

# Decision of the Adjudicatory Chamber of the Ethics Committee

Taken on 2 February 2021

## COMPOSITION:

Vassilios Skouris, Greece (Chairman)

Mohammad Al Kamali, UAE (Member)

Melchior Wathelet, Belgium (Member)

## PARTY:

Mr Franz Beckenbauer,

Germany

Regarding an infringement of the FIFA Code of Ethics (adj. ref. no. 01/2020)

## I. FACTS OF THE CASE

### A. PROCEEDINGS BEFORE THE INVESTIGATORY CHAMBER

#### a) Procedural background

##### 1. Preliminary investigation and opening of proceedings

1. Mr Franz Beckenbauer ("Mr Beckenbauer") has held various functions as a football official at national and international level over time, among which: President of the football club Bayern Munich, Vice-President of the German Football Federation ("DFB") and member of the FIFA Executive Committee (2007 – 2011). He has also served as Chairman of the World Cup Organising Committee for the 2006 FIFA World Cup in Germany (hereafter "WC OC") between 2000 and 2006.
2. On 16 October 2015, the German magazine Der Spiegel published a story about possible irregularities related to the 2006 FIFA World Cup in Germany, alleging that the German bid likely used a slush fund of EUR 6.7 million to buy votes for the awarding of the event.
3. In November 2015, both Germany and Switzerland opened criminal and tax evasion investigations. The Frankfurt Prosecutor's Office informed that it had initiated a tax evasion investigation connected to the 2006 FIFA World Cup. The suspects in the criminal proceedings were Wolfgang Niersbach, Theo Zwanziger and Horst R Schmidt.
4. Likewise, the Office of the Attorney General of Switzerland ("OAG") opened criminal proceedings on 6 November 2015, in relation to allegations of fraud, criminal mismanagement, money laundering and misappropriation. The accused in the criminal proceedings were: Wolfgang Niersbach, Theo Zwanziger, Horst R Schmidt and Mr Beckenbauer.
5. Consequently, the DFB asked the law firm [Law Firm 1] to investigate the matter and, on 4 March 2016, [Law Firm 1] issued its investigation report concerning the bidding and the organization of the 2006 FIFA World Cup Germany.
6. On 22 March 2016, the Chairperson of the investigatory chamber at the time, Dr. Cornel Borbély, concluded that based on the information and documentation obtained throughout the preliminary investigation, there was a prima facie case that Mr Beckenbauer had committed violations of the FIFA Code of Ethics ("FCE"). Investigation proceedings were initiated and Mr Beckenbauer was informed accordingly on 22 March 2016.

##### 2. Communications with the party

7. Between 22 March 2016 and 21 August 2018, the investigatory chamber exchanged several communications with Mr Beckenbauer requesting him to submit a statement and documentary evidence regarding the allegations. However, Mr Beckenbauer invoked his right to silence and refused to provide the investigatory chamber with any written or oral statement. In addition, Mr Beckenbauer refused to attend the interviews arranged by the investigatory chamber on three occasions, alleging that he had recently had an open-heart surgery and was suffering from several medical conditions. Mr Beckenbauer provided a medical certificate in that respect.

8. On 20 September 2016, the Deputy Chairman of the investigatory chamber of the FIFA Ethics Committee at the time, Mr. Djimrabaye Bourngar, imposed a warning on Mr Beckenbauer, as a sanction of his refusal to cooperate, in breach of art. 41 of the FCE 2012.
9. On 14 October 2016, the investigatory chamber sent a written questionnaire to Mr Beckenbauer regarding the 2006 FIFA World Cup, which he refused to fill out, arguing that there was a conflict of laws between the criminal and the Ethics proceedings. Mr Beckenbauer ultimately agreed to complete the questionnaire after the investigatory chamber clarified that the Ethics proceedings were independent from any other kind of proceedings and urged him to cooperate.
10. Finally, on 30 July 2018, the investigatory chamber requested Mr Beckenbauer's bank statements corresponding to the years 2008 and 2009, which he refused to provide.

**b) Factual findings of the investigatory chamber**

**1. DFB's application for hosting the 2006 FIFA World Cup and its supporters**

11. The 2006 World Cup Application Committee was established in 1997 with the main responsibility of receiving applications from the Member Associations interested in hosting such competition. On 10 August 1999, the DFB provided FIFA with its official application dossier. Among the supporters from the world of business, [Company 1] played a special part. [Company 1], under the management of its chief executive officer (CEO), [A], provided DM 4 million of sponsorship as well as other services for the DFB's application to host the 2006 World Cup. The German manufacturer of sports apparel and accessories has been cooperating with the DFB for over 50 years and is the main supplier of such items to the DFB. Additionally, [Company 1] has since 2002 held 10% of the shares in FC Bayern München AG.
12. The [Company 2] also offered the DFB their support for the German bid for the 2006 World Cup. The television and broadcasting rights for the 2006 World Cup were presumably acquired at the start of the bidding phase by the [Company 3] and [Company 2] and ended up being completely owned by the [Company 2]. After [Company 2] announced its insolvency on 8 April 2002, a group of investors associated with [B] acquired the shares in [Company 2] and thus the associated sports rights, especially the TV rights for the 2006 World Cup. In 2003 [Company 2] was renamed [Company 4] and [A] became [Company 4]'s CEO.

**2. Awarding of the 2006 FIFA World Cup, creation of the WC OC and negotiations for FIFA financial contribution**

13. On 6 July 2000, the FIFA Executive Committee in Zürich voted on the candidate to which the 2006 World Cup should be awarded, and finally elected the DFB as the hosting association.
14. On 29 January 2001, FIFA and DFB entered into the Organising Association Agreement ("hereafter OAA"), which obliged the DFB to establish the WC OC, an internal fully dependent and controlled division of the DFB that was entrusted with the organising of the 2006 FIFA World Cup Germany. The WC OC was headed by the presidium comprised

of four members, namely Messrs. Franz Beckenbauer as Chairman, Horst R. Schmidt, Wolfgang Niersbach and Fedor Radmann, who was replaced by Mr Zwanziger as from June 2003.

15. In light of the tense financial situation of the WC OC, Messrs. Beckenbauer and Schmidt started negotiations with FIFA for the granting of a financial contribution. In a letter from July 2001 to Mr Joseph S. Blatter, then FIFA president, Messrs. Beckenbauer and Schmidt, described the urgent need for a financial contribution from FIFA in order to hold the 2006 World Cup in Germany: *"We greatly urge you to authorize an appropriate amount of financial support out of the central marketing revenues of FIFA, including for the sake of reliable planning. For us, it is a matter of a guaranteed amount that will allow us to make appropriate plans and that basically corresponds to the procedure defined by FIFA for the 2002 World Cup. It is of considerable importance for the 2006 German World Cup OC to be able to draw on certain installments already in the current year 2001."*
16. On 13 December 2001, Messrs. Beckenbauer, Schmidt, Blatter and Linsi held a meeting at the FIFA headquarters in Zurich to discuss the financial situation of the WC OC. According to Mr Schmidt's statements, Messrs. Beckenbauer and Blatter had a private "man-to-man talk", and when they returned to the meeting room, Mr Blatter said something to the effect that progress was being made on the question of the contribution. Mr Beckenbauer then added that all that was missing was an agreement with the FIFA Finance Committee.
17. Following the meeting, there was apparently a consensus that FIFA would give a financial contribution to the WC OC. On 17 December 2001, a meeting of the WC OC's Executive Board took place, attended by Messrs. Beckenbauer, Schmidt, Radmann and Niersbach. The minutes of such meeting recorded that, the "announced financial aid" would include a contribution "of at least CHF 150 million".
18. Moreover, according to the [Law Firm 1] report, it appears that a second meeting was held in January 2002 between Messrs. Beckenbauer and Blatter to further discuss the financial contribution and that, following such second meeting, the contribution to be received by DFB was set to CHF 250 million (EUR 170 million).
19. On 3 May 2002, the FIFA Executive Committee approved a contribution in the amount of CHF 250 million, in order to provide the WC OC with the necessary liquidity to commence operations, based on a mutual exploitation of marketing rights.
20. On 8 May 2002, FIFA and DFB entered into an amendment agreement to the OAA providing for a CHF 250 million guarantee by FIFA on the net revenue from the 2006 FIFA World Cup Germany. The CHF 250 million contribution was scheduled to be paid by FIFA in six instalments over a period of five years as follows:
  - An amount of CHF 25 million on 7 May 2002;
  - An amount of CHF 31 million on 30 June 2003;
  - An amount of CHF 25 million on 2 July 2004;
  - An amount of CHF 25 million on 14 October 2005;

- An amount of CHF 25 million on 28 April 2006;
- An amount of CHF 25 million on 9 August 2006 (a month after the end of the 2006 FIFA World Cup).

### 3. Payments to [Company 5], loan from [A]

21. According to the [Law Firm 1] report, a demand for CHF 10 million was made to the WC OC during discussions with the FIFA Finance Committee, to be transferred to the latter in return for the FIFA financial contribution of CHF 250 million.
22. According to Mr Beckenbauer (during his [Law Firm 1] interview and his interrogation by the public prosecutor's office of Frankfurt am Main on 4 May 2016), Mr Blatter mentioned, in the private discussion on 13 December 2001 in Zurich, that a potential financial contribution of FIFA would have to be discussed with the FIFA Finance Committee. According to Mr Radmann (in his interrogation by the OAG on 28 April 2018), it was decided to approach Mr Bin Hammam, who was then one of the members of the FIFA Finance Committee as, Mr Julio Grondona, then chairman of the FIFA Finance Committee, only spoke Spanish. As admitted by both Messrs Beckenbauer and Radmann, the latter was asked by the former to contact Mr Bin Hammam. Mr Radmann testified that, after the initial contact, he was informed by Mr Bin Hammam (or someone on his behalf) that the financial contribution from FIFA was dependent on a payment of CHF 10 million, information which he transmitted to Mr Beckenbauer. The CHF 10 million was understood by Messrs Beckenbauer and Radmann as a commission.
23. Mr Beckenbauer agreed to pay the amount of CHF 10 million and, after approaching the then president of the DFB (Mr Mayer-Vorfelder) who declined, he assumed to make the payment from his own funds, with the help of his manager and advisor [D].
24. The amount of CHF 6 million was then paid from a joint bank account of Messrs Beckenbauer and [D] to an account of [C], partner of the Swiss law firm [Law Firm 2], as follows:
  - CHF 1,950,000 on 29 May 2002;
  - CHF 1,500,000 on 7 June 2002;
  - CHF 1,550,000 on 19 June 2002; and
  - CHF 1,000,000 on 8 July 2002.
25. The purpose of each instalment was designated "Purchase of TV and marketing rights Asian Games 2006". Each of the above payments was then transferred from the account of [C] to the account of [Company 5] in Qatar, including the payment reference "Asian Games 2006".
26. Furthermore, according to the [Law Firm 1] report, [D] established a link with [A] (former CEO of [Company 1]), who agreed to assist on transfer the CHF 10 million to the FIFA Finance Committee. In addition, a borrower's note was issued in the name of Mr Beckenbauer.

27. On 16 August 2002, about a month after the fourth instalment had been transferred to [Company 5], [A] transferred the amount of CHF 10 million from his [Bank 2] account in Zurich to the account of [C]. From this amount, approximately CHF 6 million were reimbursed to Mr Beckenbauer on 3 September 2002 (for his initial payments to [Company 5]), while the remaining amount of CHF 4 million was finally paid to [Company 5] on 5 September 2002 with the stated purpose "Final Payment for Asian Games 2006".
28. In summary, an amount of CHF 10 million was transferred to [Company 5] by or on behalf of Mr Beckenbauer between May – September 2002, with [A] loaning/financing such payment.

#### **4. Reimbursement of loan from [A]**

29. According to statements made by Messrs. Zwanziger and Schmidt during their interrogation with the public prosecutor's office of Frankfurt am Main, Mr Schmidt was informed by [B] in August 2003 that, [A] has previously granted a loan to the WC OC in the amount of CHF 10 million and requested repayment of such loan.
30. In his interview by the investigatory chamber, Mr Zwanziger stated that in the summer of 2003 he only knew that there was a debt owed by Mr Beckenbauer in favour of [A] for a commission paid to the FIFA Finance Committee for granting the financial contribution of CHF 250 million. However, Mr Zwanziger manifested that he was not aware of any bribe or kickback, but only of a "commission" which needed to be paid.
31. Mr Zwanziger also testified that the loan from [A] was a subject the WC OC members discussed frequently and that they came with the idea to seek for a waiver of the debt ["an amicable solution"], convincing Mr Schmidt to arrange a meeting with [A] in that sense.
32. On 14 August 2003, Messrs. Schmidt and Zwanziger met with [A] and explained that it was, from an accounting perspective, rather delicate for the DFB to repay such loan. However, [A] made clear that, he wanted the debt to be paid including the interests that this has generated (for a total of CHF 10,3 million).
33. Mr Schmidt stated (in his interrogation by the public prosecutor's office of Frankfurt am Main) that that the loan from [A] was taken out by Mr Beckenbauer on behalf and for the benefit of the WC OC, and therefore, it was the WC OC's responsibility to pay it back. It was then agreed by Messrs Zwanziger and Schmidt that a solution had to be found with FIFA to repay such loan.
34. On 23 November 2004, a few days after a meeting in Zurich between FIFA and WC OC members, including Messrs Schmidt and Radmann, FIFA sent a fax to DFB with the reference "Contribution to FIFA Germany 2006 Football World Cup Culture Program" (bearing the WC OC logo), which amounted to a draft version of a payment instruction, for which the recipients had not yet been entered and the contents of which still needed to be revised. The fax included handwritten notes from Mr Niersbach ("we are pleased to transfer to you the agreed fee for [...] with a request for forwarding to the following account" – the abbreviation "[...]" presumably standing for "Herr [A]") and from Mr Schmidt (the question "account number holder?" next to the column "Bank & account number: [tbd]" and the comment "borrower's note back").

35. Upon request by Mr Schmidt, on 23 March 2005, Mr Hans, the Head of the Finance and Logistic Division within the WC OC, prepared a proposal for the April 2005 meeting of the WC OC Executive Board, reporting a request by FIFA for joint financing/subsidy from the 2006 WC OC for the kick-off event – FIFA Football Gala – amounting to EUR 7 million. Mr Hans declared that he never saw any request from FIFA for shared costs related to the Gala and that he had initially heard about the EUR 7 million from Mr Schmidt, who also had specified the amount.
36. The proposal was subsequently discussed at the WC OC Executive Board meeting held on 7 April 2005. Mr Schmidt informed the WC OC Executive Board about "the suggestion by FIFA for a cost contribution from the OC" and Mr Zwanziger also referred to the fact that FIFA had generously agreed to the planning of EUR 12 million for cultural activities when drawing up the budget for the WC OC and that "it would be possible to use this item". The WC OC Executive Board resolved to approve this request by FIFA, while imposing a cap of EUR 7 million.
37. Later, Mr Hans drew up a similar proposal to be tabled at the meeting of the WC OC Executive Committee of 8 April 2005 in Cologne, which contained the following proposed resolution: "The OC Executive committee consents to the provision of 7 million for the FIFA Football Gala".
38. Following the meetings of the WC OC Executive Board and the Executive Committee, Messrs. Zwanziger and Schmidt informed FIFA by letter of 19 April 2005, that an amount of EUR 6.7 million would be transferred. According to Mr Zwanziger, the EUR 6,7 million amount corresponded to CHF 10,3 million, the exact amount that [A] reclaimed, which made it clear to him that "there had to be a connection to the [A] loan".
39. Through the letter dated 19 April 2005, which was addressed to Mr Linsi (then FIFA General Secretary), Messrs. Schmidt and Zwanziger informed FIFA that an amount of EUR 6.7 million would be transferred "For the account of [...]". Since the account information was not correct or intended, on the same day FIFA sent a fax to the WC OC containing the FIFA account details.
40. The transfer of EUR 6.7 million was made on 27 April 2005 from an account held by the WC OC into the FIFA account specified at [Bank 1] in Zurich, with the payment reference "Cost sharing LOC FIFA football gala". The exact identical amount was then transferred on the same day from FIFA's account to the account with [Bank 2] (account no. [...]) specifying "FIFA World Cup Germany 2006". According to the [Law Firm 1] investigation, this amount was consequently credited on 29 April 2005 into an account held at that bank designated "[...] [A] F.B.". It would therefore appear that the account designated "[...]: [A] F.B.", was only used for the purpose of: 1) granting the loan of CHF 10 million to Mr Beckenbauer; and 2) receiving the reimbursement of the said loan from the WC OC (through FIFA's account).
41. The 2006 World Cup Gala was eventually cancelled in January 2006 due to insufficient ticket sales and organizational problems. The total expenses paid by FIFA, including the expenses previously paid by the German government, in relation to this event amounted to EUR 9.9 million. However, in all of the documentary evidence in connection to the funding of the Gala, there is no recollection or record of the EUR 6.7 million transferred



by the WC OC to FIFA. This amount was never considered in the financial accounts for the referred event.

**c) Conclusions of the investigatory chamber**

42. After the careful analysis of the gathered information and documentation at its disposal, the investigatory chamber concluded that Mr Beckenbauer had breached articles 1 para. 1, 2, 5, 6, 7, 8, 9 para. 1 and 10 of the FCE 2004.

## **B. PROCEEDINGS BEFORE THE ADJUDICATORY CHAMBER**

**a) Opening of adjudicatory proceedings and communications with the party**

43. On 14 January 2020, Mr Beckenbauer was informed that the adjudicatory chamber had opened proceedings against him based on the investigatory chamber's Final Report as per art. 68 par. 3 of the FCE. Between January and December 2020, the adjudicatory chamber and Mr Beckenbauer's legal representatives exchanged several emails and documents, the most relevant of which are summarized below.
44. On 3 February 2020, Mr Beckenbauer requested that the proceedings be closed due, inter alia, to his alleged inability to stand trial, which prompted a suspension of the deadlines imposed on him, while the adjudicatory chamber assessed his health situation. In that sense, a letter was sent to him on 13 February, asking Mr Beckenbauer to clarify certain aspects of his alleged inability to stand trial, especially in the light of his participation in various public events.
45. On 18 March 2020, Mr Beckenbauer forwarded a medical certificate and a letter of the Federal Prosecutor's office to support his claim. However, on 24 November 2020, the adjudicatory chamber decided to resume the proceedings and to ask Mr Beckenbauer for his position on the merits.
46. On 13 November 2020, the adjudicatory chamber was made aware by Mr Schmidt's legal representative that the DFB President Fritz Keller informed Mr Beckenbauer of the fact that, an investigation by the firm [Company 6] (hired by the DFB), had found nothing incriminating concerning Mr Beckenbauer's activity in relation to the 2006 World Cup. It was therefore requested that the DFB be ordered to present its position, since in case Mr Beckenbauer was exonerated, this would also exonerate the other members of the WC OC.
47. On 1 December 2020, Mr Beckenbauer raised an objection as to the completeness of the file. He was granted an extension of deadline to submit his position and informed that the proceedings would continue despite his objections on 9 December 2020.

**b) Summary of Mr Beckenbauer's written position to the adjudicatory chamber**

48. On 18 December 2020, Mr Beckenbauer submitted his position to the adjudicatory chamber, in which he stated essentially the following:



- a) The Ethics proceedings conducted by FIFA should be closed due to his alleged inability to stand trial, which he had formulated in his letters dated 14 April 2016 and 3 February 2020;
- b) The facts and conducts presented by the investigatory chamber are time-barred. In that sense, setting 9 August 2006 (i.e., FIFA's last payment to the WC OC) as the relevant date for the limitation period is designed to circumvent the existing limitation period provisions since no act or omission whatsoever has been attributed to him in 2006 but rather in 2002 and the financial contribution provided by FIFA to the DFB was and is lawful;
- c) The actions of Mr Beckenbauer considered to be relevant by the investigatory chamber took place in 2002, when FIFA's regulations did not contain any reference to the offence of bribery;
- d) Given the absence of a specific provision regarding the limitation period for prosecution, art. 60 par. 1 of the Swiss Code of Obligations is applicable and provides a ten-year limitation period.
- e) The legal criteria for the offence of bribery are not fulfilled because in this case the benefit was given for a lawful act (i.e., FIFA contribution), and Mr Bin Hammam's request for a payment to be made to him personally does not make FIFA's financial contribution unlawful;
- f) The statements of Mr Bin Hammam, the payee in this case, are missing;
- g) The first instalment of the FIFA contribution was paid on 7 May 2002 and thus before the first payment to [Company 5] in early June 2002;
- h) Lastly, Mr Beckenbauer asked to be provided with the full case file, including communications exchanged by FIFA with external entities and internally.

## **II. CONSIDERATIONS OF THE ADJUDICATORY CHAMBER**

### **A. COMPETENCE AND APPLICABLE LAW**

#### **a) Competence**

49. Art. 30 of the FCE defines a primary (par. 1) and subsidiary (par. 2) competence of the FIFA Ethics Committee. According to the first paragraph of the said article, if the relevant conduct has been committed by an individual elected, appointed or assigned by FIFA to exercise a function, the Ethics Committee shall be entitled to investigate and judge the matter.
50. Mr Beckenbauer was officiating as Chairman of the WC OC for the 2006 FIFA World Cup in Germany between 12 December 2000 and 27 November 2006. Mr Beckenbauer is also the former President of the football club Bayern Munich, the former DFB Vice-President, and was, from 31 May 2007 to 1 June 2011, a member of the FIFA Executive Committee.

51. Moreover, the 2006 FIFA World Cup in Germany was a competition financed with FIFA funds totaling CHF 250 million and Mr Beckenbauer was the Chairman of the WC OC, the body in charge of managing these funds and deliver the 2006 FIFA World Cup.
52. Consequently, the Ethics Committee has the exclusive competence to investigate the present case under art. 30 par. 1 of the FCE.

**b) Applicability of the FCE *ratione materiae***

53. The adjudicatory chamber notes that, according to the Final Report of the investigatory chamber, there are several indications of potential improper conduct in terms of the FCE by Mr Beckenbauer.
54. Consequently, the FCE is applicable to the case according to art. 1 of the FCE (*ratione materiae*).

**c) Applicability of the FCE *ratione personae***

55. According to art. 2 of the FCE, the Code shall apply, inter alia, to “officials”, as per the definitions section in the FCE and FIFA Statutes.
56. By virtue of his position as Chairman of the WC OC for the 2006 FIFA World Cup in Germany, Mr Beckenbauer was an official within the meaning of the definition given in the FCE and the FIFA Statutes during the period presently relevant.
57. As a consequence, at the time the relevant actions and events occurred, and in view of Mr Beckenbauer’s position in football at the time, the FCE applies to him according to art. 2 of the FCE (*ratione personae*).

**d) Applicability of the FCE *ratione temporis***

58. The relevant facts described in previous sections of this decision occurred between 2001 and 2006 (conduct related to the charge of bribery and corruption), as well as in 2016 and 2018 (conduct related to the charge of failure to cooperate).
59. With regard to the applicability of the FCE in time, art. 3 of the FCE stipulates that the (current) FCE shall apply to conduct whenever it occurred, unless a more favorable provision was in force at the time of the facts (principle of *lex mitior*).
60. In the present case, the legal provisions of the respective articles are deemed equivalent in the various editions of the FCE (i.e. 2004, 2006, 2009, 2012, 2018, 2019, and 2020).
61. In this context, following the relevant case law and jurisprudence, the adjudicatory chamber notes that the spirit and intent of the 2004 and 2020 editions of the FCE are duly reflected in the below articles of the FCE, which contain equivalent provisions.
  - Art. 18 of the FCE (Duty to cooperate) has a corresponding provision in the 2012 edition of the Code (art.18);
  - Art. 27 (Bribery and corruption) has a corresponding provision in the 2004 FCE (art. 7).

87. In consideration of all the above, the adjudicatory chamber concludes that the different FCE editions cover the same offence.

### **Lex mitior**

62. The principle of *lex mitior* foresees that the accused should benefit from the most favourable law, imposing the lesser penalty.
63. With respect to the breach of duty to cooperate (art. 18), the adjudicatory chamber takes note that the 2012 FCE does not foresee any minimum or maximum sanction for the aforementioned provision. However, the current FCE stipulates a minimum fine of CHF 10,000 as well as a general maximum ban for a duration of two years for the relevant infringement. Therefore, it would appear that the current FCE would be more favorable to the accused.
64. In what concerns the violation of bribery and corruption, the 2004 FCE, as well as the 2006, 2009 and 2012 editions, do not foresee any minimum or maximum sanction, whereas the 2018, 2019 and the current FCE provide for a minimum fine of CHF 100,000, as well as a minimum ban of five years. However, art. 3 of the FCE specifically states that the only reason not to apply the current FCE, including to conducts that occurred prior to its entry into force, is when it contains a maximum sanction that is higher than the one contemplated in the then applicable FCE. This is not the case in the present proceedings since no maximum sanction was ever specifically contemplated for a breach of bribery. In view of the above, the adjudicatory chamber will also apply the 2020 FCE in relation to the charge of bribery and corruption.
65. Consequently, the material rules of the current (2020) FCE are applicable to the case, according to art. 3 of the FCE (*ratione temporis*), and in accordance with the principle of *lex mitior*.

## **B. PROCEDURAL ISSUES**

### **a) Capacity to stand trial**

#### **1. Claims of Mr Beckenbauer and medical certificates provided**

66. In his submission of 3 February 2020, Mr Beckenbauer's legal representative claimed the following:

*"for health reasons, Mr Beckenbauer is in no way fit to answer questions or able to stand trial, and for that reason alone he cannot exercise his right to submit a request under art. 69 par. 1 of the FIFA Code of Ethics. As he is unfit to stand trial, it is also clear that no written proceedings may be conducted either. Rather, the proceedings against Mr Beckenbauer should be closed due to his permanent inability to stand trial."*

67. In support of his claim, the legal representative referred to the previous criminal proceedings before Swiss authorities against Mr Beckenbauer. In the scope of such proceedings (closed in April 2020 due to limitation period for prosecution), Mr Beckenbauer's defense had already raised the matter of Mr Beckenbauer's health conditions and submitted a doctor's certificate in this respect. The legal representative claimed that in August 2019 the OAG decided to separate the criminal proceedings

against Mr Beckenbauer, from other proceedings against Messrs Zwanziger, Niersbach, Schmidt and Linsi, due to his inability to stand trial. It is also claimed that, at the time, FIFA - as party to such proceedings - agreed with the respective decision of separation.

68. Mr Beckenbauer's submission also referred to and enclosed an expert opinion dated 16 December 2019 (originally submitted in the scope of the above-mentioned criminal proceedings). It should be stressed that the relevant document was provided and signed by two cardiologists ([E] and [F]) from the medical clinic "[Clinic 1]" in Munich, where Mr Beckenbauer had received medical services, in other words by his treating doctors. There is no element that would indicate that Mr Beckenbauer underwent an independent medical evaluation by a specialist doctor prescribed/mandated by the relevant authorities.
69. Shortly after receipt of Mr Beckenbauer's submission of 3 February 2020, the adjudicatory chamber was made aware of the fact that the accused had participated, on 25 January 2020, in a public and official event in Salzburg (elections in the Salzburg Regional Football Association), as mentioned in an official release from the website of the relevant organization holding the event (Salzburg Regional Football Association), which include photos in this respect. Mr Beckenbauer was therefore asked to provide clarifications regarding his health status at the time.
70. On 20 February 2020, the legal representative of Mr Beckenbauer confirmed the latter's participation and on 18 March 2020, he provided a medical certificate from dated 12 March 2020, which had been submitted to the OAG in the scope of the Swiss criminal proceedings, in response to a list of questions issued by the OAG on 27 November 2019. According to the medical certificate:
  - a) Mr Beckenbauer had been treated at the respective clinic between 17 and 21 February 2020 and he continued "to exhibit clear symptoms of a neurodegenerative disease with evident mnemonic disorders. Numerous executive functions have also been clearly affected. Since his previous stay in June 2019, Mr Beckenbauer has undergone two operations as well as an intravascular stent application."
  - b) Mr Beckenbauer is suffering from a progressive neurodegenerative disease with mnemonic disorders.
  - c) The disease is progressive and there is no expectation of a notable improvement – rather, it is more likely that the neurological symptoms will increase over a period of months or even years.
  - d) Mr Beckenbauer is not in a position to participate in lengthy oral questioning or proceedings. There is also no reason to assume that he could follow or understand the essence of the procedure of oral questioning or proceedings. Due to his mnemonic disorders, the patient would not be able to provide a rational opinion on the accusations against him. He would also not be in a position to respond to questions about the facts of the case. Because of his existing mnemonic disorders, he would not be able to give an account of key facts.
  - e) From a neurological perspective, the inability to answer questions or to stand trial is permanent. Mr Beckenbauer's inability to answer questions or to stand trial is not his fault.

- f) Due to Mr Beckenbauer's neurological disease, it can be assumed that he is currently unable to answer questions or to stand trial, nor will he be able to do so in future.

## **2. Activity of Mr Beckenbauer in the recent months, participation in events and interviews**

71. Between July and October 2020, Mr Beckenbauer took part in various public events (related to the 30<sup>th</sup> anniversary of the German football national team's win of the 1990 FIFA World Cup, or to Mr Beckenbauer's 75<sup>th</sup> birthday) and gave interviews or speeches on the occasion of those events.
72. It therefore appears that, despite his claims and the content of the relevant medical certificates from December 2019 and March 2020, Mr Beckenbauer has been in relative good health throughout the year 2020 (especially second half of the year). His medical condition did not prevent him from attending events, travelling to foreign countries (despite the COVID pandemic), posing for pictures, making speeches, and giving at least three interviews. In particular, he did not appear to have any memory problems remembering matches of the 1990 FIFA World Cup, an event occurring 30 years ago, in vivid detail.

## **3. Rights of the party according to the FIFA Code of Ethics**

73. The FIFA Code of Ethics contains various provisions guaranteeing important rights for the party. For example, parties and other persons bound by the Code may have legal representation at their own costs and expense (art. 38 FCE), or even request legal aid from FIFA in case they have insufficient financial means (art. 38bis FCE). Furthermore, the parties may choose any of the four FIFA languages (English, French, German, and Spanish) and benefit from interpretation services (for example, in the case of a hearing). More importantly, the parties have the right to be heard in the adjudicatory proceedings, meaning that, before a final decision is issued, they are entitled to submit their position, to present evidence and to inspect evidence to be considered by the adjudicatory chamber. In addition, as per art. 69 par. 4 of the FCE, the parties and their representatives are entitled to attend the hearing, if a hearing is held, to discuss and submit orally their respective requests.

## **4. Determination of Mr Beckenbauer's health status and competency to stand trial**

74. On 6 November 2015, the OAG opened a criminal investigation against several (former) German football officials, including Mr Beckenbauer in connection to the charges presented in the final report of the investigatory chamber.
75. On 24 July 2019, towards the end of its investigation, the OAG has formally separated the investigation against Mr Beckenbauer from the main proceedings (according to art. 30 Swiss Criminal Procedure Code) due to his health conditions.
76. On 26 August 2019, the OAG filed a legal assistance request to the Austrian federal public prosecutor for white collar crime and corruption (in Vienna) in which the OAG requested the independent and official medical examination of Mr Beckenbauer, by a sworn expert to determine whether or not Mr Beckenbauer is in a position to participate in a court hearing and/or an interrogation. The relevant request specifically mentioned that "An assessment of Franz Beckenbauer by a medical officer is not yet available". The

term “medical officer” (Amtsarzt) refers to medical practitioners appointed by public authorities in Switzerland. The OAG asked that the medical examination be conducted/completed within 2 months.

77. However, although an independent medical officer was appointed it appears that the (independent medical) examination of Mr Beckenbauer was not conducted. Furthermore the medical certificates of December 2019 and March 2020 submitted in the scope of the present proceedings do not represent the results of such an independent medical examination, but rather an assessment from Mr Beckenbauer’s own medical staff.
78. The adjudicatory chamber was also informed that, according to article 114 para. 3 of the Swiss Penal Procedure Code (CPC), if the accused remains unfit to plead, the criminal proceedings shall be suspended or abandoned, and that if the (medical) situation is expected to get better over time, the prosecutor would usually temporarily suspend the proceedings. If the situation is not expected to get better, the prosecutor might abandon the proceedings.

## 5. Conclusion

79. Taking into account all of the above information, the Panel reached several considerations:
- a) There has not been any independent medical evaluation of Mr Beckenbauer’s health status by the public medical officer appointed to that effect ([G]);
  - b) The fact that Mr Beckenbauer attended various public events between January and October 2020 seems to suggest that his health status is positive, or in any case different from/conflicting with the severe condition described in the aforementioned medical certificates;
  - c) In particular, note is taken that Mr Beckenbauer was able to give various interviews in recent months, during which he remembered particular events of his past, in some cases with vivid detail (such as specific aspects of the final match in the FIFA World Cup played 30 years ago on 8 July 1990).
80. Based on the above, the adjudicatory chamber concluded that its proceedings against Mr Beckenbauer were valid and should not be suspended or terminated.

### b) Completeness of the file

81. In his letter dated 16 December 2020, Mr Beckenbauer claimed that the file was incomplete, and as such contravened art. 68 par 1 of the FCE which requires that the chairperson of the adjudicatory chamber examine the final report and investigation files with the assistance of the secretariat. Mr Beckenbauer had raised this matter previously in his letters dated 1 and 8 December 2020.
82. However, the Chairman considered the file comprising the final report and the respective enclosures to be complete and in line with art. 68 par 1 of the FCE. In that sense, according to art. 65 of the FCE, if the chief of the investigation considers the investigation to be adequate, he shall inform the parties that the investigation proceedings have been concluded, and shall forward the final report together with the investigation files to the

adjudicatory chamber. Furthermore, according to art. 68 of the FCE, the chairperson of the adjudicatory chamber should examine the final report and investigation files and then, if it is deemed that the matter should be adjudicated, the secretariat is requested to send a copy of the final report and investigatory files to the party concerned. In the present case, the investigatory chamber provided the chairperson of the adjudicatory chamber with the final report and investigation files, in the form of enclosures to the final report, on 10 January 2020, and these were consequently transmitted to Mr Beckenbauer on 14 January 2020.

83. The final report and the investigation files represent, together with the position Mr Beckenbauer was invited to submit, the documents on the basis of which the adjudicatory chamber will decide in the relevant case.
84. Furthermore, Mr Beckenbauer has never mentioned, neither in his letter of 8 December 2020 nor elsewhere, what specific documents were allegedly missing from the final report and investigation files. Instead, he referred to a general principle of completeness and truthfulness, and claimed that no evidence was included on how the investigatory chamber obtained the documents mentioned and enclosed to the Final Report. This argument is insufficient to serve as legal basis for an allegation that the final report (and investigation files) is incomplete, or for a formal enquiry to the investigatory chamber to take position on.
85. In this respect, the Panel would like to refer to art. 66 of the FCE, which specifically states that the final report “shall contain the relevant facts and relevant evidence gathered and mention the possible rule violation”.
86. In view of the above, and after a thorough examination of the final report and investigation files, the Panel hereby reconfirms that such material is complete and served as the basis (together with Mr Beckenbauer’s position) for the adjudicatory chamber’s present decision.

**c) Recusal of the Chairperson of the adjudicatory chamber**

87. On 16 December 2020, the legal representative of Mr Beckenbauer filed an objection (or request for recusal) to the FIFA Appeal Committee against Mr Skouris, chairperson of the adjudicatory chamber, who responded by submitting his position on the matter on 17 December 2020.
88. On 28 December 2020, the Chairperson of the Appeal Committee notified the terms of his decision dismissing Mr Beckenbauer’s request for recusal.

**d) Limitation period for prosecution according to FIFA regulations**

89. According to art. 12 of the FCE (Limitation period for prosecution) as a general rule, breaches of the provisions of the Code may no longer be prosecuted after a lapse of five years (par. 1), period which is extended to ten years when the prosecution concerns the specific infringements of bribery, misappropriation of funds and protection of physical and mental integrity (par. 2). The articles also provides that the duration of the limitation period can be extended by half its length if an investigation is opened before its expiration



(par.3), and suspended where criminal proceedings were formally opened against a person bound by the FCE during such proceedings (par. 4). Finally, in case of repeated breaches, the limitation period starts only after the last of the repeated breaches has ended (par. 5).

90. In conclusion, for an ethics infringement of bribery or corruption (art. 27 of the FCE), as in the present matter, the maximum limitation period according to the FCE (art. 12) would be 15 years, as from the moment the violation or the last conduct (in case of repeated breaches) was committed, if ethics proceedings were opened within the relevant lapse of ten years. Furthermore, this maximum limitation period would be suspended by criminal proceedings opened against a person bound by the FCE, during ethics proceedings.
91. According to the final report, the (formal) investigation proceedings against Mr Beckenbauer (as well as the other involved WC OC officials) were opened on 22 March 2016. Therefore, if the expiration of the limitation period would not have elapsed before the aforementioned date, the respective offense can be prosecuted at least until 22 March 2021.
92. Furthermore, as mentioned in the final report, criminal proceedings were opened on 6 November 2015 against Mr Beckenbauer (as well as Messrs Schmidt, Zwanziger and Niersbach) by the OAG. These criminal proceedings were closed in April 2020, due to the expiry of the relevant statute of limitation. Therefore, in accordance with art. 12 par. 4 of the FCE, the limitation period for the relevant ethics proceedings was suspended between 6 November 2015 and 28 April 2020.
93. In view of the above, the main question to be answered in respect to the procedural issue of limitation period for prosecution (art. 12 FCE) is regarding the exact date the limitation period started for the offense of bribery and corruption (art. 27 of the FCE) that Mr Beckenbauer is charged with. In case this date falls after 22 March 2006, the Ethics Committee can proceed to prosecute and judge Mr Beckenbauer until at least 22 March 2021. If not, the limitation period applicable under art. 12 of the FCE has expired and the relevant charges/offence would be time-barred.
94. One approach for the calculation of the limitation period, and the one that was used by the investigatory chamber in its final report, would be to consider that the entire scheme in relation to which the charge of bribery and corruption was brought against Mr Beckenbauer (and the other DFB/WC OC officials) occurred until 9 August 2006. Following this logic, the ten-year limitation period for the respective offense would have started running as from the aforementioned date (corresponding to the end of the infringement) and would have ended on 9 August 2016. Since ethics proceedings were initiated against Mr Beckenbauer on 22 March 2016, the respective limitation period for prosecution would be automatically extended by five years, in accordance with art. 12 par. 3 of the FCE, until 9 August 2021. Furthermore, given that the limitation period for prosecution could be considered as interrupted in accordance with art. 12 par. 4 of the FCE between 6 November 2015 and 28 April 2020, period during which criminal proceedings were opened against Mr Beckenbauer, the respective period would be extended accordingly.
95. Notwithstanding the above, a different approach can also be taken into account, and was argued by Mr Beckenbauer. Given the special characteristics of the case, in particular

the complexity and duration of the bribery scheme, the specificity of each of the charges and limited involvement of the relevant official (in casu Mr Beckenbauer), as well as the fact that the various payments made by FIFA were spread over an extensive period of time, it could be considered that the conduct of each of the said officials has an eminently individual nature. This important aspect would enable the adjudicatory chamber to consider that the conduct of each official can be dissociated/separated from the overall corruption scheme when it comes to the subjective and individual appreciation of the respective limitation period. Following this rationale, the precise timing of the conduct of each official (and not the extent of the overall corruption scheme) would determine the starting point for the calculation of the limitation period

96. In the case of Mr Beckenbauer, the relevant conduct of the official refers to the bribe payments totaling CHF 10 million made in 2002 to Mr Bin Hammam, through several intermediaries. The ten-year limitation period would therefore end in 2012, also before the start of the relevant ethics proceedings, which would entail that the respective charges against Mr Beckenbauer would be time-barred as well.
97. In the present case, it has been established that, while the relevant corruption scheme can be considered to have occurred between 2001 and 2006, Mr Beckenbauer's conduct in connection or as part of the scheme dates from 2001 and 2002.
98. Moreover, Mr Beckenbauer's actions were related and limited to the bribe payment of CHF 10 million to Mr Bin Hammam, which occurred in 2002.
99. In view of the above, the Panel considers that the individual conduct of Mr Beckenbauer could be dissociated from the overall corruption scheme in relation to the individual appreciation of the respective limitation period. Consequently, the Panel considers that the starting point of the ten-year limitation period for prosecution of the charge related to the violation of art. 27 of the FCE is the period when Mr Beckenbauer's conduct in relation to the CHF 10 million payment occurred, which was mainly in 2002.
100. It follows that Mr Beckenbauer's unethical conduct ceased in 2002, the date that marks the starting point of the (retroactive) ten-year limitation period for prosecution. Therefore, in the absence of an opening of investigation within that relevant period (of ten years after the official's infringements), the prosecution of his conduct was (retroactively) time-barred as of 2012, and can no longer be sanctioned by the Ethics Committee at this stage.
101. In the present matter, the investigatory proceedings against Mr Beckenbauer related to a potential infringement of corruption or bribery were initiated by the Ethics Committee on 22 March 2016, therefore after the expiry of the limitation period according to art. 12 of the FCE (although the 2012 edition of the FCE, in force at the time, did not provide any limitation period for the relevant infringement).
102. In light of the considerations and findings above, the adjudicatory chamber holds that the conduct of Mr Beckenbauer can no longer be prosecuted, due to the expiry of the limitation period established at art. 12 of the FCE.
103. Furthermore, since the investigation against Mr Beckenbauer was initiated by the investigatory chamber after the end of the relevant limitation period of ten years, any

other charges in relation to such investigation (including a potential failure to cooperate) cannot be prosecuted as well.

## C. PROCEDURAL COSTS

104. The procedural costs are made up of the costs and expenses of the investigation and adjudicatory proceedings (art. 54 of the FCE).
105. As a principle, procedural costs shall be borne by the party that has been sanctioned (cf. art. 56 par. 1 of the FCE). In the event of closure of proceedings or acquittal, the procedural costs shall be borne by FIFA (art. 55 par. 1 of the FCE).
106. Since the conduct of Mr Beckenbauer cannot be prosecuted, due to the expiration of the limitation period for prosecution, the procedural costs shall be borne by FIFA.
107. According to art. 57 of the FCE, no procedural compensation shall be awarded in proceedings conducted by the Ethics Committee. Consequently, Mr Beckenbauer shall bear his own legal and other costs incurred in connection with the present proceedings.

### **III. DECISION OF THE ADJUDICATORY CHAMBER**

1. Mr Beckenbauer's conduct in relation to the 2006 FIFA World Cup (concerning a financial contribution of CHF 250 million allocated to the respective World Cup Organising Committee) cannot be prosecuted due to the expiry of the applicable limitation period for prosecution in accordance with art. 12 of the FIFA Code of Ethics.
2. No procedural costs shall be paid by Mr Beckenbauer.
3. Mr Beckenbauer shall bear his own legal and other costs incurred in connection with the present proceedings.
4. This decision is sent to Mr Beckenbauer. A copy of the decision is sent to DFB and to the chairperson of the investigatory chamber of the FIFA Ethics Committee, Ms Maria Claudia Rojas.

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#### **NOTE RELATED TO THE PUBLICATION:**

The public may be informed about the reasons for any decision taken by the Ethics Committee. In particular, the chairperson of the adjudicatory chamber may decide to publish the decision taken, partly or in full, provided that the names mentioned in the decision (other than the ones related to the party) and any other information deemed sensitive by the chairperson are duly anonymized (cf. article 36 of the FIFA Code of Ethics).

#### **NOTE RELATED TO THE APPEAL PROCEDURE:**

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

**NOTE REGARDING THE LANGUAGE OF THE DECISION:**

A German translation of the decision will be provided to the Party in due course. The translation of this decision does not affect the grounds of the decision, which come into force as soon as they are communicated (art. 42 par. 1 of the FCE). However, until the German translation is provided to the Party, the deadline to appeal shall be suspended.

Any appeal shall be directed against the English version of this decision. In this sense, should there be any discrepancy between the English and the German texts, the English version shall be authoritative.

FÉDÉRATION INTERNATIONALE  
DE FOOTBALL ASSOCIATION



Mr Vassilios Skouris  
Chairperson of the adjudicatory chamber  
FIFA Ethics Committee