wished and that the FFC had the opportunity during the hearing to rebut all of the arguments submitted by FIFA.

85. Still on the first day of the hearing, during cross-examination, Colonel Jara showed, by displaying his phone on the videoconference, a copy of the first page of the Jara Report. Colonel Jara sought to show that the original document had two receipt stamps dated 26 December 2018 from the FEF Secretariat and the FEF Disciplinary Commission and did not have a handwritten note reading "no audio". The FPF requested permission to submit this document to the Panel. The Panel granted the FPF's request and the FPF duly submitted it.

86. The second day of the Hearing, on 5 November 2022, was devoted to the closing pleadings and rebuttals of the Parties. At the end of the Hearing, the Parties made no procedural objections and acknowledged that the Panel had fully respected their rights to be heard and to be treated equally throughout the proceedings.

V. SUBMISSIONS OF THE PARTIES

A. FPF

87. In its Appeal Brief, the FPF requests the following in its motions for relief:

> "*a) Declare que la presente apelación es admisible.*
>
> *b) Anule la decisión emitida por la Comisión de Apelación de FIFA de fecha 15 de septiembre de 2022, con número de referencia FDD-11556, y emita una nueva decisión determinando:*
>
> *i. Que la FEF vulneró el artículo 21 del Código Disciplinario de la FIFA, y se excluya a la FEF del Mundial Catar 2022, con la consecuencia de que su puesto sea ocupado por la asociación CONMEBOL con mejor derecho, es decir, la FPF.*
>
> *ii. En cualquier caso, se determine que la FEF vulneró el artículo 22 del Código Disciplinario de la FIFA, y se excluya a la FEF del Mundial Catar 2022, con la consecuencia de que su puesto sea ocupado por la asociación CONMEBOL con mejor derecho, es decir, la FPF.*
>
> *iii. En cualquier caso, se determine que la FEF vulneró el artículo 11 del Código Disciplinario de la FIFA, y se impongan a la FEF las medidas disciplinarias oportunas.*
>
> *c) Condene a FIFA y a la FEF al pago de los costes del presente procedimiento y a una contribución por los gastos legales incurridos por el Federación Peruana de Fútbol en relación con el presente procedimiento por importe de EUR 50.000*".

88. The FPF's submissions, in essence, may be summarized as follows:

(a) The standard of proof is "comfortable satisfaction" in accordance with Article 35.3 FDC. Due to the very nature of the infringing conduct, it is practically impossible to have direct evidence to prove it (CAS 2019/A/6665 and CAS 2018/A/6038). Indeed, the act of creating a forged document, altering a genuine document in order to forge it and/or using a forged document are the type of activities that are carried out with an attempt to leave no trace of evidence of the wrongdoing committed, or at least no trace of direct evidence. Therefore, the standard of proof must either be reduced or the burden of proof shifted pursuant to Swiss law and CAS jurisprudence (CAS 2019/A/6665 at para. 83).

(b) The FPF has standing to appeal based on Article 58 FDC because:

- it was both a party to the proceeding in the first and second instance before FIFA. Indeed, FIFA itself considered the FPF a "*a party directly affected*" and, accordingly, invited it to join the FIFA proceeding before the Disciplinary Committee and to submit its position. The decision of the FIFA Disciplinary Committee also refers to the FPF as a "*party directly affected in the proceeding*". Since FIFA and its Disciplinary Committee granted, recognized and never questioned the status of the FPF as a party in the FIFA proceedings, now on appeal the FPF cannot be stripped of its status as such (CAS

2019/A/6636, para. 85). This would be a violation of the principle of *venire contra factum proprium* and an abuse of right.

– it has a legal interest worthy of protection for the following reasons. First of all, FIFA already explicitly recognized in the first instance that the FPF was "*directly affected*". Second, it was a party to the proceeding below and had its petitions rejected in the operative part of the Appealed Decision. Third, if the FEF were excluded from the FIFA World Cup 2022, the FPF would be the only logical replacement.

(c) The FEF breached Article 21 FDC because the Player's birth certificate and, in turn, his identity and nationality were falsified. On this point, the FPF submits:

– It is beyond reasonable doubt that the Player's real identity is Bayron Javier Castillo Segura, born in Tumaco, Colombia on 25 July 1995 to Colombian parents, Olga Eugenia Segura and Harrinson Javier Castillo, and that he is not named Byron David Castillo Segura and was not born in Playas, Ecuador on 10 November 1998 to the same parents. This is proven by:

(i) The fact that the Ecuadorian birth certificate has been expressly qualified as "forged" by the governmental entity in charge of its issuance, i.e. the Directorate General of the Ecuadorian Civil Registry in the Report no. 1996.

(ii) The fact that the FEF itself through its Investigations Commission and the Jara Report concluded that in the case of the Player there were serious "*irregularities in the registration of his birth*", giving rise to situations of "*double identity, or adulteration of nationality and age*".

(iii) The fact that the Player himself has admitted the falsification of his documents in a recorded interview between Colonel Jara and the Player as part of the investigation leading up to the Jara Report. His voice in this interview has been confirmed by an acoustic-forensic expert.

(iv) The absence of the Player in the entire proceedings (before FIFA and now the CAS); the Player could have easily attended the hearings in the proceedings and bring elements to demonstrate that he was born in Ecuador and that his alleged 1998 birthdate is correct, as well as to deny that he is the voice in the audio recording of the interview with Coronal Jara, but he refused to do so, which is telling.

– None of the documents presented by the FEF prove that there was no adulteration, modification or falsification of the Player's birth certificate. Moreover, neither the decision on the Protection Action, nor the decision on the Habeas Data Action, analysed, validated or confirmed the Player's identity and nationality, much less took a position on his Ecuadorian birth certificate. The Protective Action was a legal tool the Player used to avoid being suspended and temporarily deprived of his right to work, without the disciplinary proceedings initiated by the FEF Disciplinary Commission having been completed. The purpose of the Habeas Data Action was simply to

guarantee as a precautionary measure certain fundamental rights of the Player, in relation to the use of his data and identity.

- FIFA's disciplinary bodies and now the CAS have full authority to assess and determine whether there is a violation of FIFA rules and must do so. FIFA was only supposed to decide whether there had been a violation of one or more rules of its Disciplinary Code and it should have done so on the basis of its own standards of proof and following its own procedures. FIFA cannot ignore its own criteria, nor contradict itself on this issue, when in similar situations it has defended them even before the CAS. In CAS 2016/A/4501, FIFA clearly and unequivocally advocated the separation and independence of the sports jurisdiction from proceedings or rulings in State or other jurisdictions. Thus, the fact that there is a final judgment that "provisionally" granted the Player his civil rights as an Ecuadorian citizen or even that the Player holds a valid Ecuadorian passport does not preclude the CAS from determining, to its comfortable satisfaction, that the Player was born in Colombia and that his Ecuadorian birth certificate is not genuine.
- The statute of limitations for falsification of documents did not expire under Article 10 FDC because we are dealing with a continued infraction (i.e. each time the false passport was used for the Player to participate in the competition, the statute of limitation reset and, moreover, all interruptions by procedural acts of FIFA or the Ecuadorian authorities resets the statute of limitation (see Article 10.2(b) and 10.3 FDC and the jurisprudence of the Swiss Federal Tribunal).

(d) The FEF breached Article 22 FDC because the Player is not an Ecuadorian national and, thus, is not eligible to play for the Ecuadorian national team. In order to be eligible to represent a national team, the presentation of a passport is not enough. The player must also satisfy all requirements of the FIFA Eligibility Rules, and, in particular, must possesses the nationality of the national team in order to represent it. Since the Player was not born in Ecuador, he is not eligible to represent the Ecuadorian national team pursuant to Article 5.2, lit. a) of the FIFA Eligibility Rules. Finding otherwise puts in danger the principles upon which the FIFA Eligibility Rules and the "private legal system" of FIFA are founded in relation to the eligibility of players on the basis of their sporting nationality. Such basic principles, among others, are "*the prevention of abuse (e.g. nationality shopping)*" and the "*protection of sporting integrity of international competition*" (see page 5 of the FIFA Commentary on the Rules Governing Eligibility to Play for Representative Teams, hereinafter "Commentary on Eligibility Rules").

(e) The appropriate sanction for the violation of Article 21 FDC is the exclusion from the FIFA World Cup 2022, considering the severity of the offense, the fact that it was continuous and committed during a large part of the World Cup Qualifiers, thus seriously jeopardizing the integrity of the FIFA World Cup 2022, and that since 2018 the FEF was aware of, but purposely disregarded and buried, the documentation proving the adulteration of the Player's identity, birth registration and nationality. This is consistent with the sanction imposed in the Equatoguinean FIFA cases.

(f) As for the sanction for the breach of Article 22 FDC, the applicable provision is para. 3 of Article 22 FDC. That provision allows FIFA to take into account the seriousness of the infringement and the circumstances under which it is committed: whether it is one or even two specific matches affected, or whether the situation goes beyond that and is capable of affecting an entire competition. In present case, the breach committed by the FEF is so offensive, so aberrant and contrary to the principles of fair play and sportsmanship that the appropriate and proportional sanction is, at the very least, the exclusion from the FIFA World Cup.

(g) The FEF also breached Article 11 FDC, which requires federations and their clubs, as well as their players, to respect FIFA regulations and comply with the principles of fair play, loyalty and integrity, and which provides for the imposition of disciplinary measures on any person who carries out actions contrary to this. Accordingly, the Panel should impose a sanction pursuant to Article 6 FDC, and, given the severity of the offense, exclusion from the FIFA World Cup 2022 would be more than justifiable.

(h) In the event that the FEF is excluded from the FIFA World Cup 2022, as it should be, the FPF would automatically become 4th in the standings of the World Cup Qualifiers and so, given the 4.5 slots assigned to CONMEBOL member federations by Article 10, para. 4, of the FIFA World Cup 2022 Regulations, the FPF should replace the FEF in the competition.

B. FFC

89. In its Appeal Brief, the FFC requests in its motions for relief that the CAS:

"*a) Accept the Appeal filed by the Football Federation of Chile and set aside the decision of the FIFA's Appeal Committee passed on 15 September 2022, declaring:*

i. the use of false birth certificate, fake age and false nationality by the Player, banning the Player from any football-related activity.

ii. the Player as ineligible for the 8 matches played in the Qualifiers, declaring those matches as forfeited, according to the article 22 of the Disciplinary Code and, finally, declaring FFCH in the 4th place in the South America 2022 World Cup Qualifiers.

iii. due to the use of false birth certificate, fake age and false nationality, the exclusion of FEF from the 2026 World Cup and the application of a fine of CHF 1,000,000.

b) Due to the nature of the case and to the fact that it implies a possible removal of FEF from the 2022 World Cup and the inclusion of FFCH, decide the case until 10 November 2022, preferable before.

c) Accept the request to hear the witness in a private session, by videoconference, with the sole presence of the Panel or the alternatives set forth in paragraph 268.

d) Determine FIFA to send all awards (Disciplinary Committee, Appeal Committee and CAS) related to the case and give to the parties a deadline of 2 days to file any comment they deem appropriate.

e) Refund the arbitration costs, based on the pure disciplinary nature of this appeal (R65);

f) Condemn the Respondents to pay CHF 20,000 for the legal expenses of the Appellant, as well as all the expenses incurred by the Appellant during these procedures and finally paying the totality of the advance of costs and FIFA's costs".

90. The FFC's submissions, in essence, may be summarized as follows:

(a) The FFC has standing to appeal because if the Player is held ineligible to play for the FEF, it would result in the FEF's automatic forfeit of 8 matches (2 against the FFC) and, in turn, the FFC's rise to 4th place in the CONMEBOL standings, giving it direct qualification to the FIFA World Cup 2022. The fact that the FFC filed a complaint instead of a protest does not affect its standing to appeal. Furthermore, the FFC has standing to appeal because it was a party in the first and second instance proceedings before FIFA (not just a mere "whistle-blower") and was even "*invited*", in the "*Legal Action*" part of the decisions of the FIFA Disciplinary Committee and FIFA Appeal Committee, to appeal to the CAS.

(b) The Player must be considered a party to the CAS appeal. Both in the complaint before the FIFA Disciplinary Committee and in the appeal before the FIFA Appeal Committee, the FEF requested that the Player be named as a respondent; however, FIFA decided, without providing any explanation, to exclude the Player as a party to the proceedings. The Player is a party personally affected by the dispute and therefore has standing to be sued.

(c) It is beyond any reasonable doubt that the Player was born in Colombia in 1995 and not Ecuador in 1998 and that he used falsified documents to play for the FEF, as proven by the following: (i) his confession in the interview with Colonel Jara that his name, age and nationality were falsified and that he was actually born in Colombia in 1995, (ii) the Colombian birth certificate confirming that Bayron Javier Castillo Segura was born in Colombia in 1995 to Mr. Harrison Javier Castillo and Mrs. Olga Eugenia Segura, (iii) an email from the National Civil Registry of Colombia to the National Civil Registry of Ecuador confirming that Castillo Segura Bayron Javier was born in Tumaco, Colombia, (iv) the Player's certificate of baptism, recording that he was baptized in the city of Tumaco, Colombia on 25 December 1996, (v) that the Ecuadorian birth certificate is fraught with irregularities, as confirmed by the Informe Técnico-Juridico no. 1996 (i.e. the Report no. 1996), and (vi) the Jara Report.

(d) As a result, the Player was ineligible to participate in the 8 matches he played for the FEF in the World Cup Qualifiers in breach of Article 22 FDC. This results in the automatic forfeiture of the FEF in those matches. Considering that the FFC lost one match to the FEF and tied another, it is thus entitled to receive 5 points, thereby raising its position in the CONMEBOL qualifying table to 4th, while the FEF would

lose 14 points and drop to 7th position. As the 4th place finisher, the FFC would replace the FEF in the FIFA World Cup. This is in line with CAS 2012/A/2742. In addition, for the use of falsified documents in breach of Article 21 FDC, the Player must be banned from any football-related activity and the FEF must be sanctioned with exclusion from the next edition of the FIFA World Cup (i.e. 2026).

(e) The breaches of Articles 21 and 22 FDC are not time-barred by the 5-year statute of limitation under Article 10 FDC because each time the Player participated in a match for the FEF, a new infraction occurred and the statute of limitation reset. Moreover, pursuant to Article 10 FDC the statute of limitation was interrupted by all procedural acts (including by all cases before the Ecuadorian authorities and judiciary) and started afresh with each interruption.

(f) With regard to the question of whether there was a forgery:

- FIFA is not bound by any decision of the Ecuadorian courts or authorities regarding the falsification of documents, since FIFA has its own article applicable to forgery and falsification.
- The Habeas Data decision only served to unlock the Player's ID card, but there was no declaration about the Player's nationality nor a validation of his birthplace.
- The decision of Protective Action did not make a ruling about the falsification of documents, the Player's nationality or his eligibility to play for the FEF. The Player only filed the claim alleging that the FEF violated his fundamental due process rights when it suspended him for his non-attendance to a hearing called by the FEF Disciplinary Commission on 9 January 2019.
- While the Player's Ecuadorian passport might be authentic, the information it contains is false (a "*faux intellectuel*" in French), and, therefore, the passport is invalid.
- The Player's Ecuadorian passport does not need to be revoked by the national authorities/judiciary as a forgery/falsification in order to be invalidated within the football system. FIFA was induced into fundamental error and, therefore, FIFA has the right under Swiss law to invalidate the Player's passport within the football system (Articles 23 and 24 of the Swiss Code of Obligations ("SCO") and Article 9 of the Swiss Civil Code ("SCC")).
- FIFA was defrauded by the FEF when it granted the Player eligibility based on the passport with falsified information. Such a fraud cannot produce legal effects within the football system under Swiss law (Article 28 SCO).
- The Player's passport must be deemed null and void within the football system because the FEF acted in bad faith in contravention of Article 2 of the SCC.

(g) As to the issue of eligibility:

- The Player is not eligible to play for the FEF under the FIFA Eligibility Rules. He neither acquired nationality automatically by being born in Ecuador, nor underwent the naturalization process, as explicitly confessed by the Player. The

fact that the Player holds an Ecuadorian passport is irrelevant. Since the Player is Colombian and since his birth certificate is forged, his Ecuadorian passport is null and void for purposes of eligibility under the FIFA regulations.

- According to Article 7 of the WC Preliminary Competition Regulations, the national association must "*ensure*" that "*all players shall hold the nationality of its country and be subject to its jurisdiction*". Simply filing the Player's passport is not enough to ensure that the Player is a national of the national association's country. As the FEF did nothing more than file his passport, it failed to comply with the requirements of Article 7 FIFA Eligibility Rules.
- FIFA has acted with "*excessive formalism*" by validating a passport and holding the Player eligible without considering the facts and circumstances surrounding the origin of the document serving as a basis for that eligibility. More specifically, FIFA should have taken into account in determining the Player's eligibility that, as explicitly confessed by the Player, the Player was actually born in Colombia in 1995 and not in Ecuador in 1998.

(h) FIFA has overstepped its bounds by acting like a party and failing to adopt a neutral position. It should have simply defended the decision taken by its judicial bodies – nothing more. FIFA has to apply its rules strictly and cannot base its interpretation on who the defendant is and their sporting reputation.

C. FEF

91. In its Answer in TAS 9175, the FEF sets forth the following motions for relief:

"*a) Se declare incompetente por razón de la materia para resolver la presente apelación.*

Con carácter exclusivamente subsidiario:

b) Desestime íntegramente la apelación interpuesta por la FEDERACIÓN PERUANA DE FÚTBOL dado que la ciudadanía ecuatoriana del Sr. Castillo es una cuestión ya resuelta por decisión firme por los tribunales nacionales en Ecuador.

Con carácter exclusivamente subsidiario:

c) Desestime íntegramente la apelación interpuesta por la FEDERACIÓN PERUANA DE FÚTBOL como consecuencia de su falta de legitimación activa.

Con carácter exclusivamente subsidiario:

d) Desestime íntegramente la apelación interpuesta por la FEDERACIÓN PERUANA DE FÚTBOL como consecuencia de la falta de legitimación pasiva de la FEDERACIÓN ECUATORIANA DE FÚTBOL.

Con carácter exclusivamente subsidiario:

e) Desestime íntegramente la apelación interpuesta por la FEDERACIÓN PERUANA DE FÚTBOL al encontrarse prescrita la supuesta falsedad documental.

Con carácter exclusivamente subsidiario:

f) Desestime íntegramente la apelación interpuesta por la FEDERACIÓN PERUANA DE FÚTBOL al resultar incontrovertible la ciudadanía ecuatoriana del Sr. Castillo.

Con carácter exclusivamente subsidiario:

g) Desestime íntegramente la apelación interpuesta por la FEDERACIÓN PERUANA DE FÚTBOL al carecer de soporte probatorio.

Con carácter exclusivamente subsidiario, en el improbable supuesto de estimar alguna de las pretensiones efectuadas por la Apelante, de conformidad con el art. 57 del Código:

h) Desestime íntegramente la apelación interpuesta por la FEDERACIÓN PERUANA DE FÚTBOL puesto que en todo caso la nacionalidad deportiva del Sr. Castillo es ecuatoriana.

Con carácter exclusivamente subsidiario:

i) Acuerde reenviar el caso a la FIFA a fin de que determine a su libre discreción las eventuales consecuencias de la supuesta exclusión de uno de los participantes de la competición.

Con carácter exclusivamente subsidiario:

j) Estime el recurso de apelación interpuesto por la FEDERACIÓN ECUATORIANA DE FÚTBOL en el procedimiento TAS 9206 FEF c. ANFP, FPF & FIFA.

En todos los casos:

k) Condene a la FEDERACIÓN PERUANA DE FÚTBOL al pago de las costas y demás gastos del presente arbitraje.

l) Condene a la FEDERACIÓN PERUANA DE FÚTBOL al pago de una compensación al Primer Apelado por los costes incurridos por la presente apelación y el procedimiento de primera y segunda instancia ante la FIFA en la cuantía de TREINTA MIL FRANCOS SUIZOS (30.000 CHF) de conformidad con lo previsto en el artículo R64.5 del Código".

92. In its Answer in TAS 9176, the FEF sets forth the following motions for relief:

"*a) Se declare incompetente por razón de la materia para resolver la presente apelación.*

Con carácter exclusivamente subsidiario:

b) Desestime íntegramente la apelación interpuesta por la FEDERACIÓN DE FÚTBOL DE CHILE dado que la ciudadanía ecuatoriana del Sr. Castillo es

una cuestión ya resuelta por decisión firme por los tribunales nacionales en Ecuador.

Con carácter exclusivamente subsidiario:

c) Desestime íntegramente la apelación interpuesta por la FEDERACIÓN DE FÚTBOL DE CHILE como consecuencia de su falta de legitimación activa. Con carácter exclusivamente subsidiario:

d) Desestime íntegramente la apelación interpuesta por la FEDERACIÓN DE FÚTBOL DE CHILE como consecuencia de la falta de legitimación pasiva de la FEDERACIÓN ECUATORIANA DE FÚTBOL.

Con carácter exclusivamente subsidiario:

e) Desestime íntegramente la apelación interpuesta por la FEDERACIÓN DE FÚTBOL DE CHILE al encontrarse prescrita la supuesta falsedad documental.

Con carácter exclusivamente subsidiario:

f) Desestime íntegramente la apelación interpuesta por la FEDERACIÓN DE FÚTBOL DE CHILE al resultar incontrovertible la ciudadanía ecuatoriana del Sr. Castillo.

Con carácter exclusivamente subsidiario:

g) Desestime íntegramente la apelación interpuesta por la FEDERACIÓN DE FÚTBOL DE CHILE al carecer de soporte probatorio.

Con carácter exclusivamente subsidiario:

h) Desestime íntegramente la apelación interpuesta por la FEDERACIÓN DE FÚTBOLDE CHILE puesto que en todo caso la nacionalidad deportiva del Sr. Castillo es ecuatoriana.

Con carácter exclusivamente subsidiario y en el improbable supuesto de estimar alguna de las pretensiones efectuadas por la FEDERACIÓN DE FÚTBOL DE CHILE, de conformidad con el art. 57 del Código del TAS:

i) Acuerde reenviar el caso a la FIFA a fin de que determine a su libre discreción las eventuales consecuencias de la supuesta exclusión de uno de los participantes de la competición.

Con carácter exclusivamente subsidiario:

j) Estime el recurso de apelación interpuesto por la FEDERACIÓN ECUATORIANA DE FÚTBOL en el procedimiento TAS 9206 FEF c. ANFP, FPF & FIFA.

En todos los casos:

k) Condene a la FEDERACIÓN DE FÚTBOL DE CHILE al pago de las costas y demás gastos del presente arbitraje.

l) Condene a la FEDERACIÓN DE FÚTBOL DE CHILE al pago de una compensación al Primer Apelado por los costes incurridos por la presente apelación y el procedimiento de primera y segunda instancia ante la FIFA en la cuantía de TREINTA MIL FRANCOS SUIZOS (30.000 CHF) de conformidad con lo previsto en el artículo R64.5 del Código".

93. The FEF's submissions, in essence, may be summarized as follows:

(a) The CAS violated the FEF's right of defense, right to be heard and right to equal treatment which are expressly recognize under Article 182.3 of the Federal Act on Private International Law (PILA) because it (i) did not consolidate the present appeals with TAS 2022/A/9206 and, therefore, prevented the FEF from developing "*a large part of*" its allegations and claims (in particular, the subsidiary request that the Appealed Decision be annulled and reinitiated by the FIFA Disciplinary Committee this time with the presence of the Player as a party), and (ii) it took significantly longer to calculate the advance of costs in TAS 2022/A/9206 than in the present appeals, thereby preventing *de facto* the constitution of the Panel and the Panel from ruling on the requested consolidation. The FEF reserved its right to take legal action for this alleged violation of the CAS, including to file an appeal against the final award before the Swiss Federal Tribunal ("SFT").

(b) The CAS does not have subject-matter jurisdiction to hear the present appeals. The alleged forgery/falsification of the Player's birth certificate is a not arbitrable matter, as it falls exclusively to the criminal courts of Ecuador. The nationality of the Player is likewise not an arbitrable matter because the CAS does not have jurisdiction to decide on whether the Player holds validly the Ecuadorian nationality, as this is an issue that falls exclusively to the jurisdiction of the competent Ecuadorian courts. Moreover, neither the claim of forgery/falsification or nationality represents an interest which is measurable in monetary terms and, therefore, they are not arbitrable under Article 177.1 PILA which states that only claims involving an economic interest may be submitted to arbitration.

(c) The Appellants do not have standing to appeal as there is no causal link between the alleged violations of Articles 21 and 22 FDC and their sporting interest in replacing the FEF in the FIFA World Cup. This is confirmed by CAS 2018/A/5746, CAS 2015/A/4151 and CAS 2015/A/4343 which held that a club does not have standing to appeal if it cannot prove that it would directly and automatically replace a club that is excluded from a competition.

(d) There is a lack of standing to be sued because the Appellants have failed to call the Player as a respondent.

(e) The statute of limitation has expired. First of all, the Appellants should have filed a protest under Article 46 FDC and 14 of the WC Preliminary Competition Regulations within 24 hours from the end of each of the matches in which the Player participated. Second, even if not prescribed under the aforementioned regulations, the statute of limitations of 5 years under Article 10 FDC expired. Even under Ecuadorian criminal law, the complaint against the FEF would be prescribed as the statute of limitations for forgery is 54 months.

(f) The burden of proof is on the Appellants to prove that the Player is not Ecuadorian and that his documents establishing Ecuadorian nationality were forged/falsified. The Appellants, however, have failed to prove this to the standard of comfortable satisfaction. Their appeals lack evidentiary support and are based on mere conjectures and self-serving assumptions.

(g) No adverse inferences can be drawn against the FEF for the absence of the Player because it did everything in its power to have him appear and testify before the CAS. Moreover, it was the FPF that summoned the Player as a witness and, accordingly under the CAS Code, it had the responsibility to have him appear. Finally, the Player was not required to appear as he was neither a party to the CAS or FIFA proceedings.

(h) It is undeniable that the Player is an Ecuadorian national. Based on his Ecuadorian passport, ID, voting card, birth certificate, the biometric certificate issued by the General Directorate of Civil Registry, and the 2022 Certificate from the Ecuadorian Civil Registry certifying that the Player is Ecuadorian for all legal purposes. As confirmed by the Appealed Decision, the Player's Ecuadorian passport and the ID were duly issued by the State of Ecuador. Moreover, judicial authorities of Ecuador have determined in final and binding resolutions that the Player is an Ecuadorian citizen for all legal purposes. These decisions are *res judicata* and cannot now be reassessed by the CAS.

(i) The alleged Colombian birth certificate of the Player has no legal value, as expressly disclaimed therein: "*This certification is informative, it does not constitute proof of the marital status of the registered person or of the legal validity of the registration*" (translated from the following Spanish original: "*La presente certificación es de carácter informativo, no constituye prueba del estado civil del inscrito ni de la validez jurídica del registro*").

(j) The alleged audio of an interview between Colonel Jaime Jara and the Player is non-existent and is not found in any case file or the archives of the FEF. In fact, the President of the FEF Disciplinary Commission, Mr Iván Coveña Antón, issued on 25 October 2022 an official letter in which he (i) points out that the copy of the Jara Report submitted by the FEF informs that no audio was attached ("*adjunta 15 fojas y no audio*"), and (ii) confirms no audio was found in the archives of the FEF Disciplinary Commission. Likewise, the FEF Secretary General, Mr Nicolás Solines Moreno, certified on 25 October 2022 that after searching the archives of the FEF General Secretariat, "*no file exists containing an audio with declarations from Mr. Byron Castillo Segura*" (translated from the Spanish original: "*no existe ningún archivo que contenga algún audio con declaraciones del Sr. Byron Castillo Segura*"). In any case, the audio is not authentic or reliable and it has not been proven that it is the Player being interviewed or that the audio was not manipulated. Had the audio existed, Colonel Jara would have made reference in his report to the Player's alleged admission that he was Colombian and not Ecuadorian. Instead, Colonel Jara made it clear in his report that the FEF attempted 3 times in vain to interview the Player.

(k) The FEF Disciplinary Commission never determined that the Player holds a nationality other than Ecuadorian. The disciplinary proceeding initiated by the FEF

on 26 December 2018 was suspended and subsequently terminated due to the judicial decision on the Protective Action.

(l) The FEF always acted appropriately, in strict compliance with its legal and regulatory obligations and in good faith by not summoning the Player to play with the national team while cases were pending before the Ecuadorian judicial authorities. Only after the judicial authorities confirmed that the Player was an Ecuadorian national for all legal purposes did the FEF summon him to the national team.

(m) The FEF has not violated Article 21 FDC. The FEF has not forged or falsified any document or made use of such document as the Player is an Ecuadorian national for all legal purposes and the judicial authorities of Ecuador have confirmed that the Player has not committed any forgery or falsification. Nor has the FEF used the supposedly forged Ecuadorian birth certificate of the Player. The FEF has only used the Player's passport which is valid and whose validity is not in question.

(n) The FEF has not violated Article 22 FDC because the Player is and has always been eligible to play for the national team under Article 5 FIFA Eligibility Rules. In this respect, the FEF as does FIFA must respect the sovereignty of a State in matters of nationality (CAS 94/132 and TAS 92/80). Indeed, FIFA itself stipulates that the passport is the only valid document necessary to prove the nationality of a footballer (Article 19.3 of the WC Preliminary Competition Regulations and Article 24.6 of the FIFA World Cup 2022 Regulations).

D. The Player

94. The Player did not submit an Answer in TAS 9176 (that is, the case where he was summoned as a Respondent by the FFC, while he was not named as a Respondent by the FPF). However, even without submitting a formal Answer, the Player did submit some letters to the CAS – in particular on 5 and 24 October 2022 – in which he made clear his position. In particular, the Player's arguments can be summarised as follows:

(a) The Player must be withdrawn as a party from TAS 9176 and may not be sanctioned by the CAS because he does not have standing to be sued since he was not a party to the first or second instance proceedings before the FIFA Disciplinary Committee or Appeal Committee. Maintaining the Player as a party to the CAS proceeding would result in a violation of his rights to due process and rights of defense.

(b) The Player does not have to and will not present any position on the allegations put forward by the FFC in TAS 9176, because he cannot be considered as a party thereto due to his lack of standing and, moreover, because he was not granted sufficient time to study the documentation and prepare his defense (considering that this arbitration is the first time he is made privy to the case file since he was not a party in the first and second instance proceedings before FIFA).

(c) The documentation provided by the FEF confirms that the Player is Ecuadorian. His nationality has been ratified by binding and enforceable decisions of the Ecuadorian judicial authorities. This CAS appeal cannot revisit the matter of the Player's nationality which has already been resolved definitively by the Ecuadorian judiciary.

The Player's Ecuadorian passport has never been challenged, revoked or withdrawn by the State of Ecuador and, therefore, is valid and confirms his nationality.

(d) For a charge of falsification of documents, the Player must be presumed innocent until proven guilty by the competent judiciary – the Ecuadorian criminal courts.

(e) The Appellants have presented an audio of an alleged interview by Colonel Jara in the context of an FEF investigation against the Player. However, the Player was never interviewed by any representative of the FEF and therefore, he must deny the authenticity and validity of said audio.

(f) The alleged falsification of documents occurred in 2012. Therefore, the period provided by the statute of limitations for this alleged breach of the FIFA regulations has elapsed under both the FIFA regulations (two years) and Article 75 of the Ecuadorian Integral Penal Code, which provides for a 54-month statute of limitation.

E. FIFA

95. In its Answer, FIFA requests in its motions for relief that the CAS issue an Award:

"*(a) rejecting the reliefs sought by the Appellants;*

(b) confirming the Appealed Decision;

(c) ordering the Appellants to bear the full costs of these arbitration proceedings; and

(d) ordering the Appellants to make a contribution to FIFA's legal costs and expenses".

96. FIFA's submissions, in essence, may be summarized as follows:

(a) The FFCH and FPF have filed the present appeals (without merit) as a final and desperate attempt to illegitimately obtain what they could not win on the field of play.

(b) The Appellants bear the burden of proving that the Player is not an Ecuadorian national and that the FEF has used a falsified document and fielded an ineligible player. The Appellants bear this burden because they seek to overturn the decision in which FIFA acquitted the FEF of any violation of the FDC. The burden of proof cannot be shifted to the FEF (or to the Player or FIFA). The Appellants must prove the facts that they allege.

(c) The standard of proof is "comfortable satisfaction" and cannot be reduced. In fact, according to CAS jurisprudence, since serious accusations were made, evidence of the highest quality and reliability is required (CAS 2018/O/5667, at para. 86, with reference to CAS 2014/A/3625). Moreover, the CAS should exert self-restraint and not interfere in the evidentiary assessment made by the FIFA Disciplinary Committee and Appeal Committee (CAS 2018/A/5888, para. 6).

(d) The Appellants do not have standing to appeal, since (i) they were not parties in the first and second instance proceedings before FIFA (the FFC was a "whistleblower" and the FPF simply a collaborative third party) and (ii) are not directly affected by any breach that the FEF or the Player could have committed under the FDC or by the

consequences that would arise therefrom, i.e. they do not have a legally protected interest or an actual practical usefulness in the appeal (SFT 4A_620/2015, para. 1.1 and SFT 4A_426/2017, para. 3.1). The potential imposition of a sanction against the FEF does not directly affect the Appellants since it would not result in either the FPF or FFC automatically taking the FEF's place in the upcoming FIFA World Cup 2022. First, under Articles 21 and 22 there is no automatic sanction of exclusion or forfeit. On the contrary the FDC has the discretion to apply any of the sanctions listed under Article 6 FDC, many of which would not result in the FEF losing its spot in the FIFA World Cup. Second, if the FEF were to be excluded or lose its spot in the FIFA World Cup, it would be the FIFA Council (not the CAS) who would decide on the replacement pursuant to Article 6 of the WC Preliminary Competition Regulations and there would be no guarantee that the FFC or the FPF would be selected as the replacement. There is thus no causal link between the (alleged) disciplinary violations of the FEF and any right or entitlement that the FPF or FFC could have to participate in the FIFA World Cup 2022. The Appellants' lack of standing is confirmed by CAS jurisprudence, in particular, CAS 2015/A/4151 and CAS 2015/A/4343.

(e) The Appellants did not comply with the procedural principle of "*passive mandatory litisconsortium*" and this failure must lead to the automatic dismissal of the present arbitration (CAS 2008/O/1808, para 68-70, CAS 2013/A/3228, para 8.10 and 8.11, CAS 2017/A/5001&5002, para. 74, CAS 2019/A/6351, para. 70). This is because the Appellants failed to call all the potential parties directly affected by the outcome of their appeals, more specifically, (i) the Player in TAS 9175, insofar as the FPF alleges that the FEF should be held responsible for an alleged forgery committed by him, and (ii) the national teams whose points in the standings would be affected if the CAS were to declare the FEF's matches forfeited, such as the Venezuelan Football Federation (FVF), the Argentine Football Federation (AFA) and the Bolivian Football Federation (FBF).

(f) No procedural rights (including to an appeal against the Appealed Decision) is granted to those who lodge a complaint under Article 52 FDC (as opposed to those who lodge a formal protest under Article 46 FDC). This was confirmed in CAS 2017/A/5001, paras. 91 and 92.

(g) The audio published by the Daily Mail on 12 September 2022 of an alleged interview between Colonel Jara and the Player is inadmissible. Assuming as the Appellants' claim that this is the same audio referred to in the Jara Report of 2018, the Appellants could have filed the audio file long before they actually did so on 12 and 13 September 2022. Therefore, it must be excluded from the record on the basis of Article R57 of the CAS Code. Even if the audio is admissible, it is unreliable because (i) the circumstances of the recording are absolutely unknown, (ii) it is a partial recording which decontextualizes the conversation, (iii) the Ecuadorian Civil Registry had interviewed the Player within the framework of its own investigation and in that interview the Player informed the authorities that Bayron Javier Castillo Segura was his brother, which contradicts the audio submitted by the Appellants.

(h) The FEF did not breach Article 21 FDC. First of all, the FEF cannot be in breach of said article because the 5-year statute of limitations under Article 10 FDC expired since the alleged offense occurred in 2012. Second, the Appellants have in any case failed to prove the Player's Ecuadorian passport was falsified. No report or decision issued by the Ecuadorian Civil Registry, the FEF or the Ecuadorian judiciary establishes that the Player's birth certificate or passport was falsified or that that Player is not an Ecuadorian national. In attempting to establish a falsification or forgery, the Appellants rely on the fact that there exists a Colombian birth certificates with the name "Bayron Javier Castillo Segura". However, the Appellants have failed to prove that he and the Player are one and the same person. Third, there is no basis to hold the FEF liable, even if one were to establish any violation by the Player of Article 21 FDC.

(i) Even if the Player had in fact used a forged document and breached Article 21 FDC (*quod non*) no sanctions against the FEF would be warranted because:

- the Player's breach would not (and does not) automatically result in sanctions against the FEF, since Article 21, para. 2 FDC refers to "active" forgery or falsification which therefore excludes sanctions against an association for the "use of" a forged document. In any event, FIFA has the discretion under said provision – not the obligation – to hold the association liable and the circumstances surrounding the alleged breach in this case favour not holding the FEF liable including, *inter alia*, that (i) the alleged forgery took place in 2012 without knowledge of the FEF and was never intended to benefit the FEF, (ii) the FEF carried out an investigation and disciplinary proceeding against the Player and provisionally suspended him, and that provisional decision was only annulled because of a judicial order of the Ecuadorian courts, (iii) the Ecuadorian authorities have formally recognized the Player's identity and rights as an Ecuadorian citizen by the issuance of his official documents (ID, passport, etc.), and (iv) the Ecuadorian Civil Registry acknowledged the Player's Ecuadorian nationality.
- the Player was at any rate entitled to play for the FEF national team, as he was (and continues to be) a citizen of Ecuador eligible for selection.

(j) The FEF did not breach Article 22 FDC. Under the applicable regulatory framework, when determining a player's eligibility, FIFA is bound by the legal nationality granted to a player by his respective country. In this case, the Player was eligible to play for the FEF national team under Article 5 FIFA Eligibility Rules because (i) the Player is an Ecuadorian national (as proven by his valid Ecuadorian passport); (ii) the Player's nationality does not depend on his residence in Ecuador, and (iii) the Player has never participated in an official match (either in full or in part) with Colombia or any other association. The Player's nationality is unquestionable, since no State authority in Ecuador nor any other authority in the world has ever indicated that he is not an Ecuadorian citizen or that he holds an invalid passport from that country. To the contrary, the passport and other relevant documentation (including documentation issued by the Ecuadorian Civil Registry) undoubtedly confirm that the Player is a national of Ecuador. Moreover, the information contained in the

Player's passport has been regarded as valid and accurate and has been confirmed by the decision of the Habeas Data Action. Even if one were to accept that the Player was born in Colombia (*quod non*) it would not necessarily mean (i) that he would automatically be considered Colombian and, even less (ii) that he would no longer be Ecuadorian.

VI. JURISDICTION

97. Article R47 of the CAS Code so provides:

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

98. In order to find jurisdiction, there must exist an arbitration clause binding the parties (jurisdiction *ratione personae*, or personal jurisdiction) and covering the disputed matter (jurisdiction *ratione materiae*, or subject-matter jurisdiction). The Panel must therefore determine whether the Parties are bound by an arbitration clause, and whether the disputed matter falls within the scope of such clause.

99. It is undeniable, in the Panel's view, that the Parties have agreed to arbitration before the CAS pursuant to Articles 56.1 and 57.1 of the FIFA Statutes (2022 edition), which so read:

- Articles 56.1 of the FIFA Statutes: "*FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, intermediaries and licensed match agents*"; and
- Articles 57.1 of the FIFA Statutes: "*Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS […]*".

100. The Appellants of course support that CAS has jurisdiction to settle this dispute. FIFA does not dispute at all the jurisdiction of the CAS and states at page 9 of its Answer that it is "*not in dispute that the CAS has jurisdiction in relation to the Appeals filed by the Appellants pursuant to Article 57(1) FIFA Statutes, in accordance with the provisions of Article R47 CAS Code*",

101. The FEF, however, only accepts that there is jurisdiction *ratione personae*, but it denies that there is jurisdiction *ratione materiae*, arguing that the CAS does not have jurisdiction over the claims of forgery or falsification of the Player's birth certificate and the Player's nationality. In the FEF's view, there is no jurisdiction because the first matter – forgery or falsification – falls under the exclusive competence of the State of Ecuador, and the

second – the Player's nationality – has already been scrutinized and confirmed by the Ecuadorian administrative and judicial authorities.

102. The Panel first observes that under Article R27 of the CAS Code, "*disputes may involve matters of principle relating to sport or matters of pecuniary of other interests relating to the practice or the development of sport and may include, more generally, any activity or matter related or connected to sport*". As the dispute before the Panel is undoubtedly "*related or connected to sport*", the CAS has jurisdiction *ratione materiae*.

103. With regard to the FEF's argument that the CAS would have no competence to deal with the forgery or falsification of the Player's birth certificate, the Panel observes that FIFA has its own disciplinary rules governing issues of forgery and falsification (Articles 21 FDC) and, thus, FIFA has the power (as does the CAS on appeal) to investigate and sanction any violation of those rules within the scope of its own association's internal justice system. The fact that the State of Ecuador has its own national laws against forgery and falsification and that it can, pursuant to those rules, impose a sanction at national level against a given party, does not limit or displace FIFA's power to do the same under its own regulatory framework. The two legal systems are separate and autonomous. In fact, it is common for both a State and an international federation to each impose, within their respective regulatory framework, sanctions against a party. Furthermore, it is unnecessary for an international federation to wait for a State court to declare a party guilty before imposing disciplinary sanctions on that party within the sporting system. This has been commonly seen, for example, in cases of bribery, corruption and abuse (see e.g. *ex multis* CAS 2016/A/4474, CAS 2016/A/4501, CAS 2017/A/5003, CAS 2019/A/6344, CAS 2019/A/6388).

104. As to the jurisdiction of CAS over the question of the Player's nationality, the Panel points out that this FEF's jurisdictional objection is misplaced. The issue at stake is whether the Player and/or the FEF have complied with the FIFA rules concerning the eligibility of footballers to play for a given national team. It is a subject matter whose focal point is the notion known as "sporting nationality" or "sports nationality", which is "*a purely sporting concept, defining the rules for players to qualify in order to participate in international competitions*" (TAS 92/80). Indeed, the CAS has full jurisdiction *ratione materiae* to decide on sporting nationality, as this is "*an issue that belongs to the international sports governing bodies as they are the only subjects designated to govern and regulate a private law system such as the sports system*" (CAS 2021/A/8075).

105. As was written in an academic article published many years ago: "*Sports law is indeed an autonomous private body of law which sets its own rules in matters of nationality without necessarily coinciding with existing national or international rules. In other words, within sports law there exists a concept of 'sports nationality' which is different from the ordinary legal concept of nationality. […] As a matter of fact, both the International Olympic Committee […] and International Federations establish their own regulations concerning the nationality of athletes and competitors in general*" (M. COCCIA, *Nationality of Players and International Transfers*, in *FIBA International Legal Symposium*, Bilbao, 1999, pp. 25-50, at p. 32).

106. Therefore, in the present case, the Panel certainly has the jurisdiction to decide whether the Player and/or the FEF have complied with the criteria set out in the FIFA rules for establishing the Player's sporting nationality. The fact that the Player's legal nationality is an important factor to determine his sporting nationality is in this context a factual issue that is relevant for the merits of the case but does not impinge on the jurisdiction *ratione materiae* of the CAS.

107. The Panel, therefore, holds that it possesses jurisdiction to adjudicate this dispute.

VII. ARBITRABILITY

108. The FEF argues that the present dispute is not arbitrable because it does not involve an economic interest as required by Article 177, para. 1 PILA. The Panel agrees that arbitrability is a preliminary requirement that must be assessed under Swiss law.

109. Article 177, para.1, of the Swiss Federal Private International Law Act (the "PILA") provides as follows:

> "*Any claim involving an economic interest may be submitted to arbitration*".

110. The Panel observes that Swiss courts construe this arbitrability requirement very broadly, in the sense that it is enough that at least one of the parties to the dispute has some interest at stake which can have some active or passive pecuniary value (see e.g. SFT, 118 II 353, judgment of 23 June 1992 at para. 3b: "*fall within the scope of this provision all the claims which have a pecuniary value for the parties, as assets or liabilities, in other words the rights which present, for one at least of these, an interest that can be appreciated in money*", as translated from the French original). The Panel thus finds, in accordance with well-established Swiss and CAS jurisprudence, that even in disciplinary cases a party that can be sanctioned has some economic interest at stake in fighting against a sanction potentially excluding that party from competitions (see e.g. SFT, 4P.230/2000, judgment of 7 February 2001, *Stanley Roberts v. FIBA*, reprinted in Bulletin ASA, 2001, at p. 526: "*the appellant has a pecuniary interest in his application for the ban to be lifted*").

111. In the Panel's view, there is an obvious economic interest at stake, and a clear pecuniary value, in the Appellants seeking to impose a sanction on the FEF that could result in either Appellant earning entry into the FIFA World Cup in place of the FEF. Indeed, it is public knowledge (reported by FIFA) that simply for qualifying to the FIFA World Cup, each team receives USD 9 million, with each round bringing additional prize money, all the way to USD 42 million for the winner of the competition.

112. In light of the foregoing, the Panel harbours no doubt that the dispute as stake is arbitrable.

VIII. PROCEDURAL ADMISSIBILITY

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

"*In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against.*"

114. According to Article 57.1 of the FIFA Statutes (2022 edition), appeals "*shall be lodged with CAS within 21 days of receipt of the decision in question*".

115. The FIFA Appeal Committee notified the grounds of the Appealed Decision on 28 September 2022. The FPF and FFC lodged their appeal with the CAS on 28 and 29 September 2022, respectively, and therefore well within the 21 days allotted under Article 57.1 of the FIFA Statutes. The Respondents raised no objections. It follows that the appeals are admissible.

IX. APPLICABLE LAW

116. Article R58 of the Code provides as follows:

"*The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.*"

117. According to Article 56.2 of the FIFA Statutes: "*the provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law*".

118. It follows that the Panel must apply the various FIFA regulations (in particular the FDC and FIFA Eligibility Rules), and, additionally, Swiss law, in deciding the present dispute.

119. The Panel further finds that with regard to the FDC, the 2019 edition must be applied even though some of the relevant facts occurred before entry into force of said code. This is because according to Article 4(2) FDC "*[t]his Code also applies to all disciplinary offences committed prior to the date on which it comes into force, subject to any milder sanction that would apply under previous rules*". This provision is fully compliant with the general principle *tempus regit actum* and the principle of non-retroactivity applicable to intertemporal issues, as it simply reverses the traditional *lex mitior* principle so that the new substantive rule applies automatically unless the old rule is more favourable to the accused (see CAS 2017/A/5086).

X. PROCEDURAL MATTERS

A. Rejection of the request to hear an anonymous witness

120. On 28 October 2022, the Panel rejected the FFC's request to hear an anonymous witness for reasons that would be provided in this final award. In reaching its decision the Panel made the following considerations.

121. Under CAS practice and the jurisprudence of the SFT (which refers also to the jurisprudence of the European Court of Human Rights), it is permitted to hear anonymous oral evidence by striking a balance between, on the one hand, the right of the party requesting the anonymous witness to seek the truth without jeopardising the safety of a relevant witness and, on the other hand, the due process rights of the party objecting to the anonymity of the witness (see CAS 2019/A/6388 at paras. 120 *et seq.* and the references therein).

122. FIFA rules expressly provide the possibility that a witness testifies anonymously in disciplinary proceedings when a public testimony "*could lead to threats on his person or put him or any person particularly close to him in physical danger*" (Article 38, para. 1 FDC), provided that some procedural safeguards are adopted in order to protect the rights of all involved parties (paras. 1 and 2 of Article 38 FDC).

123. Hearing the evidence of an anonymous witness in CAS proceedings is thus possible, without violating the right to be heard of any party, if the circumstances so warrant and provided that certain strict conditions are met, such as (i) that the witness, or the party requesting the witness, motivates the need for anonymity in a convincing manner, in particular giving some evidence that the witness, or someone close to the witness, would concretely face a risk of retaliation if her/his identity were known, (ii) that the panel has the possibility to see the witness, (iii) that the witness is questioned by the panel itself, which must be able to check her/his identity and the reliability of her/his statement, and (iv) that the witness is cross-examined through an audio-visual protection system (see CAS 2019/A/6388, CAS 2011/A/2384 & 2011/A/2386, CAS 2009/A/1920).

124. The Panel finds that the first and foremost condition for the admission and hearing of an anonymous testimony – i.e. whether the requesting party has proven that the anonymity of the witness is necessary – was not satisfied in the present case.

125. Indeed, the FFC has not proven to the Panel's satisfaction that anonymity was necessary to protect the witness, or someone close to the witness, from a concrete danger of retaliation. The Panel has been shown insufficient proof that the life and/or personal safety of the witness, or of anyone else, would be at actual risk if this person's identity were to be revealed. The evidence submitted by the FFC refers only generally to violence in Ecuadorian society and to a hypothetical abstract danger. The FFC claimed, for example, that the witness was "*pretty sure to be turned into a target*", "*would be a target*", "*would face severe risks*", and there "*might reach a day that something bad happens*". However, these were mere assertions by the FFC, unsubstantiated by any evidence whatsoever of some specific and concrete risk. The FFC did not even submit a personal

affidavit signed by the requested witness (which could be directed to the attention of the Panel on a confidential basis) explaining why this person felt in danger in case of a public testimony. In light of the lack of evidence of any concrete risk for the requested anonymous witness – in particular, the absence of any proof that an open testimony "*could lead to threats on his person or put him or any person particularly close to him in physical danger*" (Article 38, para. 1 FDC), the Panel had to reject this FFC's request.

B. The FFC's other procedural requests

126. By letter of 20 October 2022, the FFC requested the Panel to order the FEF to present at the hearing the original of Exhibit 10 of its Answer, i.e. a copy of the Jara Report with a handwritten note that the document was accompanied by "*15 pages and no audio*". The FFC also requested that the FEF be ordered to explain who added the handwritten note. On 2 November 2022, the Panel rejected both requests for reasons to be explained in this final award. The Panel decided to reject these requests on the basis of the principle of burden of proof. Given that the authenticity of the document produced by the FEF has been contested, it became the interest and the burden of the FEF to prove its authenticity by exhibiting the original at the hearing and, therefore, there was no need to order its production. Further, if the FFC wished to ask who wrote "*15 pages and no audio*" on the Jara Report, it could ask it during cross-examination of the FEF Secretary General at the hearing, without the need for the Panel to issue an order.

127. By a second letter also of 30 October 2022, the FFC requested the Panel to (i) inform whether FIFA revealed the name of the anonymous witness to the Panel, (ii) order FIFA to produce all letters sent to the FEGF to start the disciplinary proceedings leading to the Equatoguinean FIFA Decisions, and (iii) order the FEF, with reference to Exhibit 5 (i.e. the copy of the Player's Biometrics Certificate from the Civil Registry of Ecuador), to provide information as to what date the fingerprints were collected. The Panel accepted only the request to order FIFA to produce the opening letters of the FEGF cases. The Panel accepted this request because it had no doubt the letters existed, were in the possession of FIFA and were relevant in that they would shed light into why FIFA decided to hold the FEGF liable for breaches of FDC provisions on ineligibility and forgery/falsification and why it decided to apply the sanctions that it did against FEGF. The Panel decided to reject the first request (i.e. to be informed whether FIFA had revealed the name of the anonymous witness) because the communication sent by FIFA was justifiably confidential and, therefore, could not be revealed unless FIFA itself allowed it. The Panel decided to reject the third request because the date of the fingerprints is irrelevant given that in its answer the FEF does not argue that they were taken on a given date. The Panel considered this to be a matter of burden of persuasion and, accordingly, that it would be on the FEF to provide and prove the date of the fingerprints if it wished to make an argument in this connection.

XI. MERITS

128. The Appellants claim that the documents that establish the Player's Ecuadorian nationality were forged or falsified in breach of Article 21 FDC and that the Player was

ineligible to play for the FEF in the World Cup Qualifiers in violation of Article 22 FDC. The FPF seeks the exclusion of the FEF from the FIFA World Cup and to replace the FEF in said competition since it was the best runner-up. The FFC, on the other hand, requests the CAS to rule that (i) the Player was ineligible for the 8 matches it played in the World Cup Qualifiers for the FEF, (ii) these matches must be forfeited due to ineligibility of the Player, and (iii) the FFC must replace the FEF in the competition since, with the additional 5 points from the forfeited matches against the FEF, it would finish in 4th position in the CONMEBOL standings. The FEF and FIFA submit that the Appealed Decision should be upheld because there was no forgery or falsification in breach of Article 21 FDC and the Player was eligible to play for the FEF in compliance with Article 22 FDC and that, anyways, any irregularity would not automatically trigger the replacement of the FEF with either Appellant in the World Cup 2022.

129. In lights of the Parties' conflicting positions, the Panel must answer the following questions:

(A) Did the CAS violate the FEF's right of defense, right to be heard or right to equal treatment?

(B) What is the applicable burden and standard of proof?

(C) Do the FEF and FFC have standing to appeal the Appealed Decision.?

(D) Does the Player have standing to be sued?

(E) Should the appeals be dismissed for lack of passive mandatory joinder?

(F) Does the relevant statute of limitations bar a claim against the FEF?

(G) Is the audio of the Player's interview with Colonel Jara admissible and reliable?

(H) Did the FEF breach Article 21 FDC?

(I) Did the FEF breach Article 22 FDC?

(J) Did the FEF breach Article 11 FDC?

(K) If the FEF committed a breach of the FDC, what is the applicable sanction?

130. The Panel will discuss each matter separately below.

A. No violation of the right to defense, to be heard or to equal treatment of the FEF

131. The FEF contends that the CAS violated its right of defense, right to be heard and right to equal treatment because it did not consolidate the present appeals with its own appeal docketed as TAS 2022/A/9206 (which, by the Parties' agreement, was entrusted to the same panel of arbitrators as that in the present case). The FEF argues that it was prevented from developing "*a large part of*" its allegations and claims and that the lack of consolidation prevented it, in particular, from putting forward its subsidiary request that the Appealed Decision be annulled and reinitiated by the FIFA Disciplinary Committee, this time with the presence of the Player as a party.

132. The Panel considers that it has not violated the FEF's right to defense, right to be heard or right to equal treatment in that regard for the following reasons.

133. First, pursuant to Article R52 of the CAS Code, the CAS is not compelled to consolidate proceedings just because the underlying appeals all stem from the same decision. The CAS has the discretion, on a case-by-case-basis, to decide whether consolidation is appropriate. The President of the Panel, exercising that discretion, decided – for the reasons set forth in his Order on the Application for Consolidation of CAS Arbitration Proceedings (hereinafter "Order on Application for Consolidation") issued on 28 October 2022 within the ambit of TAS 2022/A/9206 – that consolidation of the appeal TAS 2022/A/9206 with the present appeals TAS 9175 and TAS 9176 was not appropriate. Essentially, the President of the Panel – after having considered that both the FFC and the FPF, albeit agreeing to submit case TAS 2022/A/9206 to the same Panel, had strongly objected to the consolidation arguing *inter alia* that the FEF's appeal was part of a dilatory strategy – held that the FEF's application for consolidation of the proceedings had to be rejected because:

(i) the FEF's motions for relief in TAS 2022/A/9206 were explicitly dependent on the outcome of TAS 9175 and TAS 9176, as the FEF itself stated that its claims were precautionary or *ad cautelam* and of a subsidiary nature to the cases TAS 9175 and TAS 9176; in other words, the FEF itself asked the Panel to first adjudicate on the present appeals and to only later deal with its own appeal;

(ii) the FEF raised in its appeal the exact same arguments that it had already raised as defenses in TAS 9175 and TAS 9176 and, therefore, those issues could be addressed and decided in the present proceedings, with no risk of contradictory judgments and no need to consolidate the proceedings;

(iii) a consolidation with TAS 2022/A/9206 would have unnecessarily delayed the proceedings TAS 9175 and TAS 9176, *de facto* preventing the Panel from hearing the case and issuing the operative part of its decision before the FIFA World Cup 2022;

(iv) the FEF's standing to appeal was *prima facie* very doubtful since the Appealed Decision had ruled entirely in its favour and rejected in full the FFC's and FPF's petitions, and so the FEF did not appear to have a legitimate interest in appealing and "*pas d'intérêt, pas d'action*", as is well established in CAS jurisprudence (CAS 2010/A/2091, at para. 13, and CAS 2009/A/1880 & 1881, at para. 152 *et seq.*).

134. Second, in full accordance with the CAS Code, the Panel has permitted the FEF to be heard and to defend itself by filing written submissions, producing evidentiary evidence and legal authorities in support of its arguments, calling witnesses, examining or cross-examining witnesses, and orally pleading its case. The Panel has also treated the FEF equally during the course of the proceedings. In fact, the FEF confirmed at the end of the hearing that its right to be heard and right to equal treatment had been respected by the Panel in these proceedings.

135. Third, the lack of consolidation did not prevent the FEF from moving forward, if it so wished, with its appeal in TAS 2022/A/9206 by expeditiously presenting its appeal brief in that case.

136. The FEF also argues that the CAS violated its right of defense, right to be heard and right to equal treatment because the CAS took significantly longer to calculate the advance of costs in TAS 2022/A/9206 than in the present appeals, thereby preventing *de facto* the quick constitution of the Panel and a quick decision on the requested consolidation. The Panel finds that this argument totally lacks merit, as the FEF's statement of appeal in TAS 2022/A/9206 was filed on 13 October 2022, the Panel was constituted in a timely manner on 27 October 2022, and the Panel's President swiftly ruled on the request for consolidation by issuing on 28 October 2022 his Order on Application for Consolidation.

137. Finally, the FEF argues that the Panel violated the FEF's procedural rights for dealing with TAS 9175 & TAS 9176 in an expeditious manner and, in particular, by sending communications on non-business days and setting the hearing unilaterally on a Saturday. The FEF, however, fails to cite any specific breach of the procedural rules contained in the CAS Code, which the Parties have explicitly agreed to follow in Article 57.2 of the FIFA Statutes. The fact that, given the urgency of the matter in view of the impending start of the FIFA World Cup 2022, the Panel has been swiftly dealing with this case and strictly complying with the deadlines set forth in the CAS Code is in no way a breach of the applicable procedural rules or of the FEF's procedural rights. At the end of the day, promptly adjudicating on disputes so as to allow the regular holding of important international competitions is, undoubtedly, one of the fundamental reasons for the very existence of the CAS (as acknowledged several times by the SFT, for example in the judgment 4A_428/2011 of 13 February 2012, at para. 3.2.3, where the SFT refers to "*the goal of promoting the swift resolution of disputes by specialized courts presenting sufficient guarantees of independence and impartiality, such as the CAS*", as translated from the French original "*le but de favoriser la liquidation rapide des litiges par des tribunaux spécialisés présentant des garanties suffisantes d'indépendance et d'impartialité, tel le TAS*").

B. Burden and standard of proof

a. Burden of proof

138. According to Article 36, para. 2 FDC, "*[a]ny party claiming a right on the basis of an alleged fact shall carry the burden of proof of this fact*". Article 8 of the Swiss Civil Code ("Swiss CC") provides that "*the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact*". Furthermore, according to well-established CAS jurisprudence, each party bears the burden of proving the specific facts and allegations on which it relies (see e.g. CAS 2017/A/5465, at para. 82 and CAS 2019/A/6388, at para. 161).

139. Bearing these rules in mind, the Panel holds that the burden of proof to substantiate the claim of forgery or falsification and ineligibility lies with the FFC and FPF. In these proceeding before CAS the Appellants are the parties that derive rights (i.e. the appeal

being upheld and the FEF being sanctioned) from their allegation that the FEF used a falsified documents and fielded an ineligible player in breach of the FDC. Therefore, the Panel concludes that the burden of proof with respect to the FEF's alleged breach of the FDC lies with the Appellants (see CAS 2015/A/4260, at para. 52).

b. Standard of proof

140. Article 35, para. 3 FDC provides that the standard of proof to be applied in FIFA disciplinary proceedings is that of "*comfortable satisfaction of the competent judicial body*". Therefore, the Panel must apply the well-known standard of proof of comfortable satisfaction.

c. No shift in the burden of proof or reduction in the standard of proof

141. The FPF suggests that the burden of proof must be shifted or the standard of proof reduced because of the limited investigatory powers of sport governing bodies and the fact that forgery is an activity that by its very nature makes it very difficult to have direct evidence to prove it. In support, the FPF cites award CAS 2019/A/6665 at paras. 78 to 84). However, the Panel notes that said award did not reverse the burden of proof or reduce the standard of proof; instead, that CAS panel held that, because FIFA had submitted very detailed documents to support its disciplinary charges and arguments, it fell on the appellant in that case to contest the facts and rebut any inferences which might otherwise be drawn. The panel made it clear in that award that "*the onus of proof remain[ed] on FIFA, but the evidential burden of contesting the facts submitted by FIFA and adducing evidence shift[ed] to the Appellant*" (*Idem*). The appellant only became responsible "*to contribute to the administration of proof […] by bringing forward evidence in support of his line of defence*" (*Idem*).

142. With this in mind, the Panel holds that a shift in the burden of proof or a reduction in the standard of proof is not justified in the present case. Indeed, the Appellants are not faced with a situation where they have to prove a negative fact or there is an objective impossibility to obtain the necessary evidence to prove a forgery or falsification, *i.e.* a situation where all the relevant information or evidence is under the control of a counterparty and not accessible to the Appellants. On the contrary, the Appellants have been able to access and bring forward a considerable amount of evidence to support their position that there was a falsification of the Player's documents establishing his Ecuadorian nationality. Therefore, the Panel concludes that the normal approach to burden and standard of proof must be followed (see *supra* at paras. 139 and 140).

143. A different matter altogether is that of the so-called burden of persuasion. In fact, even though there is no shift of the burden of proof or a reduction in the standard of proof, considering that the Appellants submitted very persuasive evidence that the Player was not born in the place and date indicated in his passport (as will be discussed *infra* at para. 204), it was in the interest of the opposing parties to satisfy their burden of persuasion by providing substantial counter evidence to support that the Player was truly born as reported in his Ecuadorian papers.

C. Standing to appeal of the FPF and FFC

144. Article 49 FDC, entitled "*Court of Arbitration for Sport (CAS)*", so provides: "*Decisions passed by the Disciplinary and Appeal Committees may be appealed against before CAS, subject to the provisions of this Code and articles 57 and 58 of the FIFA Statutes*".

145. Article 58 FDC, entitled "*Standing to appeal*", then provides that anyone "*who has been a party to the proceedings before the Disciplinary Committee may lodge an appeal with the Appeal Committee, provided this party has a legally protected interest in filing the appeal*".

146. The Panel is of the view that both common sense and the reference included in Article 49 FDC to the "*provisions of this Code*" (see supra at para. 144) render the standing to appeal requirements set forth by Article 58 FDC applicable not only to the internal appeals to the FIFA Appeal Committee but also to the external appeals to the CAS.

147. It thus follows from the aforementioned provisions of the FDC that for the Appellants to have standing to appeal the Appealed Decision to the CAS they (i) must have been parties to the proceedings before the FIFA disciplinary bodies and (ii) have a legally protected interest in the appeal.

148. The first requirement is satisfied because the Appellants were both parties to the first and second instance FIFA proceedings. It is evident that the FFC was a party from the fact that FIFA accepted to deal with its complaint against the FEF for alleged violations of Articles 11, 21 and 22 FDC and, on that basis, treated the FFC as a party in the disciplinary proceedings that terminated with the Appealed Decision. As for the FPF, it became a party to the FIFA disciplinary proceedings when in the opening letter of the proceeding the FIFA Disciplinary Committee explicitly recognized the FPF as a "*directly affected party*" and invited it to submit its position on the matter (the opening letter of the FIFA disciplinary proceedings reads in the relevant part: "*la Federación Peruana de Fútbol se considera parte directamente afectada en este procedimiento y se le invita a presentar su posición*…"). Finally, the decision of the FIFA Disciplinary Committee made reference to both the FFC and the FPF as "parties" and considered them as such. Indeed, the Appellants' petitions and positions were replicated in the section of the first instance decision entitled "*Allegations of the Parties*", the purpose of which was "*to summarize the position and allegations received from all parties involved during this disciplinary proceeding*" (translated from the Spanish original; see para. 9 of the Disciplinary Committee decision).

149. The second requirement – that the Appellants have an interest worthy of legal protection ("*intérêt à agir*" in French) – is also satisfied. Indeed, as will be seen in the ensuing paragraphs, the Panel is of the view that the Appealed Decision erred in finding that neither Appellant had legal interest to appeal.

150. The Respondents, endorsing the Appealed Decision, argue that a party's legal interest in the appeal requires a causal link between the alleged violations of Articles 21 and 22 FDC and the FFC and FPF's sporting interest in replacing the FEF in the FIFA World Cup. In

reliance on CAS 2018/A/5746, CAS 2015/A/4151 and CAS 2015/A/4343, the Respondents submit that a causal nexus could exist only if the sanction on the FEF resulted in the direct and automatic qualification of the FFC and FPF to the FIFA World Cup. In the Respondents' view, however, the sanctions of Articles 21 and 22 FDC would not lead to this direct and automatic qualification, as the sanction would not necessarily result in the FEF losing its spot in the FIFA World Cup 2022. Moreover, FIFA argues that, even in the case of exclusion of the FEF from FIFA World Cup 2022, the FIFA Council, not a CAS panel, would have full discretion to select the replacement team.

151. The Panel first recalls that, pursuant to long-standing CAS jurisprudence, the notion of "legal interest" – sometimes also defined as "legitimate interest" – is a broad and flexible requirement, which must be determined and applied on a case-by-case basis (CAS 2018/A/5888 at para. 174) and which is satisfied when it is demonstrated that "*the appellant (i) is sufficiently affected by the appealed decision and (ii) has a tangible interest, of financial or sporting nature, at stake*" (CAS 2005/A/895 at para. 67 and, in identical terms, CAS 2015/A/3880 at para. 46 and CAS 2016/A/4903 at para. 77; see also the awards CAS 2004/A/790, CAS 2006/A/1046, CAS 2008/A/1471, and the Order on Provisional Measures in CAS 2008/A/1674).

152. The Panel, moreover, is in full agreement with the findings of the Sole Arbitrator Prof. Ulrich Haas in CAS 2017/A/5054, that as "*the requirement of a legal interest determines if in a given case whether a claimant has access to justice, the bar must be set with prudence and – in any respect – not too high*" (at para. 71), and that "*the threshold for a legal interest must be set low before an arbitral tribunal. The prerequisite of a legal interest is designed to protect the courts from being deadlocked with needless disputes. […] The answer […] is very different in cases in which the state provides and pays for courts that adjudicate a dispute compared to cases where the parties mandate and pay (in full) a private institution to adjudicate the matter. In the latter case, a legal interest should only be denied if there is no benefit for the party whatsoever in obtaining a judgement in this matter in his or her favour*" (paras. 73-74; see also CAS 2013/A/3055, award on jurisdiction and admissibility, at paras. 7.6 *et seq.*).

153. In the Panel's view, therefore, the legal interest of a party to a proceeding administered by a sports governing body, who appeals to the CAS against the decision issued at the end of that proceeding, should only be denied if that party could obtain no benefit whatsoever from a CAS award ruling in its favour. Accordingly, sufficient legal interest exists in a CAS appeals arbitration when the relief requested by an appellant who was a party to the lower-instance proceedings could potentially result in the entry of that appellant into a sporting competition.

154. With this in mind, the Panel notes that the forfeit of matches and the exclusion from the competition (i.e. the sanctions requested by the FFC and FPF in their motions for relief) are imposable sanctions for the breaches of Articles 21 and 22 FDC. Indeed, Article 21, para. 2 FDC does not set out a specific sanction for a breaching national association, meaning that the disciplinary measures available are those listed in Article 6, para. 3 FDC, which includes forfeiture and expulsion from competition. Article 22 FDC explicitly sets out forfeiture as a sanction for using an ineligible player and also gives FIFA discretion,

taking into consideration the integrity of the competition concerned, to impose any disciplinary measure available under Article 6, para. 3 FDC.

155. The Panel then observes that, pursuant to Article 10.4 of the FIFA World Cup 2022 Regulations, the four best placed CONMEBOL member federations automatically qualify to the FIFA World Cup. This means that some of the potential sanctions for the FEF would lead to the entry of the FFC or the FPF into the World Cup. For example, if this Panel were to hold, as requested by the FFC, that the eight matches of the World Cup Qualifiers in which the FEF fielded the Player must be forfeited (see the list of the relevant matches above at para. 10), the FFC would move to 4th position in the CONMEBOL standings and this would determine its automatic qualification to the FIFA World Cup 2022 in place of the FEF. As another example, if this Panel were to deduct 3 points from the FEF's final standing in the World Cup Qualifiers, the FEF would drop to 5th place with 23 points, while the FPF would move up to 4th place and this would determine the FPF's automatic qualification to the FIFA World Cup 2022 instead of the FEF.

156. FIFA argues that no rule would automatically grant the FFC or FPF a spot in the FIFA World Cup because under Article 6 of the WC Preliminary Competition Regulations (which reads: "*If any association withdraws or is excluded from the competition, FIFA shall decide on the matter at its sole discretion and take whatever action is deemed necessary*") FIFA would have full discretion in choosing the replacement for the FEF. However, the Panel finds that this would only be true in case the Panel were to impose the sanction of "*expulsion from a competition in progress or from future competitions*" (Article 6, para. 3(i) FDC) but not if some points were to be deducted or some matches were to be forfeited – sanctions provided by Article 6, paras. 3(g) and 3(j) – because in either of those cases the FEF would not be "*excluded from the competition*" and, thus, Article 6 of the WC Preliminary Competition Regulations could not be applied. In case of deduction of points or of forfeit of some matches, the standings would be readjusted in accordance with the imposed sanction – as customarily happens in any football tournaments if no rule explicitly provides otherwise – and the qualification to the FIFA World Cup 2022 would occur in accordance with the established rules, yielding the qualification to the FIFA World Cup 2022 of the top four teams from CONMEBOL.

157. The Panel thus finds that there does exist a causal link between the alleged violations of Articles 21 and 22 FDC and the FFC's and FPF's sporting and financial interest in replacing the FEF in the FIFA World Cup 2022 and that, therefore, the Appellants do have legal interest in the appeals.

158. The Panel rejects the Respondents reliance on CAS 2018/A/5746, CAS 2015/A/4151, and CAS 2015/A/4343. Those cases – which generally held that there no standing to appeal exists where it has not been proven that the appellant would, based on the applicable sporting regulations, directly and automatically replace the sanctioned party in a competition – must be distinguished and are not authoritative for the following reasons:

- First of all, unlike in those cases, in the present case the imposable sanctions against the FEF could in fact lead to the automatic qualification of either the FFC or FPF to the FIFA World Cup 2022 (see *supra* at paras. 154 *et seq.*).

- Second, in CAS 2018/A/5746, CAS 2015/A/4151, and CAS 2015/A/4343, the appellants were not parties to the first instance proceedings, whereas in the present case the Appellants were full-fledged parties before the FIFA Disciplinary Committee and had their respective petitions rejected on the merits by FIFA; therefore, the Appellants have had in these proceedings a legal status as parties which certainly brings the threshold for legal interest at a much lower level than that of the appellants in the aforementioned CAS cases.
- Third, the Panel rejects the Respondents' argument that no procedural rights (including the right to appeal to the CAS) are conferred to those lodging a complaint before FIFA pursuant to Article 52 FDC, but only to those who lodge a protest under Article 46 FDC. In support of their argument, the Respondents referred to the award in CAS 2017/A/5001 & 5002 (the "Bolivia award"). However, the Panel (whose President also chaired the panel in CAS 2017/A/5001 & 5002) finds that the Respondents have misinterpreted that award. In the Bolivia award, the CAS panel focused on the issue whether FIFA had the right to start disciplinary proceedings on the basis of a complaint filed by a complainant that had failed to file a protest after a match. Indeed, in that case the panel simply held that – unlike the situation when a party files a protest and FIFA rules explicitly confer some procedural rights to the protestor – when someone files a complaint, FIFA has discretion to start or not disciplinary proceedings and, if it does start them, this does not change the *ex officio* legal nature of the disciplinary case and no automatic right to participate in such proceedings is conferred to the complainant or other directly affected parties. The panel in the Bolivia award did not hold that a complainant or other directly affected parties never can have procedural rights in an *ex officio* disciplinary case. Accordingly, when FIFA, in exerting its discretion, opens a disciplinary case and invites a complainant and/or other directly affected parties to participate in it – and such invitation, by the way, should not be arbitrarily withheld when important matters are at stake – said parties acquire all procedural rights normally granted to a party, including the right to appeal. In the present case, therefore, the FFC and FPF acquired full-fledged procedural rights (including the right to appeal to the FIFA Appeal Committee and subsequently to the CAS) when FIFA accepted them as parties to the FIFA Disciplinary Committee proceeding.

159. In light of the foregoing, the Panel holds that the Appellants did have legal interest and standing to appeal before the FIFA Appeal Committee and do have legal interest and standing to appeal now before the CAS.

D. Lack of the Player's standing to be sued

160. The FFC has named the Player as a respondent in TAS 9176. The Player, however, objects to his inclusion in the proceeding as a party. The Player alleges that he does not have standing to be sued (*i.e.* he denies having a sufficient stake in this dispute to be summoned as a respondent) and that, accordingly, he should be removed as a party from the proceeding.

161. The Panel notes that the Player was neither a party to the first instance proceedings before the FIFA Disciplinary Committee, nor to the second instance proceeding before the FIFA Appeal Committee. Indeed, the FIFA Disciplinary Committee, in exercising its discretion under Article 52 FDC, decided not to bring charges and open a proceeding against the Player; instead, it only did so against the FEF and it is that case that was appealed internally at FIFA and has now been brought before the CAS.

162. The Panel finds that no FIFA rule allows the FFC to start before the CAS a disciplinary action against the Player. Accordingly, the Panel holds that the FFC could not summon the Player as a respondent because he lacks standing to be sued in connection with the present proceedings.

163. To hold otherwise would essentially mean granting the FFC the unfettered authority to decide in the place of FIFA whether and when to bring charges and open a disciplinary proceeding against someone else (here the Player) pursuant to Article 52 FDC. Under that provision, however, said authority rests solely in the hands of FIFA, as was confirmed in CAS 2017/A/5001 & 5002: "*This article does not impose any obligation on FIFA, leaving it at its discretion whether or not to pursue an alleged disciplinary infraction, even if someone has reported or denounced to FIFA that one of its rules has been violated*" (translated from the Spanish original; see para. 90 of that award). Moreover, to hold otherwise would contravene CAS jurisprudence, which has firmly established that the Panel's review is limited by the objective and subjective scope of the appealed decision (see *ex multis* TAS 2009/A/1879), that is to say, the Panel's scope of review is restricted to the appraisal of matters brought before the FIFA Disciplinary Committee. The Panel can thus only adjudicate on whether the FEF, and not the Player, breached Articles 11, 21 and 22 FDC.

164. As a result, the Panel holds that the Player is not to be considered as a legitimate respondent in the present case and all FEF's motions against the Player must be rejected.

E. No lack of standing to be sued for missing passive mandatory joinder

165. FIFA argues that the present appeal must be dismissed because there is a lack of standing to be sued of the current Respondents due to the lack of so-called "passive mandatory joinder", also referred to as "passive mandatory litisconsortium". FIFA claims that the Appellants made a fatal mistake by not calling as respondents all the parties whose presence is necessary because they are directly affected by the outcome of the present arbitral proceedings, and their absence violates their right to be heard. In particular, FIFA argues that if the FPF and FFC are directly affected parties, so too are other member federations of CONMEBOL, such as the Venezuelan, Paraguayan, Argentinian and Bolivian Football Federations. In FIFA's view, the Player is also directly affected and should have been called as a respondent in TAS 9175. FIFA concludes that by failing to name these other member federations and the Player, the Respondents have no standing to be sued.

166. The Panel finds that it was not necessary for the Appellants to name as respondents the other member federations of CONMEBOL for the following reasons.

167. First, the Panel notes that under Swiss law, in principle, when a member of an association challenges a decision of that association before a State court on the basis of Article 75 SCC, the only respondent that must and can be named is the association itself. CAS practice differs in several respects. With regard to CAS cases concerning disciplinary sanctions, the duty to name other competitors in addition to the sports body that issued the appealed decision is dependent on the applicable sports regulations. When the applicable sports regulations do not address this issue, CAS jurisprudence shows that third parties must be named by an appellant only when something is requested directly against them (typically, in cases when an appellant seeks to take the place of another participant in a competition). Therefore, the issue raised by FIFA can be relevant only in cases where some motions for relief put forward by an appellant, if upheld, would directly and irremediably affect in a significant way the direct, personal and actual rights of a third party that has not been summoned as a respondent. This was indeed the situation in the CAS precedents mentioned by FIFA where this issue was actually addressed (CAS 2008/O/1808, CAS 2013/A/3228, CAS 2019/A/6351) but, as will be seen *infra* (at para. 169), this is not the case in the present proceedings.

168. Second, the other member federations of CONMEBOL had the right to request to intervene in these appeals under Articles R41.3 and R54, last paragraph, of the CAS Code. These federations certainly knew about the appeals given the highly publicized nature of the case, yet decided not to intervene – differently than what happened in case CAS 2017/A/5001 & 5002, where most CONMEBOL member federations requested to intervene – thereby showing that they did not consider that their rights could be directly and irremediably affected by the present proceedings (and rightly so).

169. Third, the other member federations of CONMEBOL could only derive benefits but not any disadvantages from the Panel's eventual decision. Indeed, if the Panel were to sanction the FEF with a point deduction, forfeiture of matches or exclusion from the FIFA World Cup, those national federations could actually move up the standings of the World Cup Qualifiers, but not suffer any negative effects such as being demoted in the standings from a qualifying position. Therefore, their direct, personal and actual rights could not be affected by the appeals filed by the FFC and the FPF. As a result, the Panel can deal with the requests for relief sought by the Appellants without violating the right to be heard of any third party.

170. Fourth, the other member federations of CONMEBOL were not parties to the FIFA disciplinary proceedings. Indeed, FIFA – which is the party that now claims there is a lack of passive mandatory joinder – could have well summoned those other member federations to the proceedings before the FIFA disciplinary bodies if it deemed that their rights could be affected. Nevertheless, FIFA chose (and rightly so) to only invite the FFC and the FPF to be parties to the disciplinary proceedings initiated by FIFA against the FEF.

171. Fifth, the Bolivia award (CAS 2017/A/5001 & 5002), cited by FIFA in support of its claim of lack of standing to be sued, is inapplicable and irrelevant to this issue. FIFA makes reference to a passage of that award (para. 74) holding that two CONMEBOL member federations who had played against the appellant (the Bolivian Football

Federation or "FBF") had *locus standi* because an award upholding the FBF's appeal would have resulted in those two national federations seeing a reversal of their 3-0 wins and the loss of the related points in the standings. FIFA argues that in the case at hand, therefore, all the teams that played against the FEF in the 8 qualifying matches where the Player participated – see *supra* at para. 10 – must have *locus standi* and, thus, should have been called as respondents in the present arbitration. However, the Panel notes, first, that the portion of the Bolivia award cited by FIFA only addresses the issue of whether the other CONMEBOL member federations had *locus standi* to intervene ex Article R41.3 of the CAS Code (para. 73: "*la cuestión de si las federaciones solicitantes tienen* locus standi *para intervenir en los presentes procedimientos o no*"). In other words, the panel in that case was not addressing the issue of standing to be sued and passive mandatory joinder but, rather, the issue of *locus standi* of the intervenors, which is a different issue altogether. Second, the Panel observes that, unlike in CAS 2017/A/5001 & 5002, in the present case the World Cup Qualifiers for CONMEBOL had already finished by the time the complaint was filed by the FFC, meaning that the final outcome of the standings was already known. Accordingly, it was already known that these other member federations of CONMEBOL (i) would not be negatively affected by whatever outcome of the present case and (ii) would not finish in a qualifying position even if they were to obtain additional points from the FEF being imposed a point deduction, forfeiture or exclusion from the FIFA World Cup (as implicitly confirmed by the fact that they chose not to intervene in the present proceedings).

172. As for the absence of the Player from TAS 9175, FIFA argues that it is not possible to conclude on the FEF's liability without previously assessing whether the Player committed forgery in accordance with Article 21 FDC; and in order to assess whether the Player committed such forgery, he must be given the opportunity to be heard and defend himself, which he cannot do if not called as a respondent in the present arbitration. The Panel finds, however, that it was not necessary to call the Player as a respondent. As previously mentioned, the Player does not have standing to be sued because he has no stake in the dispute (see *supra* at para. 160). Indeed, the petition requested by the Appellants in the appeal (to have the FEF sanctioned), does not require a finding against the Player that he has breached Article 21 and 22 FDC. The FEF's breach of those provisions is separate and apart from the Player's potential breach of the same. Moreover, since the Player is not a party to this arbitration (TAS 9175), all the findings related to him in this award are *incidenter tantum* (*i.e.*, with effects limited to the present proceedings) and do not affect his rights in a subsequent disciplinary proceeding before FIFA. The Player will have the right to be heard and fully defend himself if FIFA were to open a disciplinary case against him in the future, irrespective of the findings made in this award.

173. In light of the foregoing, the Panel holds that neither the Player nor any CONMEBOL member federation other than the FEF had to be called as respondents. Therefore, there is no lack of passive mandatory joinder for not calling those parties and no connected lack of standing to be sued for FIFA or the FEF.

F. Statute of limitations did not expire

174. The Respondents argue that the statute of limitations for breaches of Articles 21 and 22 FDC expired.

175. The FEF contends that the statute of limitations under Article 46 FDC and Article 14 of the WC Preliminary Competition Regulations expired. Those two provisions, both entitled "*Protests*", provide as follows in their relevant parts:

- Article 46 FDC: "*1. Associations and their clubs are entitled to lodge protests. Protests must reach the Disciplinary Committee in writing, indicating the relevant grounds, within 24 hours of the end of the match in question. 2. The 24-hour time limit cannot be extended. For the sake of the smooth running of the competition, the corresponding competition regulations may shorten the protest deadline accordingly. […]*".
- Article 14 of the WC Preliminary Competition Regulations: "*[…] 2. Unless otherwise stipulated in this article, protests shall be submitted in writing to the FIFA Match Commissioner within two hours of the match in question and followed up with a full written report, including a copy of the original protest, to be sent by email to the FIFA general secretariat within 24 hours of the end of the match, otherwise they shall be disregarded. 3. Protests regarding the eligibility of players selected for matches in the preliminary competition shall be submitted in writing to the FIFA Match Commissioner within two hours of the match in question and followed up with a full written report, including a copy of the original protest, to be sent by email to the FIFA general secretariat within 24 hours of the end of the match, otherwise they will be disregarded. […]*".

176. In the FEF's view, the Appellants should have, pursuant to the aforementioned provisions, filed a protest with the FIFA Match Commissioner for the alleged breaches of Articles 21 and 22 FDC within 2 hours, followed by a full written report to the FIFA general secretariat within 24 hours, after the end of the matches of the World Cup Qualifiers in which the Player was fielded.

177. However, the Panel finds, first of all, that this argument can only concern the FFC, whose national team actually played two matches against the Ecuadorian national team where the Player was fielded, and not the FPF, which faced the Ecuadorian national team without the Player on the pitch (see *supra* at para. 10 the list of matches of the World Cup Qualifiers in which the FEF fielded the Player).

178. Second, while the FFC was indeed entitled to lodge a protest after its two matches against the FEF, the FFC was not required to do so. A protest is not the only avenue available to start a disciplinary proceeding against a party for an alleged breach of Articles 21 and 22 FDC. Indeed, according to Article 52 FDC, disciplinary proceedings may be initiated *ex officio* by FIFA following the submission of a complaint by "*[a]ny person or body*". The CAS has already made clear in the Bolivia award (i) that the right to lodge a protest for infringements occurred on the occasion of a match does not exclude the ability to file a complaint within the normal statute of limitations provided by the FDC for such

infringements, and (ii) that FIFA may well start *ex officio* disciplinary proceedings upon a complaint by a national federation for matters which could also had been raised through a protest (see CAS 2017/A/5001 & 5002 at para. 95: "*the right of a federation to file a protest [...] does not exclude its ability to file a complaint [...], its only constraint being the two-year limitation period [and] FIFA may prosecute a disciplinary offense ex officio using any information it deems relevant, including information contained in a complaint from a party who, by missing the deadline, has lost the right to protest*", as translated from the Spanish original: "*el derecho que tiene una federación para interponer una protesta […] no excluye su facultad de presentar una denuncia […], siendo su única limitación el plazo de prescripción de dos años [y] la FIFA puede perseguir una infracción disciplinaria de oficio usando cualquier información que estime relevante, inclusive la información contenida en una denuncia proveniente de una parte que, por pasarse el plazo, ha perdido el derecho a protestar*"). As also explained in that CAS award, the main difference between a protest and a complaint is that the protestor has a right to have its case examined by the FIFA Disciplinary Commission while a mere complainant does not have such right and, pursuant to Article 52 (formerly Article 108) FDC, must depend on the discretion of FIFA in opening or not disciplinary proceedings (see CAS 2017/A/5001 & 5002 at para. 90).

179. Since in the present case the FIFA Disciplinary Commission started the case on the basis of a complaint (and not a protest), the applicable time-limits for the alleged breaches of Articles 21 and 22 FDC are not those of 2 hours and 24 hours provided under Articles 46 FDC and 14 of the WC Preliminary Competition Regulations (see *supra* at para. 175), but rather those stipulated in Article 10, para. 1 FDC, according to which: "*Infringements may no longer be prosecuted in accordance with the following periods: a) two years for infringements committed during a match; […] b) ten years for anti-doping rule violations (as defined in the FIFA Anti-Doping Regulations), infringements relating to international transfers involving minors, and match manipulation; c) five years for all other offences*".

180. Based on the above quoted Article 10, para. 1 FDC, the applicable statute of limitation can be of two years or five years, depending on whether one considers that the alleged FEF's infringements occurred during a match or not. The Panel, therefore, must determine whether such 2-year or 5-year statute of limitations has expired. The Respondents contend that it has expired for the alleged breach of Article 21 FDC because the claimed infringement occurred in 2012 when the Player's allegedly forged or falsified birth certificate was used to register him with Norteamérica as an Ecuadorian national. The FEF appears to make the same case for Article 22 FDC.

181. The Panel observes that the statute of limitations begins to run "*from the day on which the perpetrator committed the infringement*" (Article 10, para. 2 FDC). In the Panel's view, the statute of limitations for a breach of Article 21 FDC (punishing the use of a forged or falsified document) did not begin to run in 2012 as alleged by the Appellants. In that moment, it was only Norteamérica that had used the allegedly forged or falsified document (to register the Player as an Ecuadorian national). The Panel finds that, for the FEF, the statute of limitations began to run from each time the FEF used the allegedly forged or falsified Ecuadorian passport of the Player to have him participate in a competition. Indeed, each time the Player played in a match for the FEF national team,

the FEF was using the allegedly false information contained in his passport, including his name, age and place of birth (it would be a type of falsification that under Swiss law is known as "*faux intellectuel*" and in Spanish-speaking legal systems as "*falsedad ideológica*"). Therefore, the statute of limitations began to run on 2 September 2021 for the FEF's use of the allegedly falsified document for him to participate in his first FIFA World Cup Qualifiers match, on 5 September 2021 for his second match, and so on until 29 March 2022 for his eighth match (see *supra* at para. 10).

182. Likewise, the Panel finds that the statute of limitations for a potential infringement of Article 22 FDC (punishing a team fielding an ineligible player) begins to run on the date on which the footballer whose eligibility is disputed is fielded in a match. Therefore, for a potential infringement of Article 22 FDC, the statute of limitations also began to run on 2 September 2021 for his participation in his first FIFA World Cup Qualifiers match, on 5 September 2021 for his second match, and so on until 29 March 2022 for his eighth match.

183. Considering that the FFC filed a complaint with FIFA on 4 May 2022 (see *supra* at para. 12) and the FIFA disciplinary proceedings started on 11 May 2022 (see *supra* at para. 13), the Panel finds that even the first of those eight matches when the Player was fielded (played on 2 September 2021) falls within the 2-year limitation period of para. 1(a) of Article 10 FDC and, *a fortiori*, well within the 5-year limitation period of para. 1(c) of the same FDC provision.

184. Therefore, the Panel rejects the Respondents' submission that the Appellants' claim that Articles 21 and/or 22 FDC were infringed is time barred.

G. Admissibility and reliability of the Audio

a. Admissibility

185. The Respondents claim that the audio of the interview between the then Head of the FEF Investigation Commission, Colonel Jaime Jara, and the Player is inadmissible. The FEF argues that it is inadmissible because no such audio exists (*i.e.* it is a forgery). FIFA contends that the audio is inadmissible pursuant to Article R57 of the CAS Code because the Appellants should have filed it long before they actually did on 12 and 13 September 2022.

186. The Panel finds that the audio referred to in the Jara Report does exist. The Panel notes that the Player admitted to the audio's existence during the Protective Action judicial proceedings in Ecuador ("*Acción de Protección*"), where he stated in his claim that the FEF Report was "*accompanied by an 'audio' of an 'interview' which actually consisted of the unauthorized taking of a version regarding issues that could lead to a criminal prosecution against the undersigned, and which, in addition to not having been authorized by the undersigned, has been obtained without the presence of a counsel who, as a legal professional, would have advised me in order to guarantee my right to defense and due process*" (translated from the Spanish original: "*informe al que, cabe señalar, se acompaña un 'audio' de una 'entrevista' que ha consistido realmente, en la toma no*

autorizada de una versión respecto de cuestiones que podrían acarrear un enjuiciamiento penal contra el suscrito, cuestión que, además de no haber estado autorizado por el suscrito, ha sido obtenida sin la presencia de un Defensor técnico que, como profesional del derecho, me hubiera asesorado con el fin de garantizar mi derecho a la defensa y a un debido proceso"). It is true that, in the letter to the CAS dated 24 October 2022, the Player's counsel claimed the Player was never interviewed by any representative of the FEF and denied the authenticity and validity of the audio. However, the Player refused to attend the hearing and testify before the CAS and, thus, declined to put forward his account and explain the inconsistency between his previous statement in the Protective Action and the one made by his counsel on 24 October 2022.

187. Moreover, Colonel Jara convincingly testified – and his testimony remained uncontested –that he did interview the Player and that he recorded the interview that has been exhibited in this arbitration. In this connection, the Panel wishes to underline that it found Colonel Jara's testimony very persuasive, not only (i) because there was no rebuttal by the Player but also (ii) because it was consistent with other evidence on file and (iii) because it was not easy or unproblematic (in light of the huge significance of football in Ecuador as in many other countries around the world) for an Ecuadorian citizen to render a testimony which could even contribute to eventually excluding his country's national team from the FIFA World Cup 2022.

188. The Respondents bring up a series of reasons why the audio allegedly does not exist but none is convincing to the Panel.

189. First, the Respondents argue that the audio was supposedly not found in 2022 in the archives of the FEF Disciplinary Commission or the FEF General Secretariat, relying on the declarations submitted by Mr. Coveña Antón (President of the FEF Disciplinary Commission) and Mr. Solines Moreno (FEF Secretary General). The Panel finds, however, that the fact that the audio is not currently found in the archives of the FEF Disciplinary Commission or the FEF General Secretariat does not mean that the audio was not submitted by Colonel Jara along with his report in 2018 and, thus, that it was once in the hands of the FEF. In fact, Colonel Jara convincingly testified at the hearing that he personally delivered a copy of the Jara Report and a CD with the complete audio recording of the interview with the Player both to the Secretariat of the FEF President and to the FEF Disciplinary Commission and has exhibited the original first page of the FEF Report with receipt stamps from both offices. In the Panel's view, the reason for the supposed absence of the audio recording in the archives in 2022 could be that it was misplaced, lost or accidently/purposely destroyed.

190. Second, the Respondents point out that the Jara Report does not explicitly mention a "confession" or "admission" and that it does not quote any passage from the interview in the audio recording. The Panel finds, however, that this does not prove that the audio did not exist. The Jara Report makes explicit reference to the audio recording three times: (i) under the section of the document listing the obtained documents (entitled in Spanish "*Documentación Obtenida*") where he lists the audio-recorded interview with the Player ("*entrevista con el Jugador (audio)*"), (ii) in the concluding section of the document (entitled in Spanish "*Conclusiones*") where he explains that his conclusive findings about

the existence of "irregularities" as to the Player's identity, nationality and age are also based on the Player's interview ("*After the […] interview with the player Castillo Segura Byron David […], the following conclusions are reached*", as translated from the Spanish original: "*Luego de la […] entrevista del jugador Castillo Segura Byron David […], se llega a las siguientes conclusiones*"), and (iii) in the enclosures indication after the signature which again indicates that the audio is attached ("*Adjunto documentos y audio*"). Moreover, Colonel Jara convincingly explained during cross-examination that he did not find it necessary to quote passages of the interview in the Jara Report since it only served as reinforcement to the other information and documents referred to therein, which were on their own sufficient to prove the aforementioned irregularities.

191. Third, the Respondents argue that the Jara Report states that FEF attempted three times in vain to summon the Player for an interview at the FEF offices (the Jara report states that "*three summons for an interview were made to the player Castillo Segura Byron David, to our offices in order to clarify all these inconsistencies, however, the player mentioned above has not appeared to any of the three summons*" (translated from the Spanish original: "*se realizó tres convocatorias a entrevista al jugador Castillo Segura Byron David, a nuestras oficinas con el fin de aclarar todas estas inconsistencias, sin embargo, el jugador antes mencionado, no se ha presentado a ninguna de las tres convocatorias*"). The Panel finds that this merely proves that the Player, albeit summoned thrice, did not show up at the FEF offices and certainly does not prove that no interview ever occurred. In his testimony before the CAS, Colonel Jara provided ample details on the circumstances related to his interview with the Player. He explained convincingly that he conducted the interview at the request of the Player in an informal setting, while he was at a hotel in Guayaquil, Ecuador. Colonel Jara's account remains unrebutted since the Player elected not to testify before the CAS to provide his own account.

192. As to FIFA's argument that the audio recording should be inadmissible pursuant to Article R57, third paragraph, of the CAS Code because it should have been submitted to FIFA long before 12 and 13 September 2022 (when the FFC and FPF respectively submitted the audio file to the FIFA Appeals Commission), the Panel notes the following:

- First, the Appellants explained that they discovered the content of that audio recording only when it was published in the website of the British newspaper Daily Mail on 12 September 2022 and that they immediately delivered it to FIFA. The Panel is persuaded by the Appellants' explanation, given that it would have been in their own interest to disclose the audio recording to the FIFA disciplinary bodies at the very beginning of the proceedings, had it been in their possession. The fact that the Appellants exhibited the audio at a very late stage of the FIFA disciplinary proceedings, immediately after the publication by the Daily Mail, logically confirms that they did not have such audio recording until that moment and that they acted in procedural good faith.
- Second, the Panel observes that the third paragraph of Article R57 of the CAS Code (providing that the "*Panel has discretion to exclude evidence presented by the parties if it was available to them or could reasonably have been discovered by them before the challenged decision was rendered*") is not applicable to the case at hand, because the FIFA Appeals Commission did receive the audio

recording from the Appellants before it rendered the Appealed Decision and, therefore, this is not new evidence that is exhibited for the first time during the CAS proceedings.

– Third, even if the third paragraph of Article R57 were applicable to the case at hand, the Panel concurs with the CAS case-law that has consistently stated that such "*discretion to exclude evidence should be exercised with the utmost caution, for example, in situations where a party may have engaged in abusive procedural behaviour, or in any other exceptional circumstances where the Panel might, in its discretion, consider it either unfair or clearly inappropriate to admit new evidence*" (CAS 2014/A/3701 at para. 49); in this regard, the Panel finds that the Appellants did not engage in any abusive procedural behaviour and that it is not unfair or inappropriate to admit this evidence.

193. In light of the foregoing, the Panel holds that the audio recording is admissible as evidence in these proceedings.

b. Reliability

194. The Respondents further contend that, even assuming the audio is admissible, it is not reliable because (i) the circumstances of the recording are unknown (e.g. there is no context on where it occurred, who was present, whether the Player was coerced or otherwise forced into the interview and into giving specific answers), (ii) the Player never gave his consent/authorization to record the interview, (iii) no details on the origin and chain of custody of the audio recording were established, (iv) it is a partial recording, (v) there is no proof that it is the Player speaking, (vi) there is no proof that the audio was not manipulated, and (vii) the audio contradicts the Player's interview with the Ecuadorian Civil Registry in which he declared that Bayron Javier Castillo Segura was his brother. The Panel considers each of these arguments and finds the following:

(i) The circumstances of the recording are not unknown. Colonel Jara convincingly testified during the hearing that the Player unexpectedly called him requesting to have an interview with him. According to Colonel Jara, the Player was worried about his situation and, since Colonel Jara was the FEF chief investigator, he sought him out to speak. Colonel Jara explained that, at the time the Player called him, he was in a work meeting at a hotel in Guayaquil, Ecuador, and so he told the Player he would conduct the interview later, which he did during a break. Colonel Jara added that at the beginning of their conversation he invited the Player to do an official interview at the FEF offices, but the Player preferred to speak in an informal setting. The Colonel also testified that he requested the Player's consent to record the interview and, once obtained, both he and the Player proceeded to record it. Colonel Jara's testimony on all of the aforementioned circumstances is uncontested. Moreover, there is no indication that the Player was coerced or otherwise forced into giving specific answers during the interview. No such coercion is evident from listening to the audio recording and the Respondents have not submitted any proof of coercion. Besides, the Player never mentioned coercion in the "Protective Action" (or in any other legal proceeding including at CAS); rather, he only mentioned that he was not assisted by a legal counsel,

something which has not been denied by Colonel Jara. Nor did the Player come forward to testify before FIFA or the CAS about an alleged coercion.

(ii) The Player did give his consent/authorization to record the interview. Indeed, Colonel Jara convincingly testified that he obtained the Player's oral consent to record before conducting the interview by phone. The Respondents have not provided any counter evidence or testimony to contradict Colonel Jara's declaration. The Respondents have only made reference to the Protective Action where the Player claimed that the recording of the interview was taken without consent. The decision on the Protective Action, however, did not rule on the matter of consent and, moreover, the Player has not come forward to testify before the CAS to confirm his position that he never gave his consent. Moreover, the recording is being used here in a sports arbitration proceeding not a state proceeding and, under well-established CAS jurisprudence, even illegally obtained evidence does not violate procedural public policy or Swiss law and is not inadmissible in a CAS arbitration if there is an overriding public or private interest at stake, such as the search for truth in cases concerning serious disciplinary breaches that can affect the sport's credibility (as is the case, e.g., for issues of corruption or falsification), and provided that the party that exhibits the evidence has not engaged itself in illegal activities to obtain that evidence (see *ex multis* CAS 2011/A/2426 and CAS 2009/A/1879). In the present case, even if the recording had been illegally obtained (something that, in any event, has not been proven), the Panel finds that it may be used because there are overriding interests at stake tilting in favor of using the evidence, namely: (a) a general public interest in exposing the illegal conduct of falsification of documents, especially where those documents might have been used for fielding players in the FIFA World Cup Qualifiers; (b) a private interest of FIFA and all its member federations to identify and sanction serious wrongdoings of this kind to dissuade similar conduct in the future; and (c) a private interest of FIFA and all its member federations to ensure the correctness of all documents used by national federations to field players in national team competitions, in order to protect the credibility and integrity of football.

(iii) The chain of custody has been established. As previously mentioned, Colonel Jara convincingly explained in his testimony that he hand-delivered the full audio recording of the interview with the Player to the FEF Disciplinary Commission and the Secretariat of the FEF Presidency as an enclosure to the Jara Report. The FEF claims that when the Jara Report was submitted, the FEF personnel stamped it "received" and added a note "*attached 15 pages no audio*". However, Colonel Jara has convincingly explained that when he handed the Jara Report, both FEF offices stamped the document as received and did not write "*attached 15 pages no audio*". In support, Colonel Jara presented a copy of the first page of the Jara Report stamped and signed as "received" by both the FEF Disciplinary Commission and the Secretariat of the FEF Presidency and without any handwritten note indicating that there was no audio. The Respondents have not provided any counter evidence to establish the contrary (in particular, they did not call to testify the individuals at the FEF offices who received the document even

though their names and signatures are clearly identifiable on the first page of the document), as they have only provided evidence to show that today the audio recording is not on file at the FEF.

(iv) The fact that it is a partial recording does not make it unreliable. Colonel Jara has explained that the audio in his possession and submitted by the Appellants to the case file is a partial recording covering only the relevant part of the interview. Furthermore, he explained that he provided the FEF with the full audio as an enclosure to the Jara Report and that he then kept a partial recording of the most important part of the interview as a backup for safekeeping purposes.

(v) There is no proof that the audio recording was manipulated. The burden of proof is on the Respondents to prove that the audio recording was manipulated. Notwithstanding, the Respondents have not submitted an expert report or any other evidence to prove a manipulation. The Respondents simply questioned FPF's acoustic-forensic expert, Mr José Luis Jurjo, during cross-examination on whether it was conceivable that the audio recording was manipulated. This, however, is insufficient to prove that a manipulation occurred because, first, the expert was only tasked with confirming whether the voice in the recording was of the Player (*i.e.* manipulation was not the subject of his study) and, second, because the possibility of manipulation does not prove that an actual manipulation occurred. Moreover, Mr. Jurjo testified that while manipulation of an audio recording (e.g. cuts or edits, or voice tone alteration) is in principle possible, he did not notice any signs of it when identifying the voice of the Player. In listening to the audio, the Panel also does not perceive any signs of manipulation. Furthermore, the fact that the recording is only partial does not mean that the portion provided was manipulated. Finally, the Player could step forward and testify whether and to what extent the audio recording diverged from his actual interview with Colonel Jara, but he declined to attend the Hearing.

(vi) The Panel is comfortably satisfied that the person in the audio recording is the Player. Indeed, the FPF has submitted an expert report from acoustic-forensic expert, Mr. Jurjo, who has concluded that "*The voice has been recognized 100% of the time in all samples longer than 5 seconds in the original recording. All this against 62 undoubted samples. […] Final evaluation - It is established that the voice heard in the audio under study is that of the player Byron Castillo. […] Therefore, in view of these levels of recognition of the program there can be no reasonable doubt that the voice in the video under study is the same as that which appears in the unquestionable samples*". Mr. Jurjo's conclusion was unrebutted and he orally confirmed his findings at the hearing. Indeed, the Respondents neither submitted an expert report of their own to contest the findings of Mr. Jurjo, nor did they even question the findings of Mr. Jurjo during cross-examination, instead focusing on whether or not it was a possibility that the audio recording was manipulated. Finally, the Player has not come forward to testify and object to it being his voice in the audio recording.

(vii) The inconsistency between, on the one hand, the Player's declaration in an interview with the Ecuadorian Civil Registry (see *supra* at para. 24, last point) that

he had a brother – in an attempt to explain why there existed in the Colombian Civil Registry a Bayron Javier Castillo Segura born in 1995 in Tumaco, Colombia, from his same parents – and, on the other hand, the declaration in the interview with Colonel Jara that he only has a sister does not, in the Panel's view, tarnish the reliability of the audio recording. It simply means that the Player lied on one of the two occasions and, given the absence of any evidence whatsoever proving the existence of such alleged Player's brother (such as, e.g., a testimony, a photograph, a school record, an ID or any other kind of evidence), the Panel finds that no such brother exists and the Player lied in his first interview with the Ecuadorian Civil Registry.

195. In light of the foregoing, the Panel holds that the audio recording of a portion of the Player's interview with Colonel Jara is not only admissible but also reliable.

H. Breach of Article 21 FDC

196. Article 21 FDC ("*Forgery and falsification*") states:

> "*1. Anyone who, in football-related activities, forges a document, falsifies an authentic document or uses a forged or falsified document will be sanctioned with a fine and a ban of at least six matches or for a specific period of no less than 12 months.*
>
> *2. An association or a club may be held liable for an act of forgery or falsification by one of its officials and/or players*".

197. The Panel observes that the central issue at the stake in this case is whether the FEF "*use[d] a falsified document*" in breach of Article 21 FDC, as the Appellants never argued that the FEF could be liable of having directly forged any of the Player's identification documents.

198. The Panel also notes that the term "*falsified document*" is not defined in Article 21 FDC or in any other provision of the FIFA regulations. As the term is undefined, in accordance with Article 56, para. 2 of the FIFA Statutes, as well as Article 5 FDC, which provide that Swiss law is to be additionally applied to fill lacunas and for interpretation purposes, the Panel must interpret the term in light of Swiss law on false documents.

199. The Swiss law provision dealing with the forgery or falsification of documents and, thus, relevant for providing some guidance to the Panel in interpreting the term "*falsified document*" is Article 251 of the Swiss Criminal Code (in French "*Code pénal suisse*", hereinafter "CP"). The first paragraph of that provision reads as follows: "*Any person who with a view to causing financial loss or damage to the rights of another or in order to obtain an unlawful advantage for himself or another, produces a false document, falsifies a genuine document, uses the genuine signature or mark of another to produce a false document, falsely certifies or causes to be falsely certified a fact of legal significance or, makes use of a false or falsified document in order to deceive, shall be liable to a custodial sentence not exceeding five years or to a monetary penalty*" (official translation from the French original: "*Celui qui, dans le dessein de porter atteinte aux intérêts*

pécuniaires ou aux droits d'autrui, ou de se procurer ou de procurer à un tiers un avantage illicite, aura créé un titre faux, falsifié un titre, abusé de la signature ou de la marque à la main réelles d'autrui pour fabriquer un titre supposé, ou constaté ou fait constater faussement, dans un titre, un fait ayant une portée juridique, ou aura, pour tromper autrui, fait usage d'un tel titre, sera puni d'une peine privative de liberté de cinq ans au plus ou d'une peine pécuniaire").

200. Swiss courts have interpreted Article 251 CP and, more specifically, the terms "*false document*" and "*falsified document*" to include not only the so-called "*faux matériel*" (*i.e.*, where there is a falsification of a document), but also the so-called "*faux intellectuel*" (*i.e.*, where there is a genuine document containing false information). Indeed, the Swiss Federal Tribunal has held that "*art. 251 para. 1 CP covers not only a false title or the falsification of a title (material forgery), but also a misleading title ("faux intellectuel"). A material forgery occurs when the real author of the document does not correspond to the apparent author, whereas an intellectual forgery concerns a document which emanates from its apparent author, but whose content does not correspond to reality*" (translated from the French original: "*L'art. 251 ch. 1 CP vise non seulement un titre faux ou la falsification d'un titre (faux matériel), mais aussi un titre mensonger (faux intellectuel). Il y a faux matériel lorsque l'auteur réel du document ne correspond pas à l'auteur apparent, alors que le faux intellectuel vise un titre qui émane de son auteur apparent, mais dont le contenu ne correspond pas à la réalité*"(SFT 142 IV 119, at para. 2.1; see also SFT 6B_941/2021, at para. 3.3.1).

201. The Panel takes judicial notice of the fact that the notion of "*faux intellectuel*" is not unique to Swiss law. It is applied in other national legal systems such as in Spain, where it is termed "*falsedad ideológica*" (see e.g. Judgement of the *Tribunal Supremo Español, Sala de lo Penal*, Judgement no. 425/2021, dated 19 May 2021), or in the US, where it is described as a "*genuine document containing false information*" (see e.g. the US Supreme Court case *Raymond J. Moskal Sr. Petitioner v. U.S.*, 498 U.S. 103, Dec. 3, 1990). The same legal concept of an authentic document that contains false statements or information is known in the French legal system as "*faux intellectuel*" and in the Italian legal system as "*falso ideologico*".

202. With this in mind, the Panel finds that the term "*falsified document*" in Article 21 FDC encompasses not only the situation where a Player's national passport is not genuine, but also one in which the passport is genuine but contains information that is false.

203. It is undisputed between the Parties that the Player's Ecuadorian passport is authentic in the sense that it was issued by the State of Ecuador. Where the Parties diverge is on whether some information contained in the Player's passport (specifically his first name and date and place of birth) is false.

204. After careful analysis of the evidence before it, the Panel is more than comfortably satisfied that there exists a "*faux intellectuel*". The Panel is more than comfortably satisfied that certain information on the Player's Ecuadorian passport – in particular, part of his name and his date and place of birth – are false. The Panel is more than comfortably

satisfied that the Player was actually born in Tumaco, Colombia on 25 June 1995 under the name of Bayron Javier Castillo Segura for the following reasons:

(i) The Player expressly admitted in an interview with Colonel Jara that he was not born in Ecuador on 10 November 1998 as Byron David Castillo Segura as indicated on his Ecuadorian passport, but rather on 25 June 1995 as Bayron Javier Castillo Segura and that he came to Ecuador from Tumaco, Colombia (see *supra* at para. 42). The Player further admitted in the same interview with Colonel Jara that he only has one sibling (a sister named María Eugenia), and the Panel has already found (*supra* at para. 194.vii) that the Player lied when he declared to the Directorate General of the Civil Registry of Ecuador that he had a brother named Bayron Javier Castillo Segura to whom the Colombian birth certificate allegedly belonged. As held above at para. 185 *et seq*., indeed, the Panel has already found the audio recording of the Player's interview with Colonel Jara to be admissible and reliable evidence.

(ii) An email dated 1 July 2015 from the National Civil Registry of Colombia to the National Civil Registry of Ecuador – in the context of an exchange of electronic correspondence between those two governmental agencies, started by an enquiry of the Ecuadorian agency about the real personal data of the Player – confirming that a Bayron Javier Castillo Segura was born in Tumaco, Colombia in 1995. That email so reads: "*Having reviewed the ANI, I reiterate that the user Castillo Segura Bayron Javier, was born on June 25, 1995 in Tumaco, Nariño and registered under serial number […], his parents [are] Castillo Ortiz Harrison Javier [...] and Mrs. Ortiz Olga Eugenia [...] The user mentioned so far has not processed his ID in Colombia*" (as translated from the Spanish original: "*Revisado el ANI, le reitero que el usuario Castillo Segura Bayron Javier nació el 25-junio-1995 en Tumaco-Nariño e inscrito bajo el serial 28077072 de la notaría primera de esa cuida[d]. Sus padres Castillo Ortiz Harrison Javier […] y la señora Segura Ortiz Olga Eugenia […]. El usuario en mención hasta el momento no ha tramitado en Colombia su cedula de ciudadanía*").

(iii) The fact that the information provided by the Player in his recorded interview with Colonel Jara exactly coincides with information contained in the Player's Colombian birth certificate. The Player's name, date of birth, place of birth and parents' nationality and names all match identically. The Respondents argue that this birth certificate is not reliable because of the disclaimer at the bottom of the document stating that the "*certification is informative, it does not constitute proof of the civil status of the registered person or of the legal validity of the registration*" (as translated from the Spanish original: "*La presente certificación es de carácter informativo, no constituye prueba del estado civil del inscrito ni de la validez jurídica del registro*"). The Panel finds, however, that the document is reliable because (a) it is undisputed that the certification has been released by the National Civil Registry of Colombia, which attests in the document that the information has been drawn from the information system of that country's Civil Registry, (b) its content is confirmed by the just mentioned email correspondence between the Colombian and Ecuadorian National Civil Registries, (c) the sentence at the bottom of the document is just a routine disclaimer of the type frequently

encountered in documents released by public information systems, and (d) the Respondents did not submit any counter-evidence such as, in particular, a document released by the Colombian administration which could refute said certification.

(iv) The certificate of baptism from the diocese of Tumaco, Colombia, recording that Bayron Javier Castillo Segura, son of the Player's parents, was baptized in the city of Tumaco, Colombia on 25 December 1996.

(v) The total lack of evidence that there exists a Player's brother named Bayron Javier Castillo Segura to whom the Colombian birth certificate and baptism certificate belong. The Player claimed in the interview before the Directorate General of the Ecuadorian Civil Registry that he had a brother born in Colombia. However, this could have easily been proven by the Respondents in a number of ways, for example by showing family photos or social profiles, submitting school records or some other documents pertaining to the purported brother, or having a Player's family member render a declaration and/or testify before the CAS.

(vi) The anomalous circumstance that the Player's registration in the Ecuadorian Civil Registry did not appear until 2012 – at the same time when the Player was registered for the first time in the FEF by the club Norteamérica – and only appeared in the provincial registry of Guayas, not in the national one (see *supra* at para. 28), corroborated by the fact that there were frequent irregularities on young players' registrations in the Civil Registry, as proven not only by the cooperation agreement between the FEF and the Civil Registry (see *supra* at para. 24) but also by the fact that the Player's first club Norteamérica was even suspended in 2018 for its involvement in several cases of falsification of the identify of players (see *supra* at para. 27);

(vii) The fact that the Ecuadorian Civil Registry investigated the Player's identity and issued legal reports blocking his ID (which were only annulled by the Ecuadorian judiciary in the Habeas Data Action for constitutional reasons), coupled with the fact that both the Ecuadorian appellate court that dealt with the Habeas Data Action and the Ecuadorian court that halted the FEF disciplinary proceeding against the Player said that a definitive solution to the question of the alleged adulteration of his birth data could only come from a criminal judgment, which has not occurred yet (see *supra* at para. 36 and *infra* at para. 220).

(viii) The fact that the FEF (a) removed the Player from the U-20 national team in 2017 due to suspicion of irregularities in his documentation (see *supra* at para. 26), (b) initiated a disciplinary investigation against the Player in 2018, and (c) after the issuance of the Jara Report (which found that the Player was not named Byron David and was born in Colombia in 1995 and not in Ecuador in 1998), opened a disciplinary proceeding against him, which was only stopped by the Ecuadorian judiciary for not having respected the Player's due process rights (specifically his right to be heard and present his arguments before the FEF Disciplinary Commission temporarily suspended him; see *supra* at paras. 35 and 36).

(ix) The fact that the FEF Vice-President (a) declared in a video recorded interview that it would have been risky for the FEF to field the Player (see *supra* at para. 40)

and (b) did not testify at the CAS hearing despite the FEF having previously announced he would do so (indeed, the FEF withdrew him as a witness on the eve of the hearing; see *supra* at para. 80).

(x) Although the above evidence is by itself more than enough to persuade the Panel to the required standard of proof, it is indirectly corroborated by the Player's complete absence in the proceedings before FIFA and CAS, despite being called on multiple occasions to attend and give his version of the facts. The Player could have attended – as a witness in TAS 9175 and as a party in TAS 9176 – and testified to clear up any inconsistencies related to his name, place and date of birth, to confirm or not what he said in the interview with Colonel Jara, and give some explanations about the fact that civil and religious authorities in Colombia have released, respectively, a birth certificate and a baptism certificate attesting that a Bayron Javier Castillo Segura was born in Tumaco, Colombia, on 25 July 1995 from his same parents. The fact that he declined to attend and testify both in the FIFA proceedings and in this arbitration has not helped, to say the least, the Respondents' case. Moreover, in the Panel's opinion, the FEF did not use its best efforts to have the Player testify at the hearing, not even by video connection (as other witnesses did). In fact, on 31 October 2022, the Panel ordered the FEF to use its best efforts to have the Player testify at the hearing and warned that the Player's absence could result in the Panel drawing adverse inferences against the FEF. The Panel notes that, as the national federation under which the Player is registered and for whose national team he has played, the FEF had the tools to persuade the Player to testify if it really so wished. The FEF could have, for instance, warned the Player that if he refused to cooperate with the FEF on this matter he would no longer be summoned to the national team or could be subjected to its disciplinary proceedings. Instead, the FEF merely sent a letter to the Player on the eve of the hearing with a soft request for him to attend the hearing as a witness (see *supra* at para. 80) and did not inform the Panel of any other initiative of whatever kind.

205. The Respondents bring up a series of reasons why the FEF would have not breached Article 21 FDC but none is convincing to the Panel.

206. First, FIFA argues that even if the notion of "*faux intellectuel*" is applied under Swiss law, "*falsification*" under Article 21 FDC requires willful intent, an unlawful gain and a correlative damage to the counterpart. In support, FIFA referenced CAS 2016/A/4831. However, the Panel notes that said CAS award, in interpreting Article 43 and 44 of the Regulations of the Preliminary Competition of the 2016 Africa Women Cup of Nations (hereinafter, the "WAFCON Competition Regulations"), did not assess the terms "*falsification*" or "*falsified document*", but rather the term "*fraud*", specifically stating as follows: "*the Panel wishes to highlight that no definition for 'fraud' is provided in the applicable rules, i.e. neither in the Competition Regulations nor in the other CAF regulations. […] Given that the parties have agreed that Swiss law is applicable to the present case on a subsidiary basis, the Panel found it appropriate to examine the concept of fraud under the Swiss law*" (CAS 2016/A/4831, paras. 116-117). The panel in said CAS award interpreted the term "*fraud*" using jurisprudence on Article 146 of the CP and

Article 28 SCO and found that pure negligence is not sufficient to establish an inducement by fraud. The panel did not discuss the terms "*falsification*" or "*falsified document*" under Swiss law or Article 251 CP, which is the provision in Swiss law that deals with falsification and falsified documents and which is thus relevant to interpreting Article 21 FDC. Unlike with fraud, the Panel finds that there is no requirement of *mens rea* under Article 21 FDC. Not only does that provision not mention any such requirement, but Article 8 FDC clearly establishes that "*unless otherwise specified in this Code, infringements are punishable regardless of whether they have been committed deliberately or negligently*". Likewise, there is no requirement for an unlawful gain or correlative damage.

207. Second, the FEF contends that the decisions of the Ecuadorian judiciary (the Protective Action and Habeas Data Action) constitute final and binding resolutions and therefore produce *res judicata* effects. The Panel finds, however, that there is no *res judicata* because the "triple identity test" has not been satisfied. That test – regularly applied in CAS arbitrations to determine whether *res judicata* exists (see e.g. CAS 2018/A/6040, at para. 89 *et seq*.) – requires that the previous decision and subsequent proceeding involve the same parties, the same subject matter and same the cause of action. However, in this case, none of the aforementioned decisions involved the same parties, subject matter or cause of action of the present arbitration. In particular, none of the cases involved FIFA, the FPF and the FFC, nor do they assess whether the FEF used a falsified document under Article 21 FDC.

208. Third, the FEF asserts that a breach under Article 21 FDC requires an Ecuadorian judgement finding that a falsification was committed. However, from a procedural law viewpoint, an international sports federation such as FIFA can have and does have its own disciplinary investigations and proceedings based on its own regulations without having to wait for, rely on or defer to State judicial proceedings. Moreover, from a substantive law viewpoint, for cases of falsification FIFA rules do not refer to national law (unlike FIFA's rules on eligibility which do rely on national laws to determine the nationality of a player, as will be seen below). Therefore, there is no need to defer to any determination made by the Ecuadorian judicial authorities on the falsification of the Player's passport before finding the document falsified under Article 21.

209. Fourth, FIFA argues that the FEF cannot be held liable under Article 21, para. 2 FDC because, in its view, for an association to be held liable there must be an "*active*" as opposed to a "*passive*" falsification which excludes liability for the "*use of*" a falsified document. The Panel, however, is of the view, first, that the FEF is primarily liable under Article 21, para. 1, FDC because it used a falsified document (in the sense of a document including false information) when it used the Player's passport to field him with his national team and, second, that FIFA misreads Article 21, para. 2, FDC. Logically, the second paragraph of Article 21 FDC cannot be read in isolation from the first paragraph of the same provision. Accordingly, an "*act of falsification by one of its players*" under Article 21, para. 2 FDC must include any of the acts of falsification listed in the preceding Article 21, para. 1 FDC and, therefore, must include the "*use of a falsified document*". FIFA is correct that liability is not automatic as Article 21, para. 2 FC uses the phrase "*may be held liable*", *i.e.* it gives FIFA – and thus the CAS on appeal – the discretion

based on the circumstances to decide whether liability is appropriate. In this case, the Panel considers that liability is warranted because the FEF was fully aware that certain information on the Player's Ecuadorian passport was false and wilfully decided to run the risk to field the Player notwithstanding the abundant evidence it had about the Player's true origin (essentially it had the same evidence now before the Panel). The FEF's awareness is evident from: (i) the fact that the FEF Vice-President stated in an interview on 9 March 2021 that if it were up to him he would not call the Player to the national team due to the related risk under FIFA rules (see *supra* at para. 40), (ii) the FEF's removal of the Player from the U-20 national team for the same reason (see *supra* at para. 26), (iii) the Jara Report, (iv) a meeting held at the FEF offices attended by various individuals including Colonel Jara, Mr. Andres Terán, Mr. Carlos Manzur (Vice-President of the FEF), Enrique Garzerán (FEF Head of Security), and the legal representative of the Player, in which, according to the unrebutted testimony of Colonel Jara, the Player's case was discussed and the audio recording of the interview of the Player conducted by Colonel Jara was heard.

210. In light of the foregoing, the Panel deems it necessary to hold the FEF liable for the use of a falsified document (more specifically, the use of a document with "*faux intellectuel*") under Article 21, paras. 1 and 2 FDC. In particular, with regard to para. 1 of Article 21, the Panel is of the view that the conduct consisting of "use of a forged or falsified document", sanctioned by that provision, is attributable not only to physical persons but also to legal persons such as federations or clubs. Accordingly, the Panel holds that the FEF is liable both (i) under the first paragraph of Article 21 FDC, for the direct use of a falsified passport on the occasion of the eight national team matches (listed *supra* at para. 10) when it used such document in order to field the Player, and (ii) under the second paragraph of Article 21 FDC, for the act of falsification committed by one of its national team players consisting in the Player's use of a falsified document on the occasion of said eight matches.

211. For the sake of completeness, the Panel wishes to remark that the present decision does not produce *res judicata* effects towards the Player as he has been excluded from this arbitration on account of his lack of standing to be sued, due to the fact that no disciplinary proceedings have ever been started by FIFA against him (see *supra* at para. 160 *et seq.*). Therefore, provided that the statute of limitations and all other procedural requirements are satisfied, FIFA might determine *ex officio* to open a disciplinary case against the Player where he would then have the right to defend himself, bring any evidence and convince the competent disciplinary bodies that the information on his Ecuadorian passport is accurate. The findings related to the Player's identity in this arbitration are *incidenter tantum* and do not affect the rights of the Player in a possible subsequent disciplinary proceeding before FIFA and in a possible appeal to the CAS.

I. No breach of Article 22 FDC

212. According to Article 22 FDC:

> "*1. If a player is fielded in a match despite being ineligible, the team to which the player belongs will be sanctioned by forfeiting the match and paying a minimum fine of CHF 6,000. The player may also be sanctioned.*
>
> *2. A team sanctioned with a forfeit is considered to have lost the match 3-0 in 11-a-side football, 5-0 in futsal or 10-0 in beach soccer. If the goal difference at the end of the match is less favourable to the team at fault, the result on the pitch is upheld.*
>
> *3. If ineligible players are fielded in a competition, the FIFA judicial bodies, taking into consideration the integrity of the competition concerned, may impose any disciplinary measures, including a forfeit, or declare the club or association ineligible to participate in a different competition.*
>
> *4. The Disciplinary Committee has also the capacity to act ex officio.*
>
> *5. Cautions issued in a match that is subsequently forfeited shall not be annulled*".

213. Before assessing whether the FEF has breached Article 22 FDC for allegedly fielding an ineligible player, the Panel recalls that there is a clear distinction between "sporting nationality" and "legal nationality". According to CAS jurisprudence: "*Sporting nationality's regulation is an issue that belongs to the international sports governing bodies as they are the only subjects designated to govern and regulate a private law system such as the sports system*" (CAS 2021/A/8075, para. 111). Legal nationality, also termed sometimes as "citizenship", is an issue that belongs to sovereign States as under public international law they are the only entities entitled to establish, govern and regulate the relationship between an individual and his/her State. While "*[e]ach country has the right to determine its own rules as to nationality*" (see CAS 94/132), an international federation – here FIFA – is entitled to define the criteria for establishing sporting nationality in order to allow athletes to take part in international competitions organized by that federation.

214. FIFA has established the criteria on players' eligibility to play for national teams in the FIFA Regulations Governing the Application of the Statutes (hereinafter the "RGAS"). Article 5 RGAS is a provision dedicated to stating the "*Principles*" applicable with regard to the "*Eligibility to Play for Representative Teams*") and its first three paragraphs read as follows:

> "*1. Any person holding a permanent nationality that is not dependent on residence in a certain country is eligible to play for the representative teams of the association of that country.*
>
> *2. There is a distinction between holding a nationality and being eligible to obtain a nationality. A player holds a nationality if, through the operation of a national law, they have:*

(a) automatically received a nationality (e.g. from birth) without being required to undertake any further administrative requirements (e.g. abandoning a separate nationality); or

(b) acquired a nationality by undertaking a naturalisation process.

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

215. The Parties only dispute whether the main criterion of Article 5 RGAS – *i.e.*, whether the Player holds the nationality of Ecuador – has been satisfied. They do not dispute the fulfilment of the criterion (set out in para. 3 of Article 5 RGAS) that the Player never participated in a match (either in full or in part) in an official competition of any category or any type of football for another national federation. Therefore, the Panel only needs to assess whether the Player is an Ecuadorian national from the viewpoint of the FIFA rules or, said otherwise, whether the Player holds the Ecuadorian sporting nationality.

216. The Panel observes that, under FIFA rules, a player's sporting nationality is determined by reference to the pertinent national law. In determining whether a football player holds a given nationality under Article 5 RGAS, FIFA rules link the notion of sporting nationality to the legal nationality granted by a sovereign State and rely on the official documents issued by the competent State authorities to prove that player's nationality. Indeed, Article 5 RGAS makes a crystal-clear reference to the circumstance that a player holds a given nationality "*through the operation of a national law*". FIFA has explicitly declared this approach in regulations and commentaries and provided that a government-issued passport is the only mandatory proof of the fact that a player holds the nationality of a given country:

- Article 19, para. 3 of the WC Preliminary Competition Regulations provides: "*The only document considered to be valid proof of a player's identity and nationality shall be a permanent international passport […]. The participating member associations shall present each player's valid permanent international passport for the country of the participating member association to the FIFA Match Commissioner on the day before the match. A player without a valid permanent international passport shall not be entitled to play*".
- The FIFA Commentary on the Rules Governing Eligibility to Play for Representative Teams Commentary on Eligibility Rules states (at page 8) that "*FIFA competition regulations consistently state that proof of 'nationality' is only provided through the holding of a 'permanent international passport'*".
- The FIFA Guide to Submitting a Request for Eligibility or Change of Association (the "Guide") states that an example of a documentary evidence for establishing nationality is a "*valid passport (issued by the authorities of the country of the new association), duly indicating the player's nationality and the period of validity of the passport*").

217. A CAS panel has confirmed that this is the approach of the FIFA rules by stating in this regard: "*Only nationality can lead to sporting nationality due to requirements provided by FIFA's regulations*" and "*FIFA rules recognise the primary importance of the player's nationality to allow the applicant to play in the representative team of the relevant state. Such status will have to be in accordance with the rules of the relevant country*" (CAS 2021/A/8075 at paras. 126 and 140). Therefore, in determining whether the Player holds the Ecuadorian nationality under Article 5 RGAS, FIFA is bound, because of its own rules, by the legal nationality granted to the Player by the Republic of Ecuador and must rely on the official passport issued by the competent Ecuadorian governmental authorities establishing his nationality.

218. With this in mind, the Panel finds that the Player was eligible to represent the FEF national team in the World Cup Qualifiers under Article 5 of the RGAS because he holds a permanent Ecuadorian nationality as proven by his valid and authentic Ecuadorian passport.

219. The fact that, in the Panel's assessment, the Player was actually born in Colombia in 1995 and that his passport, used by the FEF to field him in eight matches, contained false information ("*faux intellectuel*"), did not make the Player ineligible to represent the FEF because, at the time of those matches, he was holding the Ecuadorian nationality on the basis of Ecuadorian law. In fact, due to FIFA's rules, this Panel must refer to Ecuadorian law in order to assess whether the Player had the Ecuadorian legal nationality and, as consequence, the Ecuadorian sporting nationality for the purposes of FIFA eligibility rules on national teams. Indeed, the Player's legal nationality – however acquired – has been attested not only (i) by his authentic Ecuadorian passport (which under FIFA rules would be sufficient) but also (ii) by the 2022 Certificate from the Ecuadorian Civil Registry confirming that the Player is "*Ecuadorian for all legal purposes*" (see *supra* at para. 41) and (iii) by the judgments of first and second instance of the Ecuadorian courts of the province of Guayas, which were rendered respectively on 2 February and 22 April 2021 and which adjudicated on the constitutional law action of "Habeas Data" brought by the Player against the Ecuadorian Civil Registry, both affirming *inter alia* that the Player holds the Ecuadorian nationality. Indeed, the current nationality of the Player under Ecuadorian law was confirmed at the hearing by Mr Esteban Polo Pazmiño – the Ecuadorian lawyer who testified as expert witness on Ecuadorian constitutional law – who, in commenting those two Ecuadorian judgments, made explicit reference to "*the nationality of Mr Castillo which as of today is valid, is unquestionable, [he] is Ecuadorian*" (as translated from the Spanish original: "*la nacionalidad del Sr. Castillo que hoy en día es válida, es indiscutible, [él] es Ecuatoriano*").

220. Mr Polo Pazmiño also explained, in the written expert report that he authored together with Dr Hernán Salgado Pesantes, that the caveat on the Player's status set out by the Court of the Province of Guayas in its appellate judgment of 22 April 2021 – "*Until the respondent entity [the Civil registry] reaches certainty about the veracity of the documentation*" (as translated from the Spanish original: "*Hasta que la entidad accionada [el Registro Civil] llegue a la certeza sobre la veracidad de la documentación*") – was clarified by the same Court on 10 May 2021 when it stated that it means "*until an ordinary court of justice rules whether or not there are inconsistencies in the terms alleged by the*

parties" (as translated from the Spanish original "*hasta que una autoridad de la justicia ordinaria se pronuncie si existieren o no inconsistencias en los términos alegados por las partes*". At the hearing Mr Polo Pazmiño clarified that this means that the current nationality status of the Player is valid and unquestionable but there could be in the future some judgment rendered by an ordinary Ecuadorian court (such as, in particular, a criminal court) which could hold that the original documents on which the Player's status is currently based – specifically, the Player's entry in the local Civil Registry of Guayas and his related Ecuadorian birth certificate – were falsified, and this hypothetical judgment could ultimately lead to reopening the issue of the Player's nationality status under Ecuadorian law.

221. However, as also explained during the hearing by Mr Polo Pazmiño, said future development is only hypothetical and, even if a criminal court in Ecuador were to adjudicate in the future that the original documentation on which the Player's status is based is false and the Player was actually not born in Ecuador, this would not result in the automatic annulment or revocation of his Ecuadorian citizenship. The Player might still, for example, be deemed entitled to Ecuadorian nationality through another legal avenue and, anyhow, an annulment or revocation of his nationality would require a formal judgment to be taken by the competent Ecuadorian court after granting to the Player the opportunity to exercise his constitutional right of due process and defense. Furthermore, according to Mr Polo Pazmiño, the loss of the Player's nationality would in any event not apply retroactively, *i.e.* he would still be considered a full-fledged Ecuadorian citizen during the time that came before the loss of nationality. Therefore, even in the hypothetical case of a future loss of nationality, the Player would still be considered by Ecuadorian law as having held the Ecuadorian nationality during the World Cup Qualifiers and, in turn, his sporting nationality would also still be Ecuadorian during that time, since FIFA rules make sporting nationality dependent on the legal nationality.

222. Therefore, in accordance with Article 5 RGAS, the Panel must conclude that the Player held the Ecuadorian sporting nationality during the World Cup Qualifiers because, through the operation of Ecuadorian law, he is considered within the Ecuadorian legal system as having automatically received the Ecuadorian nationality by birth without being required to undertake any further administrative requirements.

223. In light of the foregoing, the Panel holds that the FEF did not breach Article 22 FDC.

J. No violation of Article 11 FDC

224. The FPF claims that the FEF breached Article 11 and that therefore it must be disciplined with an appropriate sanction.

225. Article 11 FDC ("*Offensive behaviour and violations of the principles of fair play*") in the section "*Infringements of the Laws of the Game*" provides as follows: "*Associations […] must respect the Laws of the Game, as well as the FIFA Statutes and FIFA's regulations, directives, guidelines, circulars and decisions, and comply with the principles of fair play, loyalty and integrity*". One example of how this provision can be violated is by "*actively altering the age of players shown on the identity cards they*

produce at competitions that are subject to age limits" (see para. 2 of Article 11). The Panel thus finds that, in principle, the falsification of a document could fall within the scope of Article 11 FDC.

226. Nevertheless, since the FPF's accusation that the FEF breached Article 11 FDC is based on the same conduct that has already been sanctioned under the more specific provision of Article 21 FDC (the use of a falsified document), in application of the principle of *lex specialis derogat generalis*, the Panel finds that the FEF may not be held to have also breached Article 11 FDC because CAS jurisprudence has constantly held that "*where a specific provision entirely covers the incriminated conduct, the accused may not be sanctioned again for that same conduct under a more general provision*" (CAS 2017/A/5003 at para. 199, making reference to CAS 2014/A/3665, 3666 & 3667 at paras. 77-78 as well as to TAS 2016/A/4474, which held as follows at para. 323: "*lorsqu'un même comportement tombe sous le coup d'une disposition générale du CD […], il n'y a lieu de retenir qu'une violation de la règle spécifique. En effet, en vertu du principe* lex specialis derogat generali*, si la disposition plus spécifique couvre l'entier du comportement incriminé et ne laisse plus aucune place à l'application de la disposition générale, alors cette dernière ne doit pas être appliquée*").

227. Accordingly, the Panel holds that the FEF did not violate Article 11 FDC.

K. Applicable sanction

228. The Panel must determine what the appropriate sanction is for the FEF's use of a falsified document in breach of Article 21 FDC. Said provision does not stipulate the applicable sanctions for an association that is held liable for the use of a falsified document. Therefore, by default, the Panel may impose any of the general disciplinary measures listed in Article 6 FDC, including a fine ranging from CHF 100 to CHF 1,000,000, forfeiture of a match, deduction of points, and expulsion from a competition in progress or from future competitions. Pursuant to Article 24 FDC, the type and extent of the disciplinary measures must be determined "*in accordance with the objective and subjective elements of the offence, taking into account both aggravating and mitigating circumstances*".

229. As a starting point, the Panel notes that, under the 2011 and 2017 editions of the FDC, the potential sanction on a national federation for the use of a falsified document was the expulsion from a competition in addition to a fine (Article 61, paras. 1 and 4, of the 2011 and 2017 editions of the FDC). FIFA applied these provisions in the Equatoguinean FIFA decisions in which it sanctioned the FEGF as follows:

- In decision no. 150902 dated 4 March 2016, the sanction was the expulsion from the Olympic Games in Tokyo 2020, including the preliminary phase of the competition, and a fine of CHF 40,000, for use of forged and falsified documents with the intention to mislead in judicial proceedings related to the eligibility of one of its players in the preliminary competition of the Women's Olympic Football Tournament in Rio 2016.

– In decision no. 160249 dated 28 September 2016, the sanction was the expulsion from the FIFA Women's World Cup France 2019 and a fine of CHF 100,000 for fielding ineligible players during the preliminary competition of the Women's Olympic Football Tournament in Rio 2016 (Article 55 FDC, edition 2011 edition) and for use of a forged and falsified document by two of its players (Article 61, para. 4 FDC, 2011 edition).

230. The Panel notes that the two above mentioned FIFA disciplinary decisions against the FEGF were not appealed and, therefore, there is no CAS award on those cases. The only CAS precedent to which the Panel was directed is CAS 2016/A/4831, where the panel applied Article 45 of the WAFCON Competition Regulations, which specifically mandated the elimination in the ongoing competition the suspension from participation in the next edition of the WAFCON as the sanction for any error in the registration of players in the Competition Match System ("CMS"). As a consequence, the panel in that case excluded the FEGF from the ongoing WAFCON and suspended it from the following WAFCON for having entered a new registration record for a player in the CMS in relation to an error in the player's passport without disclosing the player's situation to the CAF.

231. The Panel observes that in the aforementioned FIFA and CAS cases, the sanction of exclusion from competition for the breach committed was specifically provided for in the relevant regulations, whereas in the present case the FIFA rules leave it to the adjudicator to decide on the appropriate sanction, meaning that it may apply a less severe sanction than exclusion from the FIFA World Cup.

232. With this legal framework and background in mind, the Panel finds that the appropriate sanction is a deduction of 3 points in the next edition of the preliminary competition to the FIFA World Cup and a fine payable to FIFA in the amount of CHF 100,000 for the following reasons.

233. First, the Panel is of the view that the FEF behaved poorly. The FEF, notwithstanding the information and documentary evidence at its disposal about the doubtful Player's situation, willingly decided to run the risk to summon the Player to play for the Ecuadorian national team in some matches of the World Cup Qualifiers. The FEF was knowledgeable about the risk of fielding the Player, given that on 9 March 2021 the FEF Vice-President Mr Carlos Manzur clearly stated in a video-recorded media interview that, personally, he would not have taken the risk of having the Player play for the national team ("*Si de mí dependiese, yo no lo haría jugar por la Selección, no correría ese riesgo*"). Indeed, as is well-known (and was in some way acknowledged by the FEF Vice-President in said interview), FIFA applies its rules independently of the various national legislations or jurisprudence of its more than 200 member federations (except, of course, when the FIFA rules themselves refer to national laws or courts). Therefore, the FEF should not have felt shielded or validated in its actions by the fact that FIFA rules on nationality refer to national laws and, under Ecuadorian law, the Player possessed the Ecuadorian nationality, because Article 21 FDC does not make such a reference to national laws. There was in fact no impediment for the FEF to refrain from summoning the Player to the national team and, to be on the safe side, even to try and find a legal avenue in agreement with the Player to have all his documentation rectified – so bringing to an end the "*faux intellectual*" –

and, considering that the Player has been constantly residing in Ecuador since 2012, to assist the Player in acquiring the Ecuadorian nationality through a governmental act of naturalization (which, according to the expert testimony of Mr Polo Pazmiño, is another way of acquiring Ecuadorian nationality in addition to the *ius soli* criterion).

234. Second, the use of falsified documents cannot be taken lightly as it poses a serious threat to the integrity of the competitions and public confidence in football. In the Panel's view, it would be a dangerous precedent to impose a very soft sanction (such as, for example, merely a fine) or, as FIFA would have it, no sanction at all, simply because the various State bodies of Ecuador have not ascertained so far the existence of a "*faux intellectuel*" in the Player's documents. Not imposing any sanction would undoubtedly open the door to future abuses from other national federations. The necessity for a sanction also derives from the financial and sporting importance of qualifying for the FIFA World Cup and, thus, the temptation a member federation would have in circumventing the rules to increase its chances to qualify to such a competition. The Panel is of the view that any sanction lesser than a 3-point deduction in the next edition of the preliminary competition to the FIFA World Cup and CHF 100,000 fine would not be sufficiently meaningful or impactful to achieve the envisaged goal of dissuading the FEF and others from a similar conduct in in the future. In fact, the Panel considered that such sanction would be too lenient if it were not for the extenuating circumstances to be mentioned next.

235. Third, certain extenuating circumstances justify lowering the sanction. Most notably, the Panel takes into account the following:

    (i) there were two judgments by Ecuadorian courts obliging the Ecuadorian Civil Registry to attest that the Player is an Ecuadorian citizen and, thus, allowing the Player to legitimately have official Ecuadorian IDs, and in particular an authentic Ecuadorian passport issued by the Republic of Ecuador, and thus becoming eligible to play for the FEF pursuant to the FIFA eligibility rules for national teams, regardless of the fact that the data on his passport did not correspond to reality;

    (ii) the FEF diligently conducted a full investigation into the Player's origin (which resulted in the Jara Report) and even initiated a disciplinary proceeding against the Player that was only abandoned because of the judgment by an Ecuadorian court in the so-called Protective Action, which prevented the FEF from ascertaining the falsification of the Player's original documentation; indeed, the Ecuadorian court – for due process reasons deriving, in essence, from the fact that the Player had been provisionally suspended by the FEF without being previously heard (see *supra* at para. 35) – found that the Player's fundamental rights had been violated and compelled the FEF Disciplinary Commission to bring to a close the disciplinary proceedings against the Player, ordering the following: "*no sanction of any nature can be imposed on Mr. BYRON DAVID CASTILLO SEGURA, for the alleged infraction of adulteration of his birth certificate until a criminal judge within the due process has determined his guilt and has issued a sentence which must be enforced in order to proceed and [impose] any administrative sanction to the aforementioned citizen*" (see *supra* at para. 36).

236. The Panel does not consider it appropriate to impose the sanction of a 3-point deduction in the FIFA World Cup Qualifiers 2022 for the following reasons. First, because of the extenuating circumstances mentioned in the preceding paragraph. Second, because the World Cup Qualifiers have already concluded and the on-field results, if possible under the applicable rules and if the circumstances warrant it, should be protected by rolling over a sanction to a future competition. The Panel finds that in the present case such rollover to the next edition of the FIFA World Cup Qualifiers is appropriate because the current competition was not directly affected by the FEF's violation of Article 21 FDC, since the Player was in fact eligible to play for the Ecuadorian national team. Third, the Panel notes that the FEF's breach did not concern multiple players, which could have warranted applying a sanction in the current World Cup Qualifiers, so changing their outcome.

237. To close, the Panel wishes to remark as *obiter dictum* that, in its view, continuing to field the Player with falsified documents, even if he is eligible under Article 21 FDC, would constitute a recidivism, which could have significant consequences such as a severe and heightened sanction, including exclusion from a competition.

XII. COSTS

(…).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Court of Arbitration for Sport has jurisdiction to hear the appeals filed by the Federación Peruana de Fútbol ("FPF") and the Federación de Fútbol de Chile ("FFC") against the decision rendered by the FIFA Appeal Committee on 15 September 2022.
2. The appeals filed by the FPF and the FFC against the decision rendered by the FIFA Appeal Committee on 15 September 2022 are partially upheld.
3. The decision of the FIFA Appeal Committee of 15 September 2022 is set aside.
4. Mr Byron Castillo Segura lacks standing to be sued and all requests against him in case 9176 are rejected.
5. The Federación Ecuatoriana de Fútbol ("FEF") is held liable for the use of a document containing false information in breach of Article 21 of the FIFA Disciplinary Code and is consequently sanctioned pursuant to Article 6 of the FIFA Disciplinary Code as follows:
   (i) The FEF is imposed a deduction of 3 points in the next edition of the preliminary competition to the FIFA World Cup;
   (ii) The FEF is ordered to pay a fine to FIFA in the amount of CHF 100,000 within 30 days after the receipt of this arbitral award.
6. (…).
7. (…).
8. All further or different motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 17 April 2023 (Operative part notified on 8 November 2022)

THE COURT OF ARBITRATION FOR SPORT

Massimo Coccia
President of the Panel

Romano Subiotto K.C.
Arbitrator

José María Alonso
Arbitrator

Francisco A. Larios
Ad Hoc Clerk