



**Arbitration CAS 2011/A/2625 Mohamed Bin Hammam v. Fédération Internationale de Football Association (FIFA), award of 19 July 2012**

Panel: Mr José María Alonso Puig (Spain), President; Mr Philippe Sands QC (United Kingdom); Mr Romano Subiotto QC (United Kingdom)

*Football*

*Corruption (bribery in view of FIFA elections)*

*De novo hearing*

*Standard of proof*

*Burden of proof*

1. According to a well-established CAS jurisprudence that interprets and applies Article R57 of the CAS Code, an appeal to the CAS arbitration procedure cures any infringement of a due process right that may have been committed by a sanctioning sports organization during its internal disciplinary proceedings.
2. An arbitral tribunal is not bound to follow the rules applicable to the taking of evidence before the State courts of the arbitral tribunal's seat. This is particularly so if the parties make use of their private autonomy to lay down some rules of evidence. The FIFA Disciplinary Code (FDC) contains a rule that plainly goes to the issue of standard of proof and which sets as the standard the "*personal conviction*" of the members of the judging panel. Consistent CAS jurisprudence has equated this standard to the "*comfortable satisfaction*" standard in disciplinary proceedings.
3. In accordance with the relevant principles, FIFA has the burden of proving, pursuant to the FDC, to the "*comfortable satisfaction*" of the CAS panel that the evidence establishes that the facts it alleges have been met. In the absence of direct evidence, a panel shall not be comfortably satisfied of the charges of bribery against an official.

Mr. Mohamed Bin Hammam (the "Appellant" or "Mr. Bin Hammam"), a national of Qatar, was a member of FIFA's Executive Committee from 1996 and President of the Asian Football Confederation (the "AFC") from 2002. He was also candidate for the presidency of FIFA at the election of June 1, 2011, before deciding to withdraw from such election. He is currently banned from exercising any football-related activity as a result of the decision made by the FIFA Appeal Committee on September 15, 2011, which is subject to the current appeal (the "Decision").

The Fédération Internationale de Football Association (the "Respondent" or FIFA) is the international governing body of football, with its registered office in Zurich, Switzerland.

This section summarizes the facts that the Panel has identified as most relevant, having regard to the Parties' written and oral submissions and the evidence submitted and examined in the course of the proceedings. These facts are not in dispute. Additional facts in dispute are addressed, where material, in other sections of this Award.

In March 2011, Mr. Bin Hammam declared his candidacy for the position of FIFA President, challenging the incumbent, Mr. Joseph Blatter. The election date was set for June 1, 2011. In this connection, Mr. Bin Hammam attended a meeting in Trinidad and Tobago on May 10 and 11, 2011. The events surrounding this meeting led to the Decision.

After being denied a visa to the US, Mr. Bin Hammam could not attend the meeting held in Miami on May 3, 2011, of the Confederation of North, Central American and Caribbean Association Football (CONCACAF) to present his candidacy. He therefore asked to speak at a special meeting of the Caribbean Football Union (CFU) in Trinidad and Tobago held on May 10-11, 2011. Mr. Jack Warner, FIFA's Vice-President and CONCACAF's President, agreed to convene the meeting, informing Mr. Bin Hammam that he would have to finance all the expenses of the meeting. Mr. Bin Hammam agreed to this condition.

Mr. Bin Hammam wired USD 360,000 to the CFU, and later provided a supplemental payment of USD 50,000 for additional expenses.

Mr. Bin Hammam arrived in Port-of-Spain on May 9, 2011. On May 10, 2011, he made a 45-minute speech about his candidacy. After the speech and once Mr. Bin Hammam had left the conference room, Mr. Warner announced that there were "gifts" for representatives of attending associations. Mr. Bin Hammam departed Trinidad and Tobago on the evening of May 10, after attending a dinner with other participants at the earlier meeting.

In the afternoon of May 10, 2011, the General Secretary of the CFU, Ms. Angenie Kanhai, went to Mr. Warner's office to collect a locked suitcase, which she then took back to the Hyatt Hotel and handed over to her assistants, Mr. Jason Sylvester and Ms. Debbie Minguell. The suitcase contained a number of unmarked envelopes, each containing USD 40,000.

Mr. Jason Sylvester and Ms. Debbie Minguell distributed the gifts during the course of the afternoon of May 10, 2011, in the hotel room that was being used as a boardroom for CFU delegates, each of whom was invited to enter the room individually. Some of the delegates were told at that time that the cash was a gift from the CFU to their national association for the development of football. This is confirmed, for example, by two letters that the representatives of Puerto Rico, Mr. Labrador, and Haiti, Mr. Jean Bart, requested for customs purposes in order to transit with the money via the US. The Panel has seen no evidence that any individuals were told in the boardroom and at that time that the source of money was other than the CFU.

Subsequently on May 10, 2011, Mr. Sealey, President of the Bahamas Football Federation, who was not attending the meeting, received a phone call from the Bahamas representative attending the

conference, Mr. Lunn (Vice-President of the Bahamas Football Federation), informing him about the cash gifts. Mr. Sealey reported this to Mr. Chuck Blazer, CONCACAF's Secretary General.

The following morning, on May 11, 2011, when Mr. Bin Hammam had already left Trinidad and Tobago, Mr. Warner called an unexpected and unscheduled meeting that started at 8:30 a.m. (the conference was due to reconvene at 10:00 a.m.). In the course of that meeting, Mr. Warner expressed his surprise to those attending that CONCACAF and FIFA had been informed about the cash gifts, adding that Mr. Bin Hammam had provided money to the CFU in lieu of any gifts, that the money had been provided for the CFU's organizational purposes, and that no effort had been made to buy votes. Mr. Warner used the following words: *"When President Bin Hammam asked to come to the Caribbean, he wanted to bring some silver...um... plaques and wooden trophies and buttons and so on, and he told me that to bring for 30 countries would be too much luggage for a private plane. I told him he need not bring anything. He said yes he want to bring something for the countries that will be equivalent to the value of the gift he would have brought. I said to him if you are bringing cash, I do not want you to give any cash to anybody, but what you do, you can give it to CFU and the CFU will give it to the members because I do not want it to even remotely appear that anyone has any obligation for you for his vote because of what gift you have given them, and he fully accepted that. I said to him also I would not even mention it but will give it to them before you leave, because Jack Warner is so unlucky the next thing you know Jack Warner keeps everything [...]"*.

On May 15, 2011, FIFA Executive member, Mr. Chuck Blazer, hired Mr. John P. Collins, an attorney, to investigate the source of the money distributed on May 10, 2011. Mr. Collins issued a report concluding that Mr. Bin Hammam had offered bribes in order to buy the votes needed to win the FIFA election: *"This special Bin Hammam meeting of the Caribbean Football Union ("CFU") took place on May 10-11 in Trinidad. At the meeting, Mr. Bin Hammam and Mr. Warner, caused cash payments totaling approximately US\$ 1,000,000 to be paid, or attempted to be paid, to "Officials" (as defined in the FIFA Code of Ethics) of the FIFA Member Associations that are also members of the CFU. These cash payments directly violate Articles 10 and 11 of the FIFA Code of Ethics. Mr. Bin Hammam and Mr. Warner organized this special meeting of CFU Officials for the express purpose of allowing Mr. Bin Hammam to present his candidacy to these FIFA voting members, ask for their vote, and present his US\$40,000 cash "gift" to each one. This gift was in addition to paying all of the travel costs for these Officials to attend this "special meeting" in Trinidad".* The report was leaked to the media.

On May 24, 2011, Mr. Blazer reported to FIFA's Secretary General, Mr. Jérôme Valcke, that Mr. Bin Hammam had allegedly committed violations of the FIFA Code of Ethics (FCE). He asked that the FIFA Ethics Committee take action against Mr. Bin Hammam. Mr. Blazer also forwarded the report prepared by Mr. John P. Collins to Mr. Valcke.

The cash gifts offered on May 10, 2011, were then the object of the FIFA proceedings brought against Mr. Bin Hammam before the FIFA Ethics Committee. Other individuals have been subject to proceedings arising out of the same facts, but the Panel has not been provided with full details.

On May 25, 2011, the FIFA Ethics Committee invited Mr. Bin Hammam to respond in writing to the alleged charges by no later than May 27, 2011. The terms of the communication were as follows: *"On 24 May 2011, Mr Chick Blazer, FIFA Executive Committee Member and CONCACAF General Secretary, represented by Collins & Collins, reported to the FIFA Secretary General, Mr Jérôme Valcke, that, during the course of a special meeting of the Caribbean Football Union held on 10 and 11 May 2011, you allegedly committed several*

*infringements to the FIFA regulations, in particular but not limited to, acts of bribery [...] This appears to be a violation of the FIFA Statutes, the FIFA Disciplinary Code (hereinafter: FDC) and the FIFA Code of Ethics, in particular art. 7 of the FIFA Statutes, art. 62 of FDC and articles 3, 6, 9, 10, 11, 12 and 14 of the FIFA Code of Ethics. In this regards, we would also like to draw your attention to the fact that acts amounting to attempt (cf. art. 8 of the FDC) and intentional involvement in committing an infringement either as instigator or accomplice (cf. art. 9 of the FDC) are also punishable”.*

Mr. Bin Hammam was also invited to attend, and did attend, a hearing in Zurich on May 29, 2011, before the FIFA Ethics Committee to determine whether he should be provisionally suspended from all football-related activities. The hearing was chaired by Mr. Petrus Damaseb. The other members were Mr. Juan Pedro Damiani, Mr. Les Murray, Mr. Robert Torres and Mr. Sondre Kaafjord. Before the hearing of May 29, 2011, Mr. Bin Hammam withdrew his candidacy for the FIFA Presidency, leaving Mr. Blatter as the sole candidate. Immediately after the hearing, the FIFA Ethics Committee announced publicly its decision to suspend provisionally Mr. Bin Hammam from all football-related activities during a period of 30 days. It released its reasoned decision on June 9, 2011.

On June 1, 2011, the FIFA Ethics Committee found Mr. Bin Hammam’s request of May 31, 2011, to revoke these provisional measures, inadmissible.

On June 28, 2011, the FIFA Ethics Committee decided to extend Mr. Bin Hammam’s provisional suspension. It sent a copy of the reasoned decision to Mr. Bin Hammam on July 6, 2011.

On June 29, 2011, the Freeh Group produced a Report about the events at the meeting of May 10-11, 2011, in Trinidad and Tobago. The Freeh Group Report concluded that *“there is compelling circumstantial evidence ... to suggest that the money did originate with Mr. Bin Hammam and was distributed by Mr Warner’s subordinates as a means of demonstrating Mr. Warner’s largesse”*. Two days later, the FIFA Ethics Committee’s Secretary wrote to Mr. Bin Hammam, convening a hearing at FIFA’s headquarters in Zurich on July 22-23, 2011.

On July 12, 2011, the FIFA Ethics Committee found Mr. Bin Hammam’s request to revoke the extension of the provisional measures inadmissible.

After the hearing of July 22-23, 2011, the FIFA Ethics Committee issued a decision in the following terms:

- 1. The official, Mr Mohamed Bin Hammam, is found guilty of infringement of art. 3 par. 1, par. 2 and par. 3 (General Rules), art 9 par. 1 (Loyalty and confidentiality), art. 10 par. 2 (accepting and giving gifts and other benefits) and art. 11 par. 2 (Bribery) of the FIFA Code of Ethics.*
- 2. The official, Mr Mohamed Bin Hammam, is hereby banned from taking part in any kind of football-related activity at national and international level (administrative, sports or any other) for life as from 29 May 2011, in accordance with art. 22 of the FIFA Disciplinary Code and in connection with art. 17 of the FIFA Code of Ethics.*
- 3. No costs are to be borne by the official, Mr Mohamed Bin Hammam.*
- 4. The official, Mr Mohamed Bin Hammam, shall bear his own legal and other costs incurred in connection with the present proceedings.*

5. *This decision is sent by fax to Mr Mohamed Bin Hammam (c/o Dr Stephan Netzle and Mr Eugene Gulland) [cf. art. 103 par. 1 of the FDC]. A copy of the decision is sent to AFC.*

This decision was communicated to Mr. Bin Hammam on August 18, 2011.

Mr. Bin Hammam appealed this decision to the FIFA Appeal Committee. A hearing was held on September 15, 2011. On the same day, the Appeal Committee issued the Decision in the following terms:

1. *The appeal lodged by the official, Mr Mohamed Bin Hammam, is rejected and the decision of the FIFA Ethics Committee passed on 22 and 23 July 2011 is confirmed.*
2. *Costs and expenses of these proceedings in the amount of CHF 3,000 are to be borne by the official, Mr Mohamed Bin Hammam, in accordance with art. 105 par. 1 of the FIFA Disciplinary Code. This amount is set off against the appeal fee of CHF 3,000 already paid by the official, Mr Mohamed Bin Hammam, in application of art. 123 par. 3 of the FIFA Disciplinary code.*
3. *The official, Mr Mohamed Bin Hammam, shall bear his own legal and other costs incurred in connection with the present proceedings.*
4. *This decision is sent by fax to Mr Mohamed Bin Hammam (c/o Dr Stephan Netzle and Mr Eugene Gulland) [cf. art. 103 par. 1 of the FDC]. A copy of the decision is sent to the Asian Football Federation.*

On October 19, 2011, the Decision was sent to Mr. Bin Hammam.

On November 9, 2011, the Appellant filed a Statement of Appeal against the Decision with the CAS, requesting that a preliminary award be rendered on the validity of the Decision, and appointed Mr. Philippe Sands QC as arbitrator.

On November 18, 2011, the Respondent indicated its disagreement with the Appellant's proposal, and appointed Mr. Romano Subiotto QC as arbitrator.

On November 21, 2011, the CAS Court Office took note of the Respondent's objection and informed the Appellant that the deadline to file his appeal brief was suspended.

On November 24, 2011, the Appellant filed his Preliminary Appeal Brief with the CAS.

On December 5, 2011, the CAS Court Office informed the Parties of the composition of the Panel, chaired by Mr. Jose Maria Alonso Puig.

On January 2, 2012, the Appellant requested an extension until January 16, 2012, to file his complete Appeal Brief. The Panel granted the requested extension.

On January 16, 2012, the Appellant filed his Appeal Brief with the CAS.

On January 23, 2012, the CAS Court Office communicated to the Parties that the hearing would take place on April 18-19, 2012, at the CAS Headquarters in Lausanne, Switzerland.

On January 31, 2012, the Respondent requested an extension until March 15, 2012, to file its Answer.

On February 3, 2012, the Appellant stated that it did not oppose an extension until February 20, 2012.

On February 8, 2012, the Respondent filed its comments on the procedural matters raised by the Appellant on February 3, 2012. On the same day, the CAS Secretariat indicated that the Panel had decided to grant the Respondent an extension to file its Answer until February 27, 2012,

On February 13, 2012, the Respondent submitted a letter challenging a number of the Appellant's assertions.

On February 27, 2012, the Respondent filed its Answer.

On March 13, 2012, the CAS Secretariat indicated that the Panel had decided to grant the Appellant seven days to file witness statements and explain the relevance of the documents which it requested to be disclosed. The letter further communicated the Panel's decision that, upon receipt of said communication, the Respondent would be given seven days to present additional witnesses if it deemed it necessary and to set out its position as regards the Appellant's request for disclosure.

On March 20, 2012, the Appellant filed its response to the Panel's letter of March 13.

On March 30, 2012, the Respondent filed its Response to the Panel's letter of 13 March of 2012.

On April 4, 2012, the CAS Secretariat informed the Parties of the Panel's decision on the Appellant's Request for document disclosure, and requested the Respondent to comply with the Panel's request to disclose certain documents. Further, the CAS Secretariat notified the Parties that the Panel had admitted the witness statements filed by the Respondent on February 27, 2012, and the new documents filed by the Appellant on March 20, 2012, giving the Respondent a deadline of April 12, 2012 to file new documents if it deemed it necessary. It provided information on the list of witnesses called by the Panel to attend the hearing, and indicated that the Panel would decide on the costs of arbitration, including any costs related to the Appellant's Request for Disclosure, at a later stage. On the same date, the CAS Secretariat corrected its previous communication and clarified one of the categories of documents to be disclosed.

On April 11, 2012, the CAS Secretariat notified the Parties regarding the Panel's decision to reject the documents submitted with the Appellant's communication of April 4, 2012; to declare that it would not admit any new documents, unless they were expressly requested pursuant to Article R44.3 of the CAS Code, apart from the documents which the Respondent could submit on April 12, 2012; and to provide further clarifications as regards the witnesses' testimonies. The notification indicated that the Panel would admit the witnesses requested by the Appellant in its submission of March 13, 2012, using its power under Article R44.3 of the CAS Code.

On the same day, the Respondent provided information on the attendance of witnesses, and indicated that Mr. Blazer would not appear at the hearing because the object of this arbitration overlapped with a pending lawsuit in the Supreme Court of Bahamas.

Further, on the same day, the Appellant submitted a letter stating that no FIFA witness evidence should be given any evidentiary weight unless FIFA made the individual available for cross-examination.

On April 12, 2012, the CAS Secretariat informed the Parties that the Panel invited the Respondent to submit all documents available to it concerning the selection and appointment of the FIFA Ethics and Appeal Committees, and provided further information on the attendance of witnesses in response to the Parties' communications dated April 11, 2012.

On the same day, the Respondent produced the documents requested by the Panel, and the rebuttal documents allowed by the Panel. It also provided further information on the attendance of witnesses, the list of results from the IT search and a copy of the emails corresponding to said list.

On April 17, 2012, the Appellant returned a signed copy of the Order of Procedure, subject to a number of reservations regarding the proposed procedure for the hearing. The Respondent signed the Order of Procedure on April 18, 2012.

On April 18 and 19, 2012, the hearing was held at the CAS Headquarters.

The Panel and the Parties also agreed to the filing of post-hearing briefs.

The Parties confirmed that their right to be heard had been fully respected.

On May 10, 2012, both Parties filed their respective post-hearing submissions.

By letter dated July 17, 2012, the Respondent submitted a request to (i) introduce new evidence (a Report by PricewaterhouseCoopers (PWC) dated July 13, 2012) and (ii) stay the arbitration proceedings. The Appellant, by letter of the same date, objected to the Respondent's requests. The Panel carefully reviewed the material and decided to reject the request.

In sum, the Panel rejects the Respondent's requests to admit the PWC Report and accompanying documents as new evidence and to stay the arbitration proceedings, because the conditions of Article R56 of the CAS Code are not met, the PWC Report does not have *prima facie* a relationship with the dispute before this Panel, and because the Respondent's request for a stay has been made on the basis of a mere suspicion.

In the event new evidence relating to the PWC Report or to any other kind of evidence related to the present case is discovered and without prejudice to the principle of *res judicata* and other principles of applicable law, it would still be possible to re-open this case.

The following summaries are indicative of the Parties' respective positions, and are not intended to provide an exhaustive or comprehensive account of every contention put forward by the Parties. The Panel wishes to make it clear that it has carefully considered and taken into account in its discussions and subsequent deliberations the complete record before it, including all pleadings, evidence and arguments submitted by the Parties.

The Appellant challenges the Decision.

He alleges that FIFA has disregarded the principle of due process in reaching its decision to sanction him.

The Appellant submits that, from the very beginning of the proceedings (i.e. the letter dated July 14, 2011, to the FIFA Ethics Committee), he demanded that the FIFA Ethics and Appeal Committees should apply the standards of due process as guaranteed in the European Convention of Human Rights ("ECHR"), Swiss law and general principles of sports law. However, the Appellant alleges that this request was rejected.

The Appellant affirms that the standards of due process must be applied because of (i) the nature of the gravity of the allegation made in this case, (ii) the extremely severe consequences arising from a public finding of bribery by a body such as FIFA, including a life ban from all football activities and the destruction of the reputation of the accused, and (iii) the fact that the consequence of the proceeding against Mr. Bin Hammam was that the incumbent president won the election unopposed.

The Appellant considers that the principle of due process set forth in the ECHR applies to FIFA, even if it is not a state, since it is the private regulator of football in many countries that are signatories of the ECHR, including Switzerland, where FIFA is based. The Appellant states that the European Court of Human Rights has ruled that a private body, such as FIFA, that undertakes the role of a tribunal to the exclusion of state courts, must comply with Article 6 ECHR. In this case, FIFA took a decision affecting Mr. Bin Hammam's civil rights, and adjudicated on a criminal charge, namely bribery. Thus, FIFA is bound to apply ECHR principles.

Further, the Appellant alleges that CAS jurisprudence has long recognized that it must apply the standards of the ECHR. Moreover, it considers that the relevant provisions of the ECHR form part of the *lex sportiva* or *lex ludica* recognized by the CAS. Therefore, by rejecting the principles of Article 6, the FIFA Ethics and Appeal Committees committed a grave violation of the principles of the *lex sportiva* which CAS jurisprudence demands that they apply.

The Appellant considers that FIFA's status as a private body under Swiss law is not an argument to avoid the application of ECHR principles. The Appellant points out that Switzerland is a party to the ECHR, so Swiss Courts are bound to apply ECHR jurisprudence. Further, the Appellant states that FIFA is an association under Swiss law, and, consequently, its Statutes of Association must comply with mandatory rules of law, which include those set out in the ECHR. Finally, the Appellant states that FIFA occupies a dominant position and its exercise of the right to adjudicate the case against Mr. Bin Hammam is a use of its dominant position, so it must exercise its right reasonably, proportionately and complying with the principles of due process.

The Appellant alleges that the following principles that are part of the due process have been infringed by the FIFA:

The Respondent addresses the Appellant's alleged procedural deficiencies and develops the merits of the case presented in front of the FIFA Ethics and Appeal Committees.

The Respondent considers that the cash payments that took place in the CFU conference are a violation of the FCE and the FDC.

The Respondent states that the applicability of the FCE is not in dispute, since the Appellant accepts that he is an "official" subject to the FCE. Thus, the Respondent invokes Articles 3, 9, 10 and 11 of the FCE, which provide as follows:

*Article 3 – General Rules*

- 1. Officials are expected to be aware of the importance of their function and concomitant obligations and responsibilities. Their conduct shall reflect the fact that they support and further the principles and objectives of FIFA, the confederations, associations, leagues and clubs in every way and refrain from anything that could be harmful to these aims and objectives. They shall respect the significance of their allegiance to FIFA, the confederations, associations, leagues and clubs and represent them honestly, worthily, respectably and with integrity.*
- 2. Officials shall show commitment to an ethical attitude while performing their duties. They shall pledge to behave in a dignified manner. They shall behave and act with complete credibility and integrity.*
- 3. Officials may not abuse their position as part of their function in any way, especially to take advantage of their function for private aims or gains.*

*Article 9 – Loyalty and confidentiality*

- 1. While performing their duties, officials shall recognize their fiduciary duty, especially to FIFA, the confederations, associations, leagues and clubs.*
- 2. Depending on their function, any information divulged to officials while performing their duties shall be treated as confidential or secret as an expression of loyalty. Any information or opinion shall be passed on in accordance with the principles, directives and objectives of FIFA, the confederations, associations, leagues and clubs.*

*Article 10 – Accepting and giving gifts and other benefit*

[...]

- 2. While performing their duties, officials may give gifts and other benefits in accordance with the average relative value of local cultural customs to third parties, provided no dishonest advantages are gained and there is no conflict of interest.*

[...]

*Article 11 - Bribery*

*1. Officials may not accept bribes; in other words, any gifts or other advantages that are offered, promised or sent to them to incite breach of duty or dishonest conduct for the benefit of a third party shall be refused.*

The Respondent asserts that the Appellant breached Article 11.2 FCE having regard to the four elements of the offence: (i) an official, (ii) bribed, (iii) a third party, (iv) in order to gain an advantage. In the Respondent's view, the Appellant's position consists in denying that the representatives of Associations were "*third parties*" within the meaning of Article 11.2 FCE. The Respondent objects to the Appellant's view by referring to the French and German versions of the FCE and because the Appellant's construction would lead to the result that the FCE does not prohibit the President of a Confederation, a FIFA Executive Committee member, or a candidate for the FIFA Presidency from bribing the representatives of Associations. In addition, the Respondent refers to CAS jurisprudence that a rule must be interpreted in light of its rationale. Allegedly, the Appellant's interpretation does not take into account the rationale of the FCE.

The Respondent further contends that Mr. Bin Hammam breached Article 9.1 FCE because this rule – and in particular the words "*performing his duties*" – must be interpreted broadly and consistently with the purpose of this Article and the FCE. Otherwise, a person who is President of a Confederation, a FIFA Executive Committee member, or a candidate for the FIFA Presidency would not be prohibited from offering a bribe to a representative of an association in the context of an election candidacy, because such candidacy would be outside his duties. The Respondent notes that the distribution of cash gifts originating from a candidate constitutes a breach of his obligations of loyalty and good faith.

Further, FIFA accuses Mr. Bin Hammam of breaching Article 10.2 FCE quoted above. The Respondent reaches this conclusion on the basis that all the requirements of this provision are met: (i) Mr. Bin Hammam accepts that he is an official within the meaning of the FCE, (ii) the Appellant does not dispute that the cash was offered by way of gift, (iii) a gift of USD 40,000 goes far beyond the average relative value of cultural customs of Trinidad and Tobago, and any Caribbean standard, (iv) Mr. Bin Hammam was performing his duties, as pointed out in the previous paragraph, and (v) Mr. Bin Hammam gave a gift in circumstances where a dishonest advantage was obtained and there was a conflict of interest contrary to Article 10.2 FCE.

The Respondent further alleges breach of Article 3 FCE. The Respondent's case is that having established bribery under Article 11.2 and inappropriate distribution of gifts under Article 10.3, Mr. Bin Hammam violated his general duties under Article 3. In addition, the Respondent contends that the simple fact of having made the payments would constitute a breach of Article 3 FCE, if one of the elements of bribery was not established.

The Respondent disagrees with the Appellant's contentions regarding procedural irregularities. It asserts that any procedural errors that might have occurred (and it denies that this is the case) are cured by the fact that the Panel is able to hear the present dispute on a *de novo* basis pursuant to Article R57 of the CAS Code. The Respondent submits that the availability of a full appeal to the CAS allows any procedural flaws to be remedied, and that CAS panels should not in such circumstances consider arguments alleging the violation of due process. The Respondent sees no reason to address in any detail the Appellant's complaints on those items.

The Respondent asserts that the legal basis for the ban were Articles 17 FCE and 22 FDC, which provide as follows:

*Article 17 – Application of the FIFA Disciplinary Code*

*1. The Ethics Committee may pronounce any of the disciplinary measures defined in the FIFA Statutes and the FIFA Disciplinary Code.*

*2. All organisational and procedural rules of the FIFA Disciplinary Code apply directly in the context of all proceedings conducted by the Ethics Committee, unless this Code of Ethics contains diverging rules or if the provisions of the FIFA Disciplinary Code manifestly cannot apply in respect of the objectives and content of this Code.*

*Article 22 – Ban on taking part in any football-related activity*

*A person may be banned from taking part in any kind of football related activity (administrative, sports or any other).*

The Respondent contends that a sanction must pursue a legitimate aim and be proportionate. It submits that a sanction is proportionate if it goes no further than is reasonably necessary to pursue the aim. The Respondent affirms that the sanction imposed to Mr. Bin Hammam complies with the principle of proportionality and refers to the considerations presented in the decision of the FIFA Ethics Committee of July 22-23, 2011.

## LAW

### CAS Jurisdiction

1. Article R47 of the CAS Code provides as follows:

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

2. The Respondent has not objected to the jurisdiction of the CAS and has confirmed in its Answer that the CAS has jurisdiction in relation to this appeal pursuant to Article 63.1 of the FIFA Statutes, Article 18.2 FCE, and Article R47 of the CAS Code.

3. Both Parties have signed the Order of Procedure without amendment in this respect.

4. Accordingly, and in the absence of any objection, the Panel concludes that it has jurisdiction to resolve this dispute.

### Applicable law

5. Article R58 of the CAS Code provides as follows:

*“The Panel shall decide the dispute according to the applicable regulations and 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, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*

6. As FIFA is a Swiss federation, the FIFA rules and regulations are applicable to this arbitration and Swiss law applies as a subsidiary matter.

### Admissibility of the Appeal

6. The Respondent has not raised any objections with regards to the admissibility of the Appeal. The Panel concludes that the appeal is admissible, having regard to the fact that the Appellants submitted it within the deadline provided by Article R49 of the CAS Code and complied with all the other requirements set forth by Article R48 of the CAS Code.

### Merits

*A. Procedural issues: The alleged violations of due process before the FIFA Ethics and Appeal Committees*

7. Putting to one side the Appellant’s allegations with regard to the merits of the case, which were articulated in greater detail during the course of the hearing, the Appellant largely argued the appeal on the grounds that there had been violations of principles of due process. The Appellant asserts that these were committed by FIFA during the procedures before the FIFA Ethics and Appeal Committees.
8. The Appellant asserts that the Panel should not decide this matter *de novo*. It argues that the Panel should instead quash the Decision, or annul the Decision and remand the case to FIFA to issue a new decision. It is only by way of subsidiary and alternative argument that the Appellant requests that the Panel issue a new decision.
9. By contrast, from the outset of these proceedings, the Respondent has argued that the Panel should decide this dispute *de novo*. It has consistently focused its arguments on the facts that are alleged to have occurred on May 10-11, 2011.
10. The Panel notes that Article R57 CAS Code provides that *“the Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance”.*
11. In this regard, the Panel further notes that there is a well-established CAS jurisprudence that interprets and applies Article R57 of the CAS Code. This jurisprudence confirms that an appeal

to the CAS arbitration procedure cures any infringement of a due process right that may have been committed by a sanctioning sports organization during its internal disciplinary proceedings (CAS 2008/A/1548, CAS 2003/O/486, CAS 2009/A/1880-1881, CAS 2004/A/549).

12. In these proceedings, the Panel considers that the Parties have been treated equally, and that each Party has been provided with the opportunity to present its case fully, and to be heard on all the issues it has sought to raise. The Appellant has had the opportunity to present a full Appeal Brief pursuant to Article R51 of the CAS Code. As noted, the Appellant recognized in this brief the possibility that the Panel could decide the dispute *de novo*. He was perfectly entitled to focus on alleged procedural violations before the FIFA Ethics and Appeal Committees, having reserved his right to appear in his own defense and to call such further evidence as may be appropriate in order to respond to any substantive case.
13. The Panel has provided the Appellant with every opportunity to present his case on the merits. Following the submission by the Respondent of its Answer, the Appellant was provided with the opportunity to present further witnesses to testify on substantive matters, if it so wished. The Panel also allowed the Appellant to further develop his request for production of documents. Having reserved his position on witnesses, the Appellant duly decided not to call any witness to testify on substantive issues, on the grounds that this might contradict his position that the Panel should not decide *de novo*. The Panel also granted the Respondent an additional period of time to propose further witnesses for examination after the Appellant had presented witnesses statements.
14. Further, with regard to the request for production of documents, and taking account of the views submitted by the Respondent, the Panel ordered the Respondent to disclose certain documents.
15. On March 13, 2012, the Appellant raised an objection to the Respondent's submission of statements from individuals that had not been submitted during earlier phases of the FIFA proceedings. The Appellant referred to the following persons: Messrs. Cheney Joseph, Colin Klass, David Hinds, Bob Forde, David Frederick and Anthony Johnson. The Appellant submitted that the statements of these persons should not be given any weight if the witness was not called for cross-examination. On March 13, 2012, the Appellant submitted:

*"27. FIFA continues to rely on the statements of persons whom FIFA does not intend to offer as witnesses at the hearing. These persons include Jack Warner, Chuck Blazer, and Joseph Blatter. They must appear as witnesses for cross-examination if their statements are to be given any evidential weight. Certainly Blazer and Blatter, who are FIFA officials, are available to testify, and Warner was himself one of the highest-ranking FIFA officials at the time he made the statements that FIFA seeks to use against Mr Bin Hammam.*

*28. FIFA's answer also relies on new, revised, or previously uncited witness statements (including some written statements that were not even dated or signed!) from Cheney, Joseph, Colin Klass, David Hinds, Bob Forde, David Frederick, and Anthony Johnson. Many of these statements contradict other statements given by the same person at other times. Without prejudice to Appellant's right that such new evidence should not be considered at this appellate stage, these persons must also be brought to the hearing for cross-examination if their statements are to be considered by the Panel as having any weight"* (footnotes omitted).

16. The weight to be given to any evidence, including any witness statement, is a matter for the Panel. Nevertheless, the Panel took account of the Appellant's position in order to ensure that the Appellant would be able to present his case on the merits as fully as possible. The Panel made use of the powers available to it under Article R44.3 of the CAS Code (applicable as per Article R57 of the CAS Code), and on April 11, 2012, called on the persons identified in the Appellant's request to make themselves available to testify during the hearing.
17. A number of these witnesses declined to appear, offering a variety of explanations. The Panel considers that the statements of persons who were not available for examination should not be rejected in their entirety, but that this circumstance should be taken into account when weighing the evidentiary value of such statements.
18. At the conclusion of the hearing, the Parties submitted further comments on an issue identified by the Panel, namely whether disciplinary proceedings brought by FIFA against an individual could be maintained after that individual had ceased to be associated with FIFA. The Respondent submitted a number of additional documents together with its post-hearing submission, and these have been admitted by the Panel.
19. For the reasons set out above, the Panel considers that it has offered both Parties every opportunity to present their case fully and to be heard on all issues, both procedural and substantive. In addition, the Parties confirmed at the end of the oral hearing that they had the opportunity to fully present their case and that the due process rights had been respected; however the Appellant confirmed his reservation of right as per its letter of April 17, 2012, with the exception of the witnesses that could be examined during the hearing, for which the Appellant considered the reservation of rights as gone.
20. Accordingly, the Panel concludes that any possible procedural violation that may have occurred in the course of the proceedings before the FIFA Ethics and Appeal Committees has been cured. It follows, in accordance with the approach taken in other CAS awards, that there is no need to address further the claims of the Appellant that have been raised in this regard.
21. The Panel would like to point out that other CAS panels have taken into account the importance and complexity of a particular case in considering whether to decide a dispute de novo. The Panel notes the CAS award 2009/A/1974 case, where the panel held:  
*"In compliance with consistent CAS jurisprudence both in pecuniary (CAS 2008/A/1741, CAS 2009/A/1793, etc.) and in disciplinary (OSCHUETZ F., Sportschiedsgerichtsbarkeit, Berlin 2005, p 348, with reference to CAS jurisprudence) disputes heard upon appeal and having regard to the circumstances of this case, the Panel opts to review the merits of this case and issue a new decision in the dispute at hand. Indeed, the value and complexity of the dispute would not justify a referral of the case back to the RPFL Appeal Commission. Although the Panel did not have the benefit of examining detailed documentation related to the Appellant's alleged disciplinary infraction and thus the RPFL Appeal Commission would probably be closer to the facts of the case, reasons of procedural economy and legal arguments explained below speak in favor of CAS resolving finally the disciplinary aspect of the dispute between the Appellant and the Club. Thereafter, however, the parties may resolve any financial dispute(s) before the appropriate forum"* (CAS 2009/A/1974, award of 16 July 2010).

22. The Panel considers that the present case is important and raises a number of serious legal issues and complex factual and evidentiary matters. The Panel has had available to it all the evidence relied upon during the various phases of the FIFA proceedings. It has also had before it additional evidence tendered by both Parties, and extensive opportunity to hear from witnesses (even if not all relevant witnesses were available, a point to which the Panel returns below). These considerations point to a resolution of the dispute *de novo*. The Panel considers that “*reasons of procedural economy*” also speak strongly in favor of the CAS resolving the disciplinary aspect of the dispute between the Appellant and FIFA. In the present dispute, its value does not fall to be measured in economic terms, but rather goes to the issue of the ability of an individual to be able to be engaged in football related activities.
23. The Panel has also given careful consideration to the possibility of other options. Having regard to certain gaps in the evidence (addressed in more detail below), it has considered the possibility of referring the case back to the previous instance. However, it has not been able to identify any previous case in which this has occurred for the purposes of completing the evidence (as compared with the situation of referral back where an authority had erroneously ruled that it had no jurisdiction, when new evidence has to be assessed or when it had not given sufficient reasons to justify its decision). It has also considered the possibility of further exercising such powers as may be available to it under Article R44.3 of the CAS Code to order specific measures to one or both of the Parties in order to clarify certain evidentiary issues. It was apparent, to the majority of the Panel, however, that this would be unlikely to provide any material additional evidence, having regard to the decision of certain individuals to decline to participate in these proceedings by making themselves available as witnesses, as well as the propensity of certain witnesses who did appear in these proceedings to decline to answer certain questions that raised material issues of fact. For these reasons, the Panel has concluded that the only path realistically available to it is to decide the dispute *de novo*.

B. *Substantive issues*

a) Preliminary issues

24. The Decision confirmed a decision issued by the FIFA Ethics Committee on July 22-23, 2011, which found Mr. Bin Hammam guilty of infringements of various provisions of the FCE, namely Article 3(1), (2) and (3) (General Rules), Article 9(1) (Loyalty and confidentiality), Article 10(2) (Accepting and giving gifts and other benefits), and Article 11(2) (Bribery).
25. The Decision addressed Mr. Bin Hammam’s alleged actions in providing cash gifts to individuals who attended the CFU conference of May 10-11, 2011, in order to buy votes for his candidacy in the election for the Presidency of FIFA. The Panel notes that the bribery charge, within the meaning of Article 11(2) FCE, is comprehensive, encompassing also all the other alleged breaches of FCE. The Panel considers that the examination of the factual and evidentiary issues relating to the charge of bribery necessarily also encompasses the evidentiary aspects of the alleged violations raised by all the other charges. For this reason, the Panel will

focus on the assessment of the facts and the evidence by reference to the requirements of the bribery charge, and then consider the application of its conclusions on the facts to the other charges.

26. Article 11(2) FCE provides that “*officials are forbidden from bribing third parties or from urging or inciting others to do so in order to gain an advantage for themselves or third parties*”.
27. It follows that a charge of bribery requires satisfaction of the following four elements:
  - The person committing the act of bribery must be a FIFA official;
  - A gift or other inducement must have been offered;
  - The act must be addressed to a third party; and
  - The purpose of the act must be to gain an advantage for the person offering the bribe or for some third person.
28. The Panel notes that the Parties have made submissions on whether Mr. Bin Hammam is to be considered an official within the meaning of Article 11(2) FCE, and whether the CFU delegates are to be considered as third parties within the meaning of that provision. Before addressing these submissions, the Panel will first address the facts relating to element (iv) above, as these were the principal focus of the hearing held on April 18 and 19, 2012. The Panel’s conclusions on these facts are of central importance to the charge under Article 11(2) FCE. If the facts relating to element (iv) above are not proven to the standard of proof to be applied by the Panel, then the charge as a whole will not have been proven.
29. The Parties are not in dispute as to the fact that, during the meeting held in Trinidad and Tobago, envelopes each containing USD 40,000 were offered to CFU delegates. The disagreement of the Parties is largely focused on two distinct factual matters: *first*, whether Mr. Bin Hammam was the source of the monies in the envelopes, and *second*, if so, whether the monies were provided for the purpose of buying votes in his campaign to be elected to the Presidency of FIFA. The Panel will deal with each of these issues in turn, having regard to the full evidentiary record before it. If the Panel concludes that Mr. Bin Hammam was the source of the monies provided to CFU delegates with the intention of inducing them to vote for him in the FIFA Presidential election, then it is necessary to decide whether Mr. Bin Hammam is a “*FIFA official*” and the CFU delegates are “*third parties*”, within the meaning of Article 11(2) FCE.
  - b) The applicable standard of proof and the burden of proof
30. To determine whether Mr. Bin Hammam was the source of the monies and that these were offered in order to buy votes, the Panel must examine whether the evidence provided by FIFA establishes the alleged facts. To do this, it must consider the applicable standard of proof.
31. The Parties have provided extensive argument on this point. They have amply addressed the standard of proof that is to be applied in this case, both in their written and oral pleadings and

in response to questions raised by the Panel, which expressly invited the Parties to develop this issue at the conclusion of the hearing.

32. Both Parties referred to the CAS case 2011/A/2426, invoking it in support of their respective positions. They also referred to Article 97 FDC, entitled “*Evaluation of proof*”, which provides:

*“1. The bodies will have absolute discretion regarding proof. 2. They may, in particular, take account of the parties’ attitudes during proceedings, especially the manner in which they cooperate with the judicial bodies and the secretariat (cf. art. 110). 3. They decide on the basis of their personal convictions”.*

33. The Appellant submits that this provision does not contain a rule on the standard of proof to be applied, so that the applicable standard falls to be determined by the law that is applicable to these proceedings, namely Swiss law, and in particular Article 8 of the Swiss Civil Code. For its part, the Respondent submits that Article 97 does set forth a rule on the standard of proof, namely the personal conviction (*intime conviction*) of the adjudicator, as applicable under Swiss law in private civil law cases.

34. The Panel notes earlier CAS decisions that have concluded that a CAS panel is not bound to follow by any national rule:

*“70. Selon le droit de l’arbitrage international un tribunal arbitral n’est pas lié par les règles applicables à l’administration de la preuve devant les tribunaux civils étatiques du siège du tribunal arbitral (POUDRET/BESSION, op. cit., no. 644: “The arbitral tribunal is not bound to follow the rules applicable to the taking of evidence before the courts of the seat” (CAS 2009/A/1879, para. 70).*

35. The Panel adopts this conclusion. The Parties have made use of their private autonomy to decide on the application of any national rules of evidence. They have agreed on the rules of evidence to be applied in FIFA disciplinary proceedings by voluntarily accepting the rules that FIFA has adopted. This view was expressed by the Panel in the CAS 2011/A/2426 case in the following way:

*“80. [...] This is particularly so if the parties make use of their private autonomy to lay down some rules of evidence.*

*81. The Panel notes that the parties to this arbitration did make use of their private autonomy – FIFA by adopting its rules and the Appellant by accepting them when he voluntarily became an indirect member and an official of FIFA – and did agree on some rules of evidence to be applied in FIFA disciplinary proceedings. Therefore, the Panel holds that the evidentiary issues of this case must be addressed applying those rules privately agreed between the parties and not the rules of evidence applicable before Swiss civil or criminal courts”.*

36. The Parties have agreed to the FDC and its Article 97. Even if that provision is not entitled “*standard of proof*”, its paragraph 3 contains, in the view of the Panel, a rule that plainly goes to the issue of standard of proof and which sets as the standard the “*personal conviction*” of the members of the Panel. In this regard, the Panel notes that the consistent CAS jurisprudence has equated this standard to the standard of “*comfortable satisfaction*” standard in disciplinary proceedings, as confirmed by the panel in the CAS 2011/A/2426 case:

“87. The Panel notes that, under Article 97 FDC, the Panel has a wide margin of appreciation and may freely form its opinion after examining all the available evidence. The applicable standard of proof is the “personal conviction” of the Panel (in the French version “intime conviction”, but according to article 143 para. 2 FDC the English version prevails).

88. The Panel is of the view that, in practical terms, this standard of proof of personal conviction coincides with the “comfortable satisfaction” standard widely applied by CAS panels in disciplinary proceedings. According to this standard of proof, the sanctioning authority must establish the disciplinary violation to the comfortable satisfaction of the judging body bearing in mind the seriousness of the allegation. It is a standard that is higher than the civil standard of “balance of probability” but lower than the criminal standard of “proof beyond a reasonable doubt” (cf. CAS 2010/A/2172 [...], para. 53; CAS 2009/A/1920 [...], para. 85). The Panel will thus give such a meaning to the applicable standard of proof of personal conviction”.

37. This standard of proof has been developed through CAS case law. This is acknowledged by the CAS panel in CAS OG 96/003-004:

*“En l’absence de règles expresses dans la réglementation applicable, la jurisprudence du TAS ne s’est toutefois pas contentée d’une simple “balance of probability” conformément au standard normalement requis en matière d’arbitrage privé (Alan Redfern & Martin Hunter: Law and Practice of International Commercial Arbitration, Londres 1999, N° 6-66. P. 314). Au cours des années, les Formations arbitrales du TAS ont en effet exigé que “[the]ingredients must be established to the comfortable satisfaction of the court having in mind the seriousness of the allegation” (RIGOZZI A., L’arbitrage international en matière de sport, Basel, § 1094; see also, e.g., CAS 2009/A/1920, para. 85; CAS 2008/A/1594, para. 48; CAS 2004/A/607, para. 34; CAS 2001/A/337, p. 21)*
38. The Panel concludes that the standard of proof to be applied in this arbitration is that of “comfortable satisfaction”. It follows that the questions it must ask focus on whether the Panel is “comfortably satisfied” that Mr. Bin Hammam was the source of the monies offered to CFU delegates at the Trinidad and Tobago meeting, and if so, whether he offered those monies in order to induce those delegates to vote for him in the FIFA Presidential election.
39. The Panel recalls that, in accordance with the relevant principles, and as accepted by the Respondent, FIFA has the burden of proving, pursuant to Article 99 FDC, to the “comfortable satisfaction” of the Panel that the evidence establishes that the facts it alleges have been met.
40. Before assessing the available evidence, the Panel wishes to make a number of observations with regard to the evidence of certain witnesses, including its probative value.
41. The Panel has before it a significant number of witness statements. Certain witnesses have provided several statements that are, in some cases, not necessarily in identical terms or entirely consistent. As a general matter, the Panel considers that this should not be per se problematic, such as to cause it to treat such evidence with caution. The Panel addresses below cases of apparent inconsistencies between two or more statements offered by the same witness, where the Panel considers this to be material.
42. In relation to two important witnesses, however, the Panel considers it appropriate to explain the basis upon which it is proceeding.

43. A large part of the Respondent's case turns on evidence in the form of information or statements provided by Mr. Jack Warner. He is plainly a central figure in this case, given the role that he played in arranging Mr. Bin Hammam's visit; making the suitcase available to Ms Kanhai; the statement he gave to the meeting on May 10, 2011; the fact that he convened the unscheduled meeting on May 11, 2011; and the statement he made at that meeting, which was partly or wholly recorded by an apparently undisclosed mobile phone, parts of which have been viewed by the Panel. Mr. Warner was himself the subject of a FIFA ethics investigation and charges, in respect of the matters arising in these proceedings, but these proceedings were dropped when he resigned from FIFA on June 20, 2011. The Panel notes the terms of the FIFA Press Release, which addressed his departure, in the following terms, to which the Panel returns below:

*"Jack A. Warner has informed FIFA about his resignation from his posts in international football.*

*FIFA regrets the turn of events that have led to Mr Warner's decision.*

*His resignation has been accepted by world football's governing body, and his contribution to international football and to Caribbean football in particular and the CONCACAF confederation are appreciated and acknowledged.*

*Mr Warner is leaving FIFA by his own volition after nearly 30 years of service, having chosen to focus on his important work on behalf of the people and government of Trinidad and Tobago as a Cabinet Minister and as the Chairman of the United National Congress, the major party in his country's coalition government.*

*The FIFA Executive Committee, the FIFA President and the FIFA management thank Mr Warner for his services to Caribbean, CONCACAF and international football over his many years devoted to football at both regional and international level, and wish him well for the future.*

*As a consequence of Mr Warner's self-determined resignation, all Ethics Committee procedures against him have been closed and the presumption of innocence is maintained".*

44. Mr. Warner appears to be prone to an economy with the truth. He has made numerous statements as to events that are contradicted by other persons, and his own actions are marked by manifest and frequent inconsistency. Most significantly, he made a statement on May 29, 2011, before the FIFA Ethics Committee, declaring that no cash gifts had been offered, a claim that is directly contradicted by the video evidence of his statement on May 11, 2011, when he referred to the gifts that had been given the previous day: "[...] it [the cash envelopes] was given to you because he [Mr Bin Hammam] said he could not bring the silver tray nas a silver, some silver trinkets and so on, and something with Qatari sand... we don't need Qatari sand... Barbados sand is as good as Qatari sand if not better. So I said what is wrong with that? Put a value on it and give the countries, and the gift you get is for you to determine how best you want to use it for development for football in your country. Whether you want to pay salaries, whether you want to pay rent, whether you want to buy equipment, whatever, it is for development but it's not a gift that I want him to give to you. Because as I said before I did not want it to appear that it would buy votes". The majority of the Panel concludes that Mr. Warner is an unreliable witness, and anything he has said in relation to the matters before the Panel is to be treated with caution. If Mr. Warner had been available for examination, it may have been possible to place some degree of reliance on some of his statements, including those against his own interest. The Panel invited him to appear, but he has declined to do so. In these circumstances, the majority of the Panel finds it difficult to place any reliance on any statement he has made,

whether in the form of a witness statement or in anything he has said to a third person and which is before the Panel in the form of evidence provided by that third person. As a result, the majority of the Panel regrets that it is unable to place any particular weight or reliance on any statement made by Mr. Warner, or alleged to have been made by him, in its assessment of the facts of this case.

45. The Panel also invited Mr. Chuck Blazer to appear before it for the purpose of examination. It appears from the record that he may have had a certain role to play in the matters before the Panel, not least with regard to an email that is alleged to have been sent by him to Mr. Warner, at some time between the afternoon of May 10, 2011, and the opening of the unscheduled meeting held on the morning of May 11, 2011. Mr. Blazer refers to this e-mail exchange in his statement to the FIFA Ethics Committee, but the Panel has not been provided with a copy of the text. It appears that this email, and the subsequent telephone conversation, may have had some role to play in causing Mr. Warner to convene the unscheduled meeting on the morning of May 11. The Panel would have welcomed an opportunity to hear from Mr. Blazer on this and other matters. To the extent that the Respondent places any reliance on anything that Mr. Blazer has said, then the Panel considers, as a matter of natural justice, that the Appellant is entitled to examine Mr. Blazer on such matter, in accordance with well-established principles of due process, whether reflected in Article 6 ECHR, or Swiss law, or other applicable rules or principles. For these reasons, the majority of the Panel also regrets that it must exclude from its assessment of the facts the placing of any weight or reliance on any statement of Mr. Blazer.
46. A third individual who has been conspicuous by his absence in these proceedings is the Appellant, Mr. Bin Hammam. He is of course fully within his rights in deciding not to appear in person, either in his capacity as Appellant or as a witness. The Panel notes that he strongly protests his innocence, and that he did appear before the FIFA Ethics Committee, where he stated that: *“Mr Blazer allege that I try to buy votes. This is outrageous and simply not true. I never bought any votes and did I [sic.] make any offers that I would pay for votes”*. The Panel would have welcomed an opportunity to ask Mr. Bin Hammam about this statement and other factual elements of this case. He has on previous occasions explained his decision not to appear on the grounds of an alleged concern that his statements could be manipulated against him, a concern that certainly has less currency in proceedings before the CAS, whose independence cannot be questioned. He will appreciate that the Panel is entitled to draw inferences from his non-attendance, as well as the evident limits of the statements he has made. The Panel is also entitled to take note of certain decisions taken by the Appellant in the litigation of his appeal. It may be said to be a matter of surprise, for example, that Mr. Bin Hammam’s team has not sought to ascertain the source of the monies by investigating the origins of those USD notes that are before the Panel in the form of photographic evidence of a sufficient clarity and detail to be able to allow the identification of the numbers on the notes, which might have allowed a tracing to take place.

c) The source of the cash gifts and the intention to buy votes

47. The Panel turns to the evidence in relation to the allegations that Mr. Bin Hammam was the source of the monies and that these gifts were offered by him as an inducement for members of the CFU to vote for his candidacy in the FIFA Presidential election.

48. To determine whether Mr. Bin Hammam was the source of the cash gifts, the Panel considers it necessary to trace back the money that was offered in the form of cash gifts, through various stages: from the time of its arrival in Trinidad and Tobago, through its presence in a suitcase in the office of Mr. Jack Warner, to its transportation to the hotel where the meeting took place, and into the boardroom where it was offered to individual CFU delegates each in the amount of USD 40,000 placed in an unmarked envelope. The Panel will then address the events of May 10 and 11.

ca) The suitcase and the source of the money

49. It is not in dispute that on the afternoon of May 10, 2011, each CFU national association representative was invited to collect a gift in the boardroom, or that the gift was in the form of a cash offering contained in an unmarked envelope in the amount of USD 40,000. Nor is it in dispute that the envelopes were offered by Jason Sylvester and Debbie Minguell, both employees of the CFU.

50. It is further not disputed that the cash gifts had been placed in a suitcase that was handed over to Mr. Sylvester and Ms. Minguell by Ms. Angenie Kanhai, Secretary General of the CFU at the time of the material events. This was confirmed in her witness statement and during the hearing. There is no dispute either that Ms. Kanhai went to Mr. Jack Warner's office at about 2:30 p.m. on May 10, 2011, from where she collected, from one of Mr. Warner's assistants, the suitcase that contained the envelopes. It is not challenged that the suitcase was locked and that the key was in a front pocket. During the hearing, Ms. Kanhai observed that "*the suitcase was a very good quality one, orange and black, and it was not the kind of suitcase that Mr Warner normally uses*". Interesting as these observations may be, they cannot be dispositive one way or the other on the question of whether the suitcase, as well as the monies that it contained, were provided by Mr. Bin Hammam.

51. The Panel has carefully examined the evidence, to ascertain whether the suitcase originated with Mr. Bin Hammam. The Panel notes in particular:

- When asked by the Panel about Mr. Bin Hammam's arrival to Trinidad and Tobago on the evening of May 9, 2011, Ms. Kanhai stated that at that time Mr. Warner was the Minister of Transport, and that his Ministry's protocol officer collected Mr. Bin Hammam from the airport. She could not express any view as to whether the suitcase was noted at the time.
- Mrs. Abo Rida, Michelle Chai, Fernando Manilal, and Worawi Makudi, have stated that there was a dinner on the evening of May 9 with the participation of Mr. Bin Hammam

and Mr. Jack Warner. However, none of the witnesses mentions having seen the suitcase at any time during the dinner.

52. The Panel further notes that there is no evidence before it that makes any reference to the suitcase or the source of the monies at any time before the events of May 10, 2011. There is therefore no direct evidence before the Panel, with regard to that period, which goes to the issue of which person made the money available in Trinidad and Tobago, placed it in the suitcase, or divided it into sums of USD 40,000 that placed into individual envelopes. The Freeh Report makes the point clearly, stating that

*“[t]here is no direct evidence linking Mr Bin Hammam to the offer or payment of money to the attendees of the Trinidad and Tobago meeting”.*

53. The Freeh Report relies entirely on

*“circumstantial evidence, including statements attributed to Mr Warner, to suggest that the money did originate with Mr Bin Hammam and was distributed by Mr Warner’s subordinates as a means of demonstrating Mr Warner’s largesse”.*

54. The Decision similarly relies on circumstantial evidence, as do the arguments of the Respondent. For its part, that circumstantial evidence turns largely on statements attributed to Mr. Warner. If Mr. Warner and his statements are taken out of the equation, the record of evidence in relation to the Respondent’s case on the origins of the suitcase and the monies it contained is founded on extremely limited sources, to put the point generously.

55. The Panel has considered very carefully those sources, as it is bound to do, having regarded the gravity of the charges. The Panel has paid particular attention to the evidence that is to be found in the statements of various witnesses, including in relation to their dealings with Mr. Warner.

cb) The evidence of Ms. Kanhai

56. The Panel notes the central role played by Ms. Kanhai, who was Secretary General of the CFU at the time of the Trinidad and Tobago meeting. Unlike Messrs. Warner and Blazer, she agreed to attend, and did attend the hearing and allow herself to be examined. The Panel expresses its appreciation to her for this. She also prepared two statements, one dated July 15, 2011, and the other date February 27, 2012, which was prepared for the purposes of the proceedings before the CAS panel.

57. Ms Kanhai’s statement of July 15, 2011, was made in the form of a Note to the CFU Executive:

*“On May 10, 2011 Mr Warner advised me that he had gifts, which were to be distributed to the delegates. Mr Warner did not tell me what the gifts were, but advised that they were to be distributed from the hotel that afternoon”.*

58. This statement, which was given shortly after the events in issue, makes no mention of Mr. Bin Hammam being the source of the gifts. By contrast, her statement of February 27, 2012, which

was made while the proceedings before the CAS Panel were underway and shortly before the hearing, is different. It states:

*“I was first told that there would be gifts on May 10<sup>th</sup> 2011. At the meeting on that date and around noon, Mr Warner advised me that gifts were to be distributed to the delegates. He did not describe the nature of the gifts but advised that distribution be completed, at the hotel and that very afternoon. [...] Mr Warner told me that the gifts were taken gifts from Mr Bin Hammam”.*

59. She was asked by the Panel to explain why she had failed to mention to the CFU Executive in her note of July 15, 2011, that Mr. Bin Hammam was the source of the gifts, despite the fact that the Note was prepared shortly after the date in question, but had included that information in her second statement which was made much later in time. She was unable to give a satisfactory explanation, eventually stating:

*“I didn’t want to, I didn’t remember, I really don’t know, July 15<sup>th</sup> was quite a long time ago”.*

60. When she was then asked *“So what changed between July and February to cause you to take a different view?”*, she replied *“Nothing changed”*. When pushed, she did then say:

*“I accept that there is a change, yes, because there is obviously a change”.*

61. The Panel considers Ms. Kanhai’s testimony on this point to be relevant, because her second statement appears to be the only place in the record of evidence that Mr. Warner told anyone on May 10 (as opposed to May 11) that Mr. Bin Hammam was the source of the gifts. The Panel is bound to observe that Ms. Kanhai’s second statement was made on February 27, 2012, at a time when she was unemployed, having resigned from the CFU in December 2011, and that two days after signing this second statement, on March 1, she signed a contract of employment with FIFA, the Respondent in these proceedings. It may be that the timing is entirely coincidental, but given the significance of the addition to the statement and her failure to provide a compelling (or any real) explanation for it, the Panel is bound to treat the evidence with some degree of caution. If Ms. Kanhai’s second statement is removed from the equation, there is no evidence before the Panel to show that Mr. Warner mentioned the connection between the gifts and Mr. Bin Hammam until the morning of May 11.

62. Ms Kanhai is not the only witness to have made differing or contradictory statements. There are contradictions also in Mr. Blatter’s statements. At the hearing of May 29, 2011, before the FIFA Ethics Committee, he accepted that Mr. Warner had not said that CFU members would receive money from Mr. Bin Hammam, stating specifically:

*“But we didn’t speak about that the [sic.] money is coming there – from who the money was coming”.*

63. However, just a day earlier he provided a written statement in which he stated that:

*“Jack Warner also told me that at the planned special CFU Congress, the CFU members would receive money from Mohamed Bin Hammam”.*

64. The Panel asked Mr. Blatter to clarify which of those two statements was correct. He answered as follows:

*“They may be both right, but the one the transcript gave the impression that he would receive this money, the, not he, the member association would receive some money because they need money, they need money. Speaking about the transcription of what I had said to [not audible] I said it was my understanding that this could come there but I hadn’t said express examples that it came from, it came from Mohammad bin Hammam. So the one and the other, they are not biting each other”.*

*“I had not expressed that the money was coming from Bin Hammam, would I have known at that time about that I would have disclosed this matter. I couldn’t do that”.*

65. Having regard to this explanation, and drawing his attention to it, in the present proceedings, the Panel asked Mr. Blatter to confirm that *“Mr. Warner didn’t tell you that the money was coming from Mr. Bin Hammam, did he?”*. From the response given by Mr. Blatter to that question, it was understood by the Panel to confirm the point that Mr. Warner did not tell him that the money was coming from Mr. Bin Hammam. The Panel concludes that Mr. Warner did not expressly tell Mr. Blatter that the gifts were from Mr. Bin Hammam.

66. Against this background, the Panel turns to the events of May 10 and 11 which were extensively addressed during the written pleadings, in the statements of numerous witnesses, and during the hearing.

cc) May 10

67. The events at the meeting held on the afternoon of May 10 were the subject of extensive argument and witness evidence. Two issues in particular were the subject of attention: (i) whether Mr. Bin Hammam was present at the meeting when Mr. Warner raised the issue of gifts, and (ii) what Mr. Warner said with regard to the source of the gifts. The Panel will address both points in turn.

68. The Panel has carefully examined the question of whether Mr. Bin Hammam was present in the conference room when Mr. Warner announced that the delegates could collect gifts from the boardroom. There are contradictions in the accounts of certain witnesses on this issue. Mr. Mathurin, Mr. Johnson and Ms. Angenie Kanhai were clear in their view that Mr. Bin Hammam departed after giving his speech and was not present when Mr. Warner first referred to the gifts in his speech to the delegates. Others, such as Mr. Gregory Grimes or Ms. Sonia Bien-Aime, stated that Mr. Bin Hammam may have been present when Mr. Warner made the announcement of gifts. During the hearing, Mr. Joseph said he could not remember whether Mr. Bin Hammam was present when Mr. Warner announced the gifts. Others, such as Mr. Fernando Manilal, Mr. Klass and Mr. Hinds, stated that he had not left the main table before Mr. Warner’s announcements. The Panel is unable to decide the point with absolute certainty, but is comfortably satisfied that he was not present and therefore did not hear Mr. Warner make his announcement.

69. Accordingly, there is no evidence before the Panel to indicate that Mr. Bin Hammam was aware of what Mr. Warner said about the gifts, including the source and the modalities for their distribution.

70. The Panel has been provided with mixed accounts of what Mr. Warner said at the meeting on May 10 about the source of the gifts. A small number of witnesses, such as Mr. Bernardo Faro or Mr. Egbert Lacle, provided statements indicating Mr. Warner told the attendees that Mr. Bin Hammam wanted to bring gifts of silver plates for the attendees, but they did not indicate whether that was said on May 10 or 11. Another witness, Mr. Hinds, stated in his affirmation of August 30, 2011, that after Mr. Bin Hammam's speech on May 10, Mr. Warner told the attendees that Mr. Bin Hammam had brought a gift. However, during the hearing, counsel for the Respondent invited Mr. Hinds to concentrate on what had happened and was said on May 10, rather than May 11, to be sure that he was not in confusion as to the dates. Mr. Hinds hesitated and expressed some doubts on his recollection of the facts. He later clarified that the statement on Mr. Bin Hammam having brought a gift had been made but it could have been made on May 11, and that on May 10 he may only have inferred that the gifts came from Mr. Bin Hammam. During the hearing, another witness, Mr. Forde, was questioned on the same point, as his statement of August 30, 2011, indicated that Mr. Warner had told the audience that Mr. Bin Hammam had brought a gift. He clarified that Mr. Warner did not expressly state that the gifts came from Mr. Bin Hammam, but he had simply assumed it from the context and because, during his statement, Mr. Bin Hammam had said that he would assist the national associations of CFU. Mr. Forde further clarified this recollection, stating that Mr. Bin Hammam had said that FIFA (rather than the CFU) would make more money available to confederations. The Panel concludes that Mr. Forde appears to have become confused about what was said on May 10, and what was said on May 11. Similarly, and pursuant to what has been said by other witnesses, the Panel concludes that it is likely that the statements of Mr. Faro and Mr. Lacle refer to what Mr. Warner said during the morning of May 11, as recorded in the video submitted by FIFA to the Panel.
71. Another witness, Mr. David Frederick, stated in his first affirmation, on June 16, 2011, that after Mr. Bin Hammam's speech on May 10, Mr. Warner told the attendees that Mr. Bin Hammam had a gift for each of the attendee's associations, and that these gifts could be collected from the boardroom between 3 p.m. and 5 p.m. that afternoon. The Panel notes that Mr. Frederick states in his first affirmation that he had never entered the boardroom. However, in his supplemental affirmation of August 31, 2011, he contradicts this by stating that he did meet Debbie Minguell in the boardroom. Given this inconsistency, the Panel concludes that it cannot place any real weight on his assertions as to what did or did not happen on May 10, including what may have been said.
72. Another witness, Mr. Yves Jean Bart, states in his statement of June 14, 2011, that, after Mr. Bin Hammam's speech on May 10, Mr. Warner said that Mr. Bin Hammam wanted to bring some gifts for the attendees, but his plane was too small. He also stated that Mr. Warner did not invite the attendees to go to the boardroom to pick up gifts. However, in his supplemental affirmations of August 30, 2011, he stated that: *"translation throughout the conference duration was not good and many things were difficult for me to understand. As a result, I did not fully grasp what had occurred at the conference until weeks later during the Congress in Zurich"*. For this reason, the Panel concludes that only a limited reliance may be placed on Mr. Bart's recollection of statements made by other individuals.

73. Another witness, Mr. Cheney, stated during the hearing that, when he was offered the gift, Mr. Sylvester told him that the gift came from “*the boss*”, who at the time was Mr. Warner. During the hearing, Ms. Kanhai confirmed that “*the boss*” would generally be understood to refer to Mr. Warner.
74. The Panel notes that most of the delegates who provided witness statements do not say that Mr. Warner said in his speech to delegates on May 10 that the gifts were brought by Mr. Bin Hammam. The Panel concludes to its comfortable satisfaction that, when he addressed the delegates on May 10, Mr. Warner did not state that the gifts were being offered by Mr. Bin Hammam. Rather, he indicated that the gifts were being offered by the CFU.
75. This is consistent with the evidence as to what happened in the boardroom when individual delegates came to collect their gifts later on the afternoon of May 10. Some witnesses who expressly stated that Ms. Minguell and Mr. Sylvester told them the origin of the gift, recall that they said that they were told that the gift was “*from the CFU*”. This is the case of Mr. Lunn in his statements of May 23, 2011, June 8, 2011, and February 24, 2012, and of Mr Giskus in his statement of June 1, 2011. Other witnesses do not say whether Minguell or Sylvester said where the money was coming from, but none recall having been told that afternoon that the source of the monies was Mr Bin Hammam.
76. Having regard to the totality of the record before it, the Panel concludes to its comfortable satisfaction that the evidence shows that Mr. Warner did not tell anyone that the money had come from Mr. Bin Hammam before he addressed delegates on the morning of May 11. The evidence indicates that until that time his statements indicated that the gifts were from the CFU.

cd) May 11

77. There can be no doubt that when he addressed the delegates shortly after 8.30 a.m. on the morning of May 11, in the course of an unscheduled meeting, Mr. Warner had changed his story: on this occasion he told the delegates that “*the gifts were from Mr. Bin Hammam*”. The Panel has seen for itself the extracts of the video recording of his presentation, from which a transcript has been prepared. Neither party has challenged the authenticity or accuracy of the video or the transcript.
78. The Panel notes that in the course of the hearing before the FIFA Ethics Committee held on May 29, 2011, Mr. Warner stated that Mr. Bin Hammam had never given him any money to give to CFU members, and that Mr. Warner had not promised money to any person. Mr. Warner also stated that:

*“I never went to any congress of the CFU and told members they have a gift to receive from FIFA and I found this strange to tell him so because I felt it was wrong for FIFA to use Mr Bin Hammam’s meeting to give delegates FIFA gifts but be that as it may I said, you have to receive from FIFA a laptop and a monitor and sign for having received it. I said that and you will see in your documents of course I sent you a copy of the terms I signed having received the laptop and computer. That’s the only mention I made of gift and therefore I’m saying*

*it is wrong for anybody[...]I sent President Blatter a report, an update, and I told him in the update of course how Mr Bin Hammam was grilled by members. Members who receive a bribe don't grill you. They grilled him [...] I may not have told you, but the fact is not one of them can vote at the FIFA congress, so why did Mr Bin Hammam have to give any money in any case?"*

79. The Panel notes that this statement directly contradicts the video and transcript of Mr. Warner's statement of May 11, 2011, when he said that the gifts came from Mr Bin Hammam. For this reason, amongst others, the majority of the Panel has reached the conclusion set out above with regards to Mr. Warner's detached relationship with the truth.
80. Additionally, the Panel considers that the Freeh and Collins reports did not sufficiently investigate the existence of CFU accounts to check whether the CFU had ever had enough funds to provide the cash gifts, or whether there had been cash withdrawals from these accounts. Asked about Mr. Warner sending in the previous two months two cheques totalling USD 455,000 to Mr. Blazer on a CFU account, Mr. Sealey answered that he did not know that CFU had a secret account and that he could therefore not exclude that the money came from CFU accounts.
81. The majority of the Panel notes the absence of consistent statements about Mr. Bin Hammam being the source of the monies, the fact that there is no trace of the suitcase before it was picked up by Ms. Kanhai, the lack of investigations about the CFU's accounts, and the uncertain origin of the recording containing Mr. Warner's statement of May 11, 2011. These and the other uncertainties and gaps that have been pointed out above are factors that cause the majority of the Panel to have certain doubts as to the weight of the evidence on which the charges against Mr. Bin Hammam are founded.

ce) Conclusions

82. Having regard to the considerations set out above, the Panel now sets out its conclusions with regard to the evidence before it, as concerns the events that occurred in the period leading up to and including the meeting held in Trinidad and Tobago on May 10 and 11, 2011.
83. The evidence shows that Mr. Bin Hammam invited Mr. Warner to convene a meeting of CFU members, with the purpose of offering Mr. Bin Hammam an opportunity to make a presentation to those members to persuade them of the merits of his candidacy in the forthcoming election to the FIFA Presidency. The meeting was irregular, in the sense that it was not scheduled, the only item on the agenda was there placed for the purposes of one of the candidates for the FIFA Presidency, and that candidate paid for the costs of the meeting, including all of the travelling and accommodation expenses of the CFU members present.
84. The evidence also shows, to the comfortable satisfaction of the Panel, that on the second day of the meeting Mr. Warner arranged for each of the members present to be offered a personal gift of USD 40,000. When he announced that gift, on the afternoon of May 10, when Mr. Bin Hammam was not present in the meeting room, Mr. Warner said that the gift was from the

CFU. When the members present collected their gift, on the afternoon of May 10, they were told it was from the CFU. The following morning, at an impromptu meeting called at 8.30 a.m. on May 11, without the benefit of translation, Mr. Warner changed his story, telling those present that the gift was from Mr. Bin Hammam, an account that, according to the evidence, he had not previously given to any person. The Panel is unable to establish why Mr. Warner changed his story, although it appears that one or more communications from Mr. Blazer – in the form of an email sent by him to Mr. Warner at some point on May 10 (see above) – may have been the catalyst for the calling of the impromptu meeting and the changed account of the source of the gift.

85. From these bare facts, the FIFA Ethics Committee and then the FIFA Appeal Committee concluded that Mr. Bin Hammam was the source of the money that comprised the gift, and that it was offered by him to induce the members present to vote for his candidacy in the FIFA Presidential election. The Panel accepts that this is one possible interpretation of the facts, and that it may even be the most plausible explanation. However, for the majority of the Panel, it is one that is constructed entirely on circumstantial evidence, having regard to the obvious motive that Mr. Bin Hammam might have had for these actions. The fact remains that the Panel has not been presented with any direct evidence to link Mr. Bin Hammam with the money's physical presence in Trinidad and Tobago, its transfer in a suitcase or otherwise to Mr. Warner, and its subsequent offer to the CFU members for the purpose of inducing them to vote for him.
86. It is possible to construct alternatives scenarios. The Panel considers it to be more likely than not that Mr. Bin Hammam was the source of the money: the Panel regrets that no efforts were made to trace the source of those banknotes that were photographed, and recognises that it is possible to infer that the failure of Mr. Bin Hammam to carry out that relatively simple exercise in the course of these proceedings might be explained by the fact that it would have confirmed that he was the source. The Panel notes, too, the statement that he made to the FIFA Ethics Committee (see above), when he denied that he had made gifts or offered bribes but adopted a formulation that might nevertheless accommodate the possibility that he was the source of the monies when they entered Trinidad and Tobago.
87. The Panel further concludes that it is more likely than not that Mr. Bin Hammam gave the money, assuming him to be the source, to Mr. Warner. But even if both these elements are established to the comfortable satisfaction of the majority of the Panel, it is not, as such, sufficient to establish a violation of the FCE in respect of the charge made against Mr. Bin Hammam. It would also have to be established to the majority of the Panel's comfortable satisfaction that the monies were then passed on, through the conduit of Mr. Warner, to the CFU members as a bribe from Mr. Bin Hammam for the purposes of inducing those members to vote for him in the FIFA Presidential election. If Mr. Bin Hammam had been in the room when the gifts were announced, and if they had been announced by Mr. Warner as originating from him (or they had been offered with Mr. Hammam as the source in the boardroom when the monies were being collected), then the evidence might be said to point the same conclusions as those reached by the FIFA Ethics and Appeal Committees. But that is not the evidence before the Panel.

88. The evidence before the Panel allows, according to the majority of the Panel, other scenarios to be imagined or constructed. It cannot be excluded, for example, that Mr. Bin Hammam gave the money to Mr. Warner as a token of appreciation for setting up the meeting, or perhaps for some assistance given in the past on another matter. In such circumstances, the possibility cannot be excluded that Mr. Warner subsequently decided to pass on some or all of the money to the members of the CFU, to curry further favour with them, and that Mr. Bin Hammam may not even have known that this occurred.
89. The possibility also cannot be entirely excluded that there was another source of money, other than Mr. Bin Hammam. Whilst the Panel considers this to be unlikely, there is ample evidence that Mr. Warner ran a secret USD bank account in which he co-mingled CFU and personal funds, and that two cheques were drawn on this account in the sum of USD 455,000 and paid to Mr. Blazer just a few weeks before the events in Trinidad and Tobago (there is no evidence that any accounting or explanation has been given to the CFU of the reasons for these large payments).
90. The Panel does not raise these possibilities for the purpose of indicating whether any of them is more or less likely. The simple point is that in the absence of any direct evidence, for the majority of the Panel other scenarios than the one constructed and concluded by the FIFA Ethics and Appeal Committees are easily and plausibly identified.
91. It is against this background too that the change in Mr. Warner's account, as well as the small but very significant addition that was made by Ms Kanhai in her second statement, raise concerns for the Panel.
92. It is readily apparent that the investigation carried out by FIFA was neither thorough in respect of the matters that it did address, nor comprehensive in its scope. Of great concern to the Panel is the decision by FIFA to terminate the investigation of Mr. Warner when he resigned from FIFA (see FIFA press release quoted above).
93. The Panel is bound to note that there was apparently no requirement to close those FIFA Ethics Committee procedures, as it is plain to it that FIFA would continue to be able to exercise jurisdiction over acts occurring whilst Mr. Warner was a FIFA official. Mr. Warner is at the heart of the events of May 10 and 11, and there is every possibility that if the FIFA investigations of Mr. Warner had continued at least some of the missing facts that have hampered the work of this Panel – facts that go to the heart of the gaps in the events - might have been clearly established, one way or the other. By closing the Ethics Committee procedures, FIFA disabled itself from pursuing a proper, thorough and complete investigation of Mr. Bin Hammam's role in the matters that give rise to these proceedings. In effect, the paucity of the evidence is connected to FIFA's own actions and inactions. In this regard, the Panel notes that Mr. Blatter declined to answer its questions concerning the circumstances of Mr. Warner's resignation and the termination of disciplinary proceedings against him, as well as the relationship between these two events.

94. Accordingly, on the basis of the foregoing considerations and the evidence before it, the majority of the Panel is unable to conclude to its comfortable satisfaction that the charges against Mr. Bin Hammam are established.
95. The Panel wishes to make clear that this conclusion should not be taken to diminish the significance of its finding that it is more likely than not that Mr. Bin Hammam was the source of the monies that were brought into Trinidad and Tobago and eventually distributed at the meeting by Mr. Warner, and that in this way, his conduct, in collaboration with and most likely induced by Mr. Warner, may not have complied with the highest ethical standards that should govern the world of football and other sports. This is all the more so at the elevated levels of football governance at which individuals such as Mr. Bin Hammam and Mr. Warner have operated in the past. The Panel therefore wishes to make clear that in applying the law, as it is required to do under the CAS Code, it is not making any sort of affirmative finding of innocence in relation to Mr. Bin Hammam. The Panel is doing no more than concluding that the evidence is insufficient in that it does not permit the majority of the Panel to reach the standard of comfortable satisfaction in relation to the matters on which the Appellant was charged. It is a situation of "*case not proven*", coupled with concern on the part of the Panel that the FIFA investigation was not complete or comprehensive enough to fill the gaps in the record.

## Decision

96. The Panel concludes, by majority, that it is not convinced to the standard of "*comfortable satisfaction*" that Mr. Bin Hammam made monies available to delegates attending the CFU meeting held in Trinidad and Tobago on May 10 and 11, 2011, for the purposes of inducing them to vote for him in the election for the Presidency of FIFA.
97. It follows, for the reasons set out above, that the Panel concludes, by majority, that the charges against Mr. Bin Hammam in relation to Article 3(1), (2) and (3) (General Rules), Article 9(1) (Loyalty and confidentiality) and Article 10(2) (Accepting and giving gifts and other benefits) of the FCE, since they are based on the same facts, are also not well founded, on the basis of the limited evidence relied upon by FIFA.
98. The Panel therefore annuls the Decision issued by the FIFA Appeal Committee on September 15, 2011 and lifts the life ban with immediate effect.
99. By lifting the ban of Mr Bin Hammam, the Panel does not necessarily consider that this matter is concluded. FIFA is about to set up two new ethics committees, one to undertake investigations, and the other to adjudicate cases that may follow an investigation. In the event new evidence relating to the present case is discovered and without prejudice to the principle of *res judicata* and other principles of applicable law, it would still be possible to re-open this case, in order to complete the factual background properly and to determine if Mr. Bin Hammam has committed any violation of the FCE.

**The Court of Arbitration for Sport:**

1. Upholds the appeal filed by Mohamed Bin Hammam on November 9, 2011;
2. Annuls the Decision of the FIFA Appeal Committee adopted on September 15, 2011;
3. Lifts the life ban imposed on Mohamed Bin Hammam with immediate effect;
4. (...)
5. Dismisses all other requests, motions or prayers for relief.