

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 Horst Rudolf Schmidt,

Germany

Regarding an infringement of the FIFA Code of Ethics (adj. ref. no. 5/2020)

I. FACTS OF THE CASE

A. PROCEEDINGS BEFORE THE INVESTIGATORY CHAMBER

a) Procedural background

1. Preliminary investigation and opening of proceedings

1. Mr Horst Rudolf Schmidt ("Mr Schmidt") has held various functions as a football official between 2001 and 2013, at national and international level, such as: General Secretary of the German Football Federation ("DFB") between 2003 and 2007, Treasurer of the DFB (2007 - 2013), Member of the Bureau for the 2006 FIFA World Cup Germany (2000 – 2006), as well as member of the World Cup Organising Committee for the 2006 FIFA World Cup Germany (hereafter "WC OC") between 1999 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. It was alleged that the German bid likely used a slush fund of EUR 6.7 million to buy votes for the awarding of the aforementioned World Cup.
3. Consequently, the DFB asked the law firm [Law Firm 1] (hereafter "[Law Firm 1]") to internally investigate the matter.
4. Respectively, in October and November 2015, the prosecutors of Germany and Switzerland opened criminal and tax evasion investigations. The Frankfurt am Main Prosecutor's Office informed that it had initiated a tax evasion investigation connected to the 2006 FIFA World Cup. The suspects in such proceedings were Messrs Wolfgang Niersbach, Theo Zwanziger and Horst R. Schmidt. Likewise, the Office of the Attorney General of Switzerland (hereafter "OAG") opened criminal proceedings on 6 November 2015, in relation to allegations of fraud, criminal mismanagement, money laundering and misappropriation. The accused in the Swiss criminal proceedings were Messrs Niersbach, Zwanziger, Schmidt and Franz Beckenbauer.
5. On 4 March 2016, [Law Firm 1] issued the investigation report concerning the bidding and the organisation of the 2006 FIFA World Cup Germany (hereinafter "[Law Firm 1] report"). This report exposed several conducts that might have potentially breached the FIFA Code of Ethics ("FCE"). Taking account of the relevant information and documentation obtained throughout the preliminary stage of the investigation, on 22 March 2016, the then chairperson of the investigatory chamber of the FIFA Ethics Committee (hereinafter "the investigatory chamber"), Dr Cornel Borbély, concluded that there was a *prima facie* case that Mr Schmidt has committed violations of the FCE. Investigation proceedings were initiated and Mr Schmidt was informed accordingly on 22 March 2016.

2. Communications with the party

6. From 22 March 2016 until 8 February 2017, the Investigatory chamber maintained several communications with Mr Schmidt through which he was requested to provide his oral testimony and written statements in regards to the allegations, as well as to offer any documental evidence that support the same.
7. On 1 April 2016, Mr Schmidt informed that he had no relevant documents in connection with the awarding of the 2006 FIFA World Cup to Germany, since his personal involvement during the application process mainly concerned the creation of the bid

books, the occasional participation in presentations by the German Application Committee and support to other committee members. That, the creation of the bid books and the further application costs were financed exclusively by sponsor money; and that the sponsored bid budget was managed by him in collaboration with the then financial director of the DFB. Furthermore, Mr. Schmidt maintained that the first time he became aware of the existence of a transaction made by a bank account in Switzerland from [Law Firm 2] to another account in Qatar belonging to [Company 2], was when the [Law Firm 1]'s report was published in March 2016. That, previously to this, he had no knowledge of the Swiss bank account nor of the money transfers described, and therefore, the purpose or the goal of any payments was completely unknown to him.

8. On 10 May 2016, the investigatory chamber requested Mr. Schmidt to deliver a copy of any record of his meetings with [Law Firm 1], particularly the transcripts of the interviews conducted on 29 October 2015 and 19 February 2016.
9. On 13 May 2016, Mr. Schmidt provided some of the documents previously requested by the investigatory chamber, in particular the transcripts of his meeting with [Law Firm 1] on 29 October 2015 and a questionnaire that was sent and answered by him in regards to the same investigation. However, Mr. Schmidt informed that he could not send the transcripts referring to the meeting of 19 February 2015, because the same have not been provided to him nor to his legal counsels.
10. Between August and September 2016, the investigatory chamber attempted to organise an interview with Mr Schmidt, who was invited several times to confirm his availability and participation for such. Additionally, in view of the announcement made by the OAG that it had opened criminal proceedings, on 6 November 2015, in connection with allegations of fraud (Art. 146 SCC), criminal mismanagement (Art. 158 SCC), money laundering (Art. 305bis SCC) and misappropriation (Art. 138 SCC) within the DFB, with Mr Schmidt as one of the suspects, the latter was also requested to provide any documents in relation to the above that were in his possession.
11. Mr Schmidt asked to be provided with the questions the investigatory chamber wanted to ask him, and then informed the investigatory chamber that, as a reason of the initiation of Swiss criminal proceedings by the OAG, his legal counsels had advised him to refrain from traveling outside Germany. Mr. Schmidt further maintained that he was willing to cooperate with the Ethics Committee's investigation and proposed, as an alternative, to conduct the interview at a location in Germany or the opportunity to answer the investigatory chamber in written.
12. On 26 October 2016, Dr. Borbély, the then chairperson of the investigatory chamber, together with Mr Schmidt and his legal counsel participated in an in-person interview at the Frankfurt Airport Convention and Conference Center.
13. Following the interview, in November 2016 and in January 2017, the investigatory chamber asked Mr Schmidt to provide further clarification in regard to certain details given during the interview, as well as various information and documents in relation to the status of the criminal proceedings initiated by the OAG and the Public Prosecutor's Office in Frankfurt am Main. Such requests were replied by Mr Schmidt in November 2016 and January 2017.

3. Criminal proceedings in relation to the 2006 FIFA World Cup investigation

14. On 15 October 2018, a Frankfurt's court rejected the tax evasion charges against Messrs Wolfgang Niersbach, Theo Zwanziger and Horst R Schmidt, because it considered there

was insufficient evidence to prove the alleged wrongdoings. In response, the Frankfurt prosecutor's office, on 23 October 2018, announced that it would appeal against the decision of this court. On 26 August 2019, the Frankfurt Appeal Court revoked the previous judgement and ruled that the accused should face trial.

15. On 6 August 2019, the OAG filed an indictment against Messrs. Niersbach, Zwanziger and Schmidt as well as against former FIFA official, Mr Urs Linsi, and informed that the suspects were accused of having fraudulently misled members of a supervisory body of the DFB organizing committee for the 2006 World Cup in Germany in April 2005 about the true purpose of a payment of around EUR 6.7 million. The statement also noted that the proceedings against Mr Beckenbauer would be continued separately due to his health condition.
16. On 28 April 2020, the OAG stated that the relevant cases against the DFB and FIFA officials could not "be concluded with a judgement" after the statute of limitations expired due to the coronavirus pandemic.

b) Factual findings of the investigatory chamber

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

17. 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.
18. 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.
19. 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.
20. 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.
21. 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".
22. Moreover, according to the [Law Firm 1] report, it appears that a second meeting was held in January 2002 between Messrs. Beckenbauer and Blatter, in which the contribution to be received by DFB was set to CHF 250 million (EUR 170 million).

23. 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.
24. 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).

2. Payments to [Company 2], loan from [A]

25. 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.
26. 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.
27. 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].
28. The amount of CHF 6 million was then paid from a joint bank account of Messrs Beckenbauer and [E] 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.

29. 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 the Qatari company [Company 2] Scaffolding Co. (hereinafter "[Company 2]"), owned by Mr Bin Hammam, including the payment reference "Asian Games 2006".
30. 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.
31. On 16 August 2002, about a month after the fourth instalment had been done to [Company 2], [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 2]), while the remaining amount of CHF 4 million was finally paid to [Company 2] on 5 September 2002 with the stated purpose "Final Payment for Asian Games 2006".
32. In summary, an amount of CHF 10 million was transferred to [Company 2] by or on behalf of Mr Beckenbauer between May – September 2002, with [A] loaning/financing such payment.

3. Reimbursement of loan from [A]

33. 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 in 2003 that [A] had granted a loan to the WC OC in the amount of CHF 10 million was now requesting repayment of such loan.
34. 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.
35. Mr Zwanziger also testified that the loan from [A] was a subject the WC OC members discussed frequently and that he 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.
36. 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).
37. 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.
38. 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").

39. 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.
40. 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.
41. 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".
42. 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".
43. Furthermore, on 20 April 2005, Mr Zwanziger stated in writing that the amount discussed in the meetings of EUR 7 million would perhaps have to be reduced by EUR 300,000 since "staff and material costs" would arise in this regard. The investigatory chamber concluded that the proposal presented by Mr Zwanziger indicates that he knew about the exact amount owed to [A], that he must have been aware of the converted currency at the time he proposed the reduction of EUR 300,000.00, and consequently, he most probably was aware of the justification of the transfer to FIFA before the payment was released.
44. 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 [...] [A]". 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.
45. 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. [...] [A]) 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].", 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).

46. 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 documental 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.
47. Moreover, Mr Schmidt acknowledged that there was no settlement of the EUR 6.7 million paid by the WC OC as significant preparatory costs had already arisen at the time the Gala was cancelled, with a result that no amount was claimed back from FIFA. Mr Schmidt further explained that a specific statement of costs for the cancelled gala was never requested from FIFA, which he assumed was related to the fact that the costs had in any case been significant for FIFA. However, contrary to Mr Schmidt's statements, there is evidence that other expenses related to the Gala were requested from the WC OC to FIFA less than a month after the cancellation of the event.

c) Conclusions of the investigatory chamber

48. After the careful analysis of the gathered information and documentation, the investigatory chamber was able to identify the following conducts committed by Mr Schmidt:
 - At the very last, Mr Schmidt became aware of the loan and the justification for such in summer of 2003. In other words, Mr Zwanziger, from then on, knew the loan was granted for the purposes of paying a bribe.
 - Mr Schmidt willingly engaged in conversations with [A], his business associates and with FIFA personnel as to find a solution on how to pay the debt without causing financial alarm.
 - Even though Mr Zwanziger, together with Mr Schmidt presented a proposal before the WC OC Board and Executive Committees on 7 and 8 April 2005, respectively, knowing that the supporting purpose/reason behind such transaction – shared costs for the gala-, was false. The proposal was eventually approved by both bodies and EUR 6.7 million out of the gala's spending was authorized to be transferred to FIFA.
 - Together Messrs. Zwanziger and Schmidt, on behalf of the WC OC, signed a letter dated 19 April 2005 through which they informed FIFA of the transfer of the EUR 6.7 million, additionally providing payment instructions where the beneficiary was [A].
 - On 27 April 2005, FIFA received from the WC OC the amount of EUR 6.7 million, which was immediately transferred by FIFA to [A]'s bank account as specified on the letter 19 April 2005.
 - After the gala was cancelled, Mr Schmidt prevented the reclaim of the EUR 6.7 million from FIFA.

49. As a consequence of the foregoing, Mr Schmidt was found to have breached article 7 (bribery) of the FCE 2004 edition.

B. PROCEEDINGS BEFORE THE ADJUDICATORY CHAMBER

a) Opening of adjudicatory proceedings

50. On 9 September 2020, Mr Schmidt was informed that the adjudicatory chamber had opened proceedings based on the investigatory chamber's final report ("Final Report") as per art. 68 par. 3 of the FCE.

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

51. On 15 September 2020, Mr Schmidt's legal representative sent a letter to the adjudicatory chamber, requesting an extension of the time limits to submit his position and to request a hearing and making the following statements:
- The accusation of bribery pursuant to art. 7 of the 2004 FCE is unfounded, since Mr Schmidt only learnt of the loan granted by [A] to Mr Beckenbauer (to be repaid by the WC OC) from [B] in the summer of 2003. Upon further enquiry, Mr Beckenbauer provided credible assurance that he availed himself of the grant in favour of the WC OC from [A] in order to pay a commission for the grant of CHF 250 million requested by the FIFA Finance Committee. At that time, the payments to Mr Bin Hammam (or his company) had already been made;
 - The statute of limitations for the accusation pursuant to art. 7 of the 2004 FCE has lapsed, given that the notification of the opening of investigation proceedings was first communicated on 22 March 2016 and that the accusation of bribery pursuant to the aforementioned 2004 FCE provision was not included in that notification;
 - The evidence cited is incomplete;
 - Mr Schmidt was interested to know who the other persons accused of bribery under the FCE in relation to "the 2002 FIFA grant" were, as he intended to call witnesses (if necessary);
 - A personal hearing of Mr Schmidt did not appear to be necessary, based on the findings of the final report.
52. On 28 September 2020, Mr Schmidt sent a personal letter, in which he declined the invitation for a hearing, due to the COVID-related danger of traveling to Switzerland, as well as his inability to stand trial (for health reasons). He also made a series of statements, in particular:
- He had worked for over 40 years in the organization of World Cups, since 1974. This extensive career ended prematurely due to the accusations made against him in November 2015 in relation to the 2006 World Cup (and his consultancy with FIFA for the 2018 FIFA World Cup Russia was suspended);
 - The accusations weigh extremely heavily on him, and affect his good reputation in international football, at UEFA and at FIFA level, built over the years. He was forced to cancel consultancy contracts and step down from supervisory boards, as well as turn down new contracts.

- It would appear that the final report of the investigatory chamber was already in the hands of journalists before he could even comment on it
 - He didn't act unethically in the case at hand and did everything to protect FIFA and the DFB from harm and contributed to making the 2006 FIFA World Cup a great success for everyone involved;
 - He was in no way and at no point involved in the payment to Mr Bin Hammam or his company [Company 2]. He first heard about it through the findings of the investigatory chamber and he believed the statements of Mr Beckenbauer, who made an enormous contribution to the 2006 World Cup. In his opinion, FIFA must take responsibility for the actions of its (former) Vice-President Bin Hammam.
 - The involvement of the WC OC in the costs for the gala seemed to be an appropriate way to solve the issue of the loan repayment based on a quid pro quo;
 - He did not deceive anyone and there was no personal gain to members of the WC OC.
53. On 16 October 2020, Mr Schmidt's legal representative provided his written submission, with the following arguments:
- His letters dated 15 and 28 September are integral part of his position;
 - The intended purpose for the transfer to FIFA was indicated as being the cultural event (the gala) and the payment reference was "2006 FIFA World Cup". FIFA thus deviated from the intended purpose specified by the OC WC;
 - He did not prevent the DFB's request for repayment after the gala was cancelled, it was FIFA (Urs Linsi) who refused to repay the DFB. In light of FIFA's high costs for the gala, Mr Schmidt waived the repayment;
 - Article 7 of the 2004 FCE is not even mentioned, let alone the 2012 FCE, in the initiation of the investigation by the investigatory chamber on 22 March 2016. In light of this, the allegation that Mr. Schmidt violated the 2004 FCE on the ground of bribery is untenable;
 - The alleged bribery of Mr Bin Hammam definitively ended in 2002, meaning that it is now time-barred. Any actions on the part of the OC WC that could have had something to do with the alleged bribery of Mr Bin Hammam would have been completed by April 2005 at the latest;
 - It is astounding that the investigatory chamber finds itself in possession of the records of the hearings of the public prosecutor's office in Frankfurt and the Office of the Attorney General in Bern;
 - In 2003, Mr Schmidt did not have any knowledge of a payment to [Company 2]. He first learned of this from the 2016 [Law Firm 1] Report;
 - In 2002 the FIFA Code of Ethics did not yet exist.
54. On 13 November 2020, Mr Schmidt's legal representative claimed that the DFB President Fritz Keller informed Beckenbauer of the fact that, an investigation by the firm [Company 3] (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, including Mr Schmidt.

55. On 23 November 2020, it was pointed out to Mr Schmidt that he referred to a discussion between Mr Beckenbauer and the president of the DFB regarding an alleged (internal) investigation mandated by the said association, and that it would be up to Mr Schmidt to provide any relevant documents or evidence in support of his statement.
56. On 3 December 2020, Mr Schmidt's legal representative referred to a media article published on 1 December 2020 and to a statement made by the chairperson of the adjudicatory chamber (during a hearing in a separate ethics proceedings) concerning Mr Bin Hammam's death. In this respect, Mr Schmidt expressed his concern about the quality and impartiality of the Ethics Committee, and stated once more his innocence in relation to the corruption charges against him.
57. On 8 December 2020, Mr Schmidt's legal representative argued that, the Swiss judicial bodies did not convict or sanction him for bribery, FIFA (the Ethics Committee) should come to the same conclusion.

II. CONSIDERATIONS OF THE ADJUDICATORY CHAMBER

A. COMPETENCE AND APPLICABLE LAW

a) Competence

58. 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, directly concerns their FIFA-related duties or responsibilities, or is related to the use of FIFA funds, the Ethics Committee shall be entitled to investigate and judge the matter.
59. At the time of the facts relevant to the present case, Mr Schmidt was a member of the WC OC (1999 – 2006), as well as a high-ranking official of the DFB (between 2003 and 2013). He was also member of a FIFA committee between 2000 and 2006.
60. Through the Organising Association Agreement, that the DFB signed with FIFA in 2001 in relation to the 2006 FIFA World Cup Germany, the DFB was obliged to establish the WC OC - an internal fully dependent and controlled division of the DFB that was entrusted with the organisation of the aforementioned event. Alongside Messrs Beckenbauer and Radmann (later replaced by Mr Zwanziger), Mr Schmidt was one of the members of the presidium of the WC OC.
61. Moreover, Mr Schmidt's conduct in the present case concerns payments made from the WC OC/DFB to FIFA, as well as the payment of CHF 250 million by FIFA to the WC OC as a contribution for the organization of the 2006 FIFA World Cup Germany.
62. Consequently, the FIFA Ethics Committee is entitled to investigate and judge Mr Schmidt's conduct, as per art. 30 par. 1 of the FCE, as such conduct directly concerns his duties and responsibilities towards FIFA (in his function as member of the WC OC presidium) and is related to the use of FIFA funds.

b) Applicability of the FCE *ratione materiae*

63. The adjudicatory chamber notes that, according to the Final Report, there are several indications of potential improper conduct in terms of the FCE by Mr Schmidt. In particular, during the investigations, possible violations of Bribery and corruption (art. 27) in the FCE have been identified. The factual circumstances raise questions of potential misconducts in terms of the FCE.
64. Consequently, the FCE is applicable to the case according to art. 1 of the FCE (*ratione materiae*).

c) Applicability of the FCE *ratione personae*

65. 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.
66. By virtue of his positions within the WC OC and DFB (cf. par. 1 above), Mr Schmidt was an official within the meaning of the definition given in the FCE and the FIFA Statutes during the period presently relevant.
67. As a consequence, at the time the relevant actions and events occurred, and in view of Mr Schmidt’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*

68. 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 (conduct related to the charge of failure to cooperate).
69. 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*).
70. 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).
71. In this context, following the relevant case law and jurisprudence, the adjudicatory chamber notes that the spirit and intent of the 2004 - 2020 editions of the FCE are duly reflected in the case of Art. 27 (Bribery and corruption) in the corresponding provisions of the 2004 FCE (art. 7), in the 2006 FCE (art. 12), the 2009 FCE (art. 11), the 2012 FCE (art. 21 par. 1), and in the 2018 and editions 2019 of the Code (art. 27).
72. In consideration of all the above, the adjudicatory chamber concludes that the different FCE editions cover the same offence.

Lex mitior

73. The principle of *lex mitior* foresees that the accused should benefit from the most favourable law, imposing the lesser penalty.
74. 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.

75. 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) Limitation period for prosecution

76. In his various submissions, Mr Schmidt claims that the limitation period for prosecution, established at art. 12 of the FCE has elapsed, and therefore the charges against him are time-barred. In support of his argumentation, he refers to the fact that the letter of 22 March 2016, opening the investigatory proceedings against him, did not mention the violation of art. 7 of the 2004 FCE. This would entail that, given the lack of a clear description of the rule violations (according to art. 60 par. 2 of the FCE), the limitation period for prosecution could not have been extended, in accordance with art. 12 par. 2 of the FCE. Mr Schmidt also claimed that the alleged bribery of Mr Bin Hammam definitively ended in 2002, and that any actions on the part of the WC OC in relation to such bribery would have been completed by April 2005 at the latest.
77. With respect to the letter of 22 March 2016, the following considerations should be made.
78. First, it can be clearly understood, from its content, that the respective letter (only) refers to the various provisions contained in the 2012 edition of the FCE, which was in force at the time of the letter, without mentioning the corresponding articles from the previous versions of the Code. That should and could not have entailed that such corresponding provisions could not be considered or applicable.
79. Second, the list of provisions mentioned in the letter of 22 March 2016 as potential violation was not exhaustive. In fact, the letter contains a specific sentence stating that "The list of possible violations may be supplemented as additional information becomes available." There is no provision in the FCE preventing the investigatory chamber to expand the charges or potential violations based on evidence uncovered during the investigation.
80. Regardless of the above, the Panel wishes to clarify that, according to art. 12 par. 3 of the FCE, the limitation period can be extended by half its length if a formal investigation is opened before its expiration. This means that there is no requirement for a specific provision to be mentioned in the opening of the formal investigation, in order for the limitation period to be extended. In other words, the mere fact that formal investigation proceedings were initiated against Mr Schmidt on 22 March 2016 (in relation to the present matter) entails that the limitation period for prosecution in this respect was extended by half its length.
81. According to art. 12 of the FCE, 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).

82. 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.
83. As mentioned previously, the formal investigation proceedings against Mr Schmidt 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.
84. Furthermore, as mentioned in the final report, criminal proceedings were opened on 6 November 2015 against Mr Schmidt (as well as Messrs Beckenbauer, Zwanziger, and Niersbach) by the OAG. These criminal proceedings were closed/concluded 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.
85. In view of the above, the main question to be answered in respect to the procedural issue of limitation period for prosecution concerns the exact date the limitation period started for the offense of bribery and corruption (art. 27 of the FCE) that Mr Schmidt is charged with. In case this date falls after 22 March 2006, the Ethics Committee would be allowed to prosecute and judge Mr Schmidt 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.
86. The final report and enclosed investigation files (in particular the [Law Firm 1] Report) describe a very complex and intricate scheme devised and operated by a number of football officials, including Mr Schmidt, in relation to the hosting and organisation of the 2006 FIFA World Cup by the DFB and WC OC. At the centre of this scheme was a payment of USD 10 million made in 2002 to a company of Mr Mohammad Bin Hammam. The purpose of the payment was to obtain, in exchange, with Mr Bin Hammam's help and influence within the FIFA Executive and Finance Committees (both of which he was a member of), the approval of a CHF 250 million financial contribution paid by FIFA to the DFB and the WC OC, for the organisation of the 2006 World Cup, in various instalments between 2002 and 9 August 2006.
87. 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 Schmidt (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 Schmidt 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 Schmidt, the respective period would be extended accordingly.

88. Notwithstanding the above, a different approach can also be taken into account, and was argued by Mr Schmidt. 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 Schmidt), 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.
89. In the case of Mr Schmidt, the relevant conduct of the official refers to the payment of EUR 6.7 million (approx. CHF 10 million) made on 27 April 2005 from the WC OC to FIFA, and transferred on the same day to [A] in order to settle the outstanding debt (which was previously used in 2002 in order to pay the bribe/kickback to Mr Bin-Hammam). The ten-year limitation period would therefore end on 27 April 2015, also before the start of the relevant ethics proceedings, which would entail that the respective charges against Mr Schmidt would be time-barred as well.
90. In order to determine the approach that should be applicable and used for the calculation of the limitation period for prosecution of Mr Schmidt's conduct, the Panel has deemed necessary to analyze such conduct in relation to a potential violation of the Code of Ethics. Only such an analysis would allow the Panel to establish the role of Mr Schmidt in the corruption scheme, and conclude whether his behavior had an inherently individual nature that would separate it, and the starting point for the calculation of the limitation period, from the other elements and conducts of the officials involved.
91. 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 Schmidt's involvement in the scheme dates from the period 2001 - 2005, ending in April 2005.
92. Moreover, Mr Schmidt's actions were mostly related to the payment of the EUR 6.7 million by the WC OC to [A] (via FIFA), in order to reimburse the previous loan made in 2002, which financed the bribe to Mr Bin Hammam. This payment had no influence over the scheduled payment of the FIFA contribution to the WC OC, which was made in six instalments spread over a significant period of time (four years), until 9 August 2006.
93. In view of the above, the Panel considers that the individual conduct of Mr Schmidt 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 Schmidt's conduct in relation to the EUR 6.7 million payment occurred, which was mainly between November 2004 and April 2005 (ending on 27 April 2005, when the payment was transferred).

94. It follows that the date that marks the starting point of the ten-year limitation period for prosecution is, at the latest, 27 April 2005. Therefore, in the absence of the opening of an investigation within the following ten-year period, Mr Schmidt's conduct could no longer be prosecuted after 27 April 2015.
95. In the present matter, the investigatory proceedings against Mr Schmidt 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).

b) Conclusion

96. In light of the considerations and findings above, the adjudicatory chamber holds that the conduct of Mr Schmidt can no longer be prosecuted, due to the expiry of the respective limitation period established at art. 12 of the FCE.

C. PROCEDURAL COSTS

97. The procedural costs are made up of the costs and expenses of the investigation and adjudicatory proceedings (art. 54 of the FCE).
98. 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).
99. Since the conduct of Mr Schmidt cannot be prosecuted, due to the expiration of the limitation period for prosecution, the procedural costs shall be borne by FIFA.
100. According to art. 57 of the FCE, no procedural compensation shall be awarded in proceedings conducted by the Ethics Committee. Consequently, Mr Schmidt shall bear his own legal and other costs incurred in connection with these proceedings.

III. DECISION OF THE ADJUDICATORY CHAMBER

1. Mr Schmidt'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 Schmidt.
3. Mr Schmidt shall bear his own legal and other costs incurred in connection with the present proceedings.
4. This decision is sent to Mr Schmidt. 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.

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

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Mr Vassilios Skouris
Chairperson of the adjudicatory chamber
FIFA Ethics Committee