

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 Theo Zwanziger,

Germany

Regarding an infringement of the FIFA Code of Ethics (adj. ref. no. 6/2020)

I. FACTS OF THE CASE

A. PROCEEDINGS BEFORE THE INVESTIGATORY CHAMBER

a) Procedural background

1. Preliminary investigation and opening of proceedings

1. Mr Theo Zwanziger (“Mr Zwanziger”) has held various functions as a football official between 2001 and 2015, at national and international level, such as: Treasurer of the German Football Federation - DFB (2001 - 2004), second/executive President of the DFB (2004 – 2006), President of the DFB (2006 – 2012), Member of the Organising Committee for the 2014 FIFA World Cup (2007 – 2015), member of the FIFA Council (2011 – 2015), Deputy chairman of the FIFA Committee for Women's Football and the FIFA Women's World Cup (2012 – 2013), member of the FIFA Committee for Fair Play and Social Responsibility (2013 – 2015), and Chairman of the FIFA Players' Status Committee (2012 – 2015). He has also served as member of the World Cup Organising Committee for the 2006 FIFA World Cup in Germany (hereafter “WC OC”) between 2003 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 Wolfgang Niersbach, Theo Zwanziger, Horst R. 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 Zwanziger has committed violations of the FCE. Investigation proceedings were initiated and Mr Zwanziger was informed accordingly on 22 March 2016.
- ##### 2. Communications with the party
6. Between 22 March 2016 until 8 February 2017, the Investigatory chamber maintained several communications with Mr Zwanziger through which he was requested to provide

his oral testimony and written statements in regard to the allegations, as well as to offer any documentary evidence in order to support the same.

7. On 24 March 2016, the legal representatives of Mr Zwanziger submitted an objection against the FIFA Ethics Committee in accordance with article 35 para. 4 of the FCE, 2012 edition ("2012 FCE"). In summary, Mr Zwanziger informed the investigatory chamber that he had strong reasons to cast doubt on the impartiality of the chairman of the Investigatory chamber of the FIFA Ethics Committee.
8. Between August and September 2016, the investigatory chamber attempted to organise an interview with Mr Zwanziger, who was invited several times to confirm his availability and participation for such, but declined to do so, despite being reminded of his duty to cooperate as a football official subject to the FCE and of the possible sanctions he could incur in case he refused to cooperate. 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 Zwanziger as one of the suspects, the latter was also requested to provide any documents in relation to the above that were in his possession.
9. Due to Mr Zwanziger's failure to respond and confirm his availability/participation for the interview, and to provide the requested documents, the chairman of the Investigatory chamber concluded that Mr Zwanziger had not complied with the several requests and reminders made, and asked the Deputy Chairman of the Investigation Chamber, to issue a warning against Mr Zwanziger.
10. Consequently, on 20 September 2016 Mr Zwanziger was warned by the FIFA Ethics Committee for lack of cooperation and advised that, in accordance with article 41 par. 4 FCE his lack of cooperation could lead to further disciplinary measures in the future.
11. Between September and November 2016, the investigatory chamber corresponded with Mr Zwanziger with the purpose to arrange once more an interview, to be conducted in Germany.
12. On 11 November 2016, Dr. Borbély, the then Chairperson of the Investigatory chamber, together with Mr Zwanziger and his legal counsel participated in an in-person interview at the Frankfurt Airport Convention and Conference Center. During this interview, Mr Zwanziger explained that he knew from July 2003 and on, about the existence of debt owed by Mr Beckenbauer for a loan he acquired from [A]. Additionally, Mr Zwanziger in several occasions manifested that he did not know the reason behind such debt, and that he only became aware of this after the payment to FIFA was executed.
13. By letter dated 18 November 2016, Mr Zwanziger once again provided arguments and objections regarding the investigation proceedings. Additionally, Mr Zwanziger provided the investigatory chamber with various documents.
14. In January and February 2017, the investigatory chamber asked Mr Zwanziger to provide various information (in relation to the status of the criminal proceedings initiated by the OAG and the Public Prosecutor's Office in Frankfurt am Main), documents (related to the criminal proceedings, as well as an email communication from Mr Schmidt dated 9 January 2013), as well as his comments and clarifications regarding the accusations exposed by an article published by the German newspaper Süddeutsche Zeitung. Such requests were either not replied or Mr Zwanziger refused to provide any further documents.

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

15. 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, on 23 October 2018, the Frankfurt prosecutor's office 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.
16. 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.
17. 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

18. 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.
19. 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.
20. 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.
21. 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.
22. 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".

23. 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).
24. 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.
25. 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]

26. 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.
27. 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.
28. 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].
29. An 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.

30. 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] (hereinafter "[Company 2]"), owned by Mr Bin Hammam, including the payment reference "Asian Games 2006".
31. 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.
32. 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".
33. 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]

34. 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.
35. 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.
36. Mr Zwanziger also testified that the loan from [A] was a subject the WC OC members discussed frequently and that 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.
37. 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).
38. 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.
39. 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").

40. 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 (hereinafter "the 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.
41. 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.
42. 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".
43. 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".
44. 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.
45. 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.
46. 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] 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).

47. 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 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.
48. 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

49. After the careful analysis of the gathered information and documentation, the investigatory chamber was able to identify the following conducts committed by Mr Zwanziger:
 - At the very last, Mr Zwanziger 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 Zwanziger 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 knew the supporting purpose/reason behind the proposal was false, he, together with Mr Schmidt, presented it before the WC OC Board and Executive Committees on 7 and 8 April 2005, respectively. Such proposal aimed at recommending a joint coverage between the WC OC and FIFA of the spending of the Gala. 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, there was no reclaim of the EUR 6.7 million addressed to FIFA.
 - By the use of dilatory means, Mr Zwanziger has additionally violated his duty to cooperate with the investigatory proceedings.
50. As a consequence of the foregoing, Mr Zwanziger was found to have breached articles 7 (bribery) of the FCE 2004 and article 18 par. 2 (duty to cooperate) of the FCE 2012.

B. PROCEEDINGS BEFORE THE ADJUDICATORY CHAMBER

a) Opening of adjudicatory proceedings

51. On 9 September 2020, Mr Zwanziger 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 Zwanziger's written position to the adjudicatory chamber

52. On 11 September 2020, Mr Zwanziger sent a letter to the adjudicatory chamber, requesting for a hearing before the adjudicatory chamber and making the following statements:
- a) that investigation proceedings against him were not properly conducted as he had not received a notification, as required under the FCE;
 - b) since there was no need for legal representation, he asked that the correspondence be sent only to himself;
 - c) he asked to be released from the provisions of article 18 of the FCE concerning the confidentiality of the files regarding "[Prosecutor 1], the special investigator", as he was expecting to be "summoned" by the latter to be heard as a witness;
 - d) the final report in possession of the adjudicatory chamber shows that the FIFA Ethics Committee and FIFA President knew for more than four years that the CHF 10 million from Mr Beckenbauer's assets, paid in 2002, did not, as claimed, go to the FIFA Finance Committee but personally to Mr Bin Hammam;
 - e) despite repeated written warnings and indications from Mr Zwanziger, for example the letter of 18 November 2016, culminating in a request for criminal proceedings against the FIFA President, nothing was done to clarify this unbelievable situation as Mr Bin Hammam had to be protected "at all costs";
 - f) in doing so, the "leaders of the Ethics Committee" refused, for a long time, to properly clarify the events of 2002 and to request the repayment of the amount received by Bin Hammam. This is not only relevant in terms of criminal mismanagement but is also a serious violation of ethical duty;
 - g) to this day, the purpose of the payment from Mr Beckenbauer to Mr Bin Hammam has not been clarified, even though FIFA itself could, and even should, have done this long ago. In contrast to the state investigators, Mr Bin Hammam was an easier target for FIFA and easier to compel to give a truthful statement;
 - h) he was clearly not, and could not have been, involved in an alleged wrongful agreement between Mr Beckenbauer and Mr Bin Hammam in 2002;

- i) it would have been the Ethics Committee's duty to clarify matters and after such a serious omission he considers the accusations against him to be defamatory;
 - j) he asked to be informed who from did the FIFA Ethics Committee obtain "questioning from the public prosecutor's office in Frankfurt" and why his questioning by the OAG was not mentioned in the final report.
53. On 21 September 2020, Mr Zwanziger submitted his written position, together with four enclosures, in which he made the following claims, in particular:
- a) His letters dated 11 September and the 4 attached files he sent are an integral part of his position;
 - b) The allegation that he knew about the so-called bribe money is outrageous, because he was the one who, after learning of the fact that the CHF 10 million had gone to Bin Hammam, asked the FIFA Ethics Committee on 18 November 2016 to check the transaction;
 - c) He did not contact any FIFA employees regarding the repayment to [A] (from the end of November 2004 to the end of April 2005). He deemed the matter closed with the unsuccessful conversation with [A];
 - d) The letter of 19 April 2005 has no validity with regard to the allegations for the simple reason that it clearly informs FIFA that it has received this amount "for the cultural program", which then also became legally binding on FIFA with the subsequent bank transfer on 25 April 2005, in which the purpose of the transfer was clearly stated;
 - e) The claim that members of the World Cup Organising Committee did not intend to claim repayment of the amount of EUR 6.7 million from FIFA after the Gala had to be cancelled is a lie. As Linsi himself testified when questioned by the public prosecutor's office in Frankfurt (sheet 4034 of the investigation file);
 - f) The assumption that there is a single bribery scheme is erroneous as this assumes that the payment in 2002 to Bin Hammam was made with the same level of knowledge, consciously and intentionally, as the repayment by FIFA in 2005;
 - g) Beckenbauer's payment to Bin Hammam was for a completely different purpose, namely supporting Blatter for re-election;
 - h) In a letter dated 18 August 2016, Mr Borbély wrote: "In particular, no 'allegation of corruption' was raised against Mr Theo Zwanziger at any time." Mr Zwanziger argues that this document has been deleted from the case file;
 - i) He failed to cooperate because he wanted first to examine the conclusions of the [Law Firm 1] report;
 - j) In the period from March 2016 to his interview in Frankfurt, there were three pending investigations concerning the same facts stretching back 11 years, and he no longer had any documents about any of them.
- c) The hearing**
54. On 22 October 2020, Mr Zwanziger was informed that the hearing in his case would take place on 16 – 17 November 2020 by videoconference, pursuant to art. 75 in particular par. 5 of the FCE. Furthermore, Mr Zwanziger was provided with various

information on the organization of the hearing, as well as with the composition of the Panel (and was reminded of the content of art. 35 par. 4 of the FCE).

55. After mentioning potential availability issues for the proposed hearing dates in a correspondence on 23 October 2020, Mr Zwanziger informed on 27 October 2020 that he was not available on those dates, but only during the last week of November 2020. He also claimed that there was no urgency to organize the hearing, since the evidence presented by the investigatory chamber was incomplete, requested a public hearing (in accordance with art. 74 par. 2 of the FCE) and argued that:
- The ethics proceedings should be suspended until the Swiss Federal Criminal Tribunal has made its final decision (since the Ethics Committee has waited four years, until the Swiss criminal proceedings have been concluded, before proceeding with the case);
 - Mr Bin Hammam is a key witness and should be/have been questioned;
 - The two interrogations of Mr Schmidt by German state authorities (contained in enclosures to the final report) are not admissible as evidence, in accordance with art. 46 of the FCE, as they were obtained through deception, in violation of human rights;
56. On 29 October 2020, Mr Zwanziger was referred to the content of art. 75 par. 5 of the FCE and informed that, taking into consideration all relevant circumstances, such as the restrictions on international travel and other measures at national/international level that have an impact on the activity of the members of the Ethics Committee imposed as a result of the COVID-19 pandemic, it had been decided to organise the hearing by videoconference. Mr Zwanziger was informed that a postponement of such hearing would cause considerable organizational issues, especially with respect to the availability of the panel members, as well as that of the chief of investigation. In conclusion, Mr Zwanziger was informed that the hearing would not be postponed and would take place on 16 – 17 November 2020 by videoconference, asked once more to confirm his availability, and invited to indicate his preferred date and time, in order to accommodate his participation (due to his busy schedule during the relevant period).
57. On 2 November 2020, Mr Zwanziger stated that he considered the previous correspondence, not accepting his request for the postponement of the hearing, to be a violation of all rules of fairness.
58. On the same day, Mr Zwanziger's legal representative submitted an objection against the chairperson of the adjudicatory chamber (hereinafter the Chairperson) in accordance with art. 35 of the FCE. The objection was transmitted to the chairman of the FIFA Appeal Committee, who is competent to decide on such in accordance with art. 35 par. 5 of the FCE. On 11 November 2020, the chairman of the FIFA Appeal Committee decided to reject the objection submitted by Mr Zwanziger against the chairperson of the adjudicatory chamber. The relevant decision was notified on 12 November 2020.
59. On 17 November 2020, the hearing took place by videoconference, in accordance with art. 75 par. 5 of the FCE. Mr Zwanziger did not attend the hearing, but was represented by his legal counsel, Mr Hans-Jörg Metz.

1. Closing statements of the investigatory chamber

60. Ms Rojas made the following statements in her pleading:

- Mr Zwanziger breached art. 7 of the FCE 2004, by participating in a scheme for the payment of a bribe of CHF 10 million to a member of the FIFA Financial Committee in exchange for a financial contribution from FIFA to the organization of the 2006 World Cup in Germany worth CHF 250 million. Additionally, due to his lack of collaboration with the investigation procedures, the accused violated art. 18 par. 2, of the 2012 FCE.
- The FIFA Ethics Committee is competent to investigate this matter in accordance with art. 27 of the 2012 FCE and art.30 par. 1 of the 2019 FCE. In order to determine the applicable FCE, it must be taken into consideration that the bribery conduct in which Mr Zwanziger is involved was a continuing conduct that began in 2001 and continued until 2006. Therefore, the applicable code is that of the year 2004, which establishes the conduct of bribery, conduct that has been maintained in the 2009 (art. 11), 2012 (art. 21) 2018 (art. 27) and 2019 (art. 27) Codes. By virtue of the *lex mitior* principle, the Ethics Committee will apply the most favorable sanction.
- Regarding the statute of limitations, the Investigating Chamber decided to open formal investigations against Mr. Zwanziger on 22 March 2016, after a preliminary analysis of the available evidence. In accordance with art. 12 of the 2012 FCE, in force at the time, offenses of bribery and corruption were not subject to a limitation period. However, taking into account article 12 of the 2019 FCE, the investigatory chamber has a term of 10 years to investigate bribery behaviors. Par. 3 of the same article indicates that the statute of limitations would be extended by five years if an investigation is initiated before its expiration.
- Although Messrs. Beckenbauer and Bin Hamman seem to be the main actors in the scheme created for the payment of a bribe, there are also many other officials who participated, directly or indirectly, in the execution of the conduct and therefore, each one of them has a certain degree of participation and responsibility. Mr. Zwanziger has been identified as one of those people who helped carry out the bribery scheme.
- From the evidence collected, it is established that at the end of the summer of 2003, Mr Zwanziger learned of the loan requested by Mr. Beckenbauer from Mr. [A], as can be seen from the meeting that took place on 14 August 2003 between Messrs. Schmidt, Zwanziger, [B], [A] at the latter's private residence in Lugano.
- After trying to find a solution for the repayment of the money owed to Mr. [A], on 19 April 2005, Messrs. Schmidt and Zwanziger addressed a letter to Mr. Urs Linsi, FIFA Secretary General, confirming the transfer of 6.7 million euros (10.3 million CHF) to FIFA, which was subsequently transferred to the account of Mr. [A] on 27 April 2005.
- On 20 April 2005, Mr. Zwanziger proposed through a handwritten note that the amount of EUR 7 million authorized in the meetings of the Board of Directors and of the Executive Committee of the WC OC, be reduced by EUR 300,000, due to the costs of "personnel and material". There are reasons to conclude that the handwritten note gave the false impression that a reduction for costs of "personnel and material" still had to be considered internally. This is false since obviously the decision had already been taken at least on 19 April 2005, when Messrs. Zwanziger and Schmidt sent to FIFA the letter establishing the amount of 6.7 million (that is, the amount of EUR 7 million minus EUR 300,000). There is therefore substantial evidence to suggest that the EUR 300,000 was deducted from the EUR 7 million previously authorized in order to ensure that the amount transferred to [A] would not exceed the amount owed.

- Additionally, it is important to emphasize that the Gala event was canceled, and that the WC OC did not claim a refund of the EUR 6.7 million. Certainly, such amount cannot be considered insignificant so as not to seek its refund. The absence of any attempt by the WC OC to seek said reimbursement reinforces the opinion of the investigatory chamber that the expense for the supposed Gala of the 2006 FIFA World Cup Germany was used as a pretext in order to justify the transfer to FIFA of the money for the payment of the debt contracted with [A] corresponding to the bribery of Mr. Bin Hamman.
- Mr. Zwanziger testified that he had been aware, since July 2003, of a debt contracted by Mr. Beckenbauer for a loan that he acquired from Mr. [A], and that he only found out the reason for this debt after the payment the WC OC made [A] via FIFA (in April 2005). The investigatory chamber cannot understand why, when Mr Zwanziger learned the cause of the debt, and bearing in mind that he was President of the DFB between 2006 and 2012, he did not take any action to bring the irregular conduct to the attention of the corresponding authorities, or why the DFB failed to request FIFA to return the funds for a Gala that was never held.
- Although he was not the main author of this bribery, Mr. Zwanziger was an accomplice in the bribery scheme that ended with the payment of the money loaned by Mr. [A], violating art. 7 of the 2004 FCE, which was maintained in the 2009 (art. 11), 2012 (art. 21) 2018 (art. 27) and 2019 (art. 27) editions of the FCE.

2. Closing statements of Mr Zwanziger's legal representative

61. In particular, Mr Hans-Jörg Metz - Mr Zwanziger's counsel – stated the following:

- Mr Zwanziger was not a subject of the FCE;
- There is no arbitration agreement regarding CAS;
- The Ethics Committee lacks independence;
- The 2004 FCE does not represent sufficient legal basis, in accordance with German law, as it did not specify the sanctions but only mentioned the "possibility" of sanctions;
- Art. 7 of the 2004 FCE refers to "perpetrators" but not about accomplices/instigators, as mentioned in the final report. The current FCE mentions accomplices and instigators, but the 2004 FCE did not, and thus there is no sufficient legal ground to charge Mr Zwanziger as an accomplice/instigator in relation to a bribe on the basis of art. 7 of the 2004 FCE;
- The state tribunals in Germany and Switzerland, in the scope of the relevant proceedings, could not clarify the purpose of the payment. Therefore, it is incredible that, following a very fast procedure, the Ethics Committee could have solved this matter;
- In the letter of 22 March 2016 opening the investigatory proceedings, there was no mention of art. 7 of the 2004 FCE;
- Even if sufficient legal basis would exist for the bribery charge, quod non, the respective charge is in any case time-barred, as the relevant limitation period was not adhered to;

- Regarding the hearing, it is deplored that Mr Zwanziger was prevented from personally taking part in such, as from presenting his position, due to a refusal to postpone the hearing date. It is clear that for the Ethics Committee the time aspect is more important than the quality of the hearing, which is a major deficit;
- The final report does not explain how the payment of CHF 10 million was connected to Mr Zwanziger, since he was not involved at the moment of that payment;
- The final report also does not clarify whether the bribery can be linked to the CHF 10 million payment in 2002, and it is based on assumptions and suppositions instead of facts;
- The [Law Firm 1] report refers to Mr Schmidt's letter of 2014, in which he explains that the letter (of April 2005) was not written by Mr Zwanziger but came from FIFA;
- Mr Zwanziger was not aware of what was going on, and he could not have been an accomplice since he lacked the intention (to commit bribery);
- In 2016 Mr Zwanziger did not have access to documents of 10 years prior, some of them even before the period he was president of DFB. Moreover, due to proceedings before tax authorities in 2015, Mr Zwanziger could not gain access to such documents. However, FIFA had intensive contacts with the Swiss criminal authorities and could have obtained access to the documents therefrom. The accusation that Mr Zwanziger failed to cooperate with the investigation is therefore unacceptable, unethical and without grounds;
- The proceedings should be closed for lack of legal grounds, but also in order for Mr Bin Hammam, who was a central figure in these events, to be interrogated;
- Mr Zwanziger reserves his right to open legal action against Ms Rojas;

3. Rebuttals from the investigatory chamber and Mr Zwanziger's legal representative

62. Ms Rojas, made the following additional submissions in her rebuttal:

- The current version of the FCE establishes at its art. 3 that the Code applies to conduct whenever it occurred, as long as the relevant conduct contravened the Code applicable at that time. Bribery was an infringement included in the 2004 edition of the FCE, and has been part of the Code ever since.
- The FCE clearly establishes different degrees of participation, including accomplice and instigator;
- Mr Zwanziger had a key role in the corruption scheme, as he was the one who enabled the reimbursement of the CHF 10 million to [A], who had previously loaned the funds for the bribe;
- Since Mr Zwanziger claims he did not know the loan from [A] was (related to) a bribe, this prompts the question as to why he would agree to a financial triangle of payments, operating the transfer of EUR 6.7 million through FIFA, and not directly to [A];
- The proceedings conducted by the FIFA Ethics Committee are independent from any criminal or state proceedings which occurred in Germany and Switzerland;

- It is very important to ensure transparency in football, and that investigations of football officials respect the rights of the respective persons;
- In the present case, there are sufficient elements to justify that Mr Zwanziger had an active participation in the bribery scheme;

63. Mr Zwanziger's legal representative made the following additional statements, in response to requests for clarification from the Chairperson:

- Art. 7 of the 2004 FCE prohibited active and passive bribery, but only as perpetrator, not as an accomplice, who is in a different situation;
- Mr Zwanziger is part of the committee of a school, and as such he has to attend a very important meeting, planned a long time in advance. He would have liked to take part in the hearing, but because of the timing of the other committee meeting it was not possible for him to attend;
- If bribery was committed, it was committed in 2004 or before and is therefore time-barred due to statutes of limitation. In any case, if bribery was committed, Mr Zwanziger was not part of it and cannot be sanctioned. Also the rules (FCE) should clearly stipulate what should and should not be sanctioned;
- A payment of EUR 7 million by the WC OC, for the purpose of the opening Gala of the 2006 FIFA World Cup, was approved and decided by the committee of the said organization. The payment was made to FIFA, who accepted the money and thus it became part of its budget. It was then entirely up to FIFA how to use the funds;
- The German criminal authorities have stated, in the final report of the Frankfurt district court, that the payment of EUR 6.7 million made by the WC OC in 2005 was used for the purpose of the World Cup opening Gala;
- As president of the DFB, Mr Zwanziger was not involved in the technical details of the payment of EUR 6.7 million to FIFA, and was not aware that the account number belonged or was connected to [A]; also, in his senior DFB position, Mr Zwanziger would not check account numbers for a payment;
- The purpose of the payment from Mr Beckenbauer to Mr Bin Hammam is not clear; Mr Beckenbauer called it a "commission" but it is not established what was its purpose, the former chairperson of the Finance Committee is dead and therefore he cannot clarify this aspect;
- Mr Zwanziger strongly refutes the allegations of bribery, on the merits, considering that the payment of EUR 6.7 million in 2005 was not connected to the Beckenbauer payment in 2002.

d) After the hearing

64. On 18 November 2020, Mr Zwanziger's legal representative requested clarification regarding two issues addressed during the hearing: first, he argued that he was only given two potential dates to choose from, for the scheduling of the hearing, not three, as it was mentioned by the Chairperson; second, he claimed that the Chairperson incorrectly stated during the hearing that Mr Bin Hammam had passed away (when Mr Zwanziger's legal counsel asked about the latter's questioning). The statement was

either made untruthfully, in order to prevent Mr Bin Hammam's interrogation, or it was a wrong assumption, meaning that the proceedings were based on incorrect facts and should be closed.

65. On 24 November 2020, Mr Zwanziger was provided with clarification on both aspects. With regards to the alternative dates for a hearing proposed, Mr Zwanziger was referred to the previous letters of 20 and 27 October 2020 inviting him to choose not only the date but also the time of the hearing, in the period 16 – 17 November 2020. He was also reminded that, given the absence of any reply from his side choosing a date, the Chairperson chose the date. In summary, Mr Zwanziger was presented with sufficient options to schedule the hearing at the date and time of his choosing (so that he can attend it) but regrettably failed to do so, as well as to attend the hearing in person. With respect to the statement about Mr Bin Hammam, the Chairperson confirmed it had indeed been an error from his part, as it was Mr Julio Grondona, the former chairman of the FIFA Finance Committee (at the time of the facts relevant to the present matter) who has sadly passed away, not Mr Bin Hammam, who was a member of the same committee during the relevant period. Mr Zwanziger was further reminded that Mr Bin Hammam had been banned for life from taking part in any football-related activity by the FIFA Ethics Committee on 17 December 2012, after resigning from all his football functions on 15 December 2012.
66. On 26 November 2020, Mr Zwanziger's legal representative made a series of written submissions:
- The clarifications of the chairperson about the proposed dates for the hearing was not sufficient, the statement made during the hearing in this respect were lies, as Mr Zwanziger had not been provided with appropriate alternatives for the scheduling of the hearing, and his request for a postponement was denied;
 - This prevented him from taking part in person in the hearing, and from presenting his case orally, in particular his final opportunity to speak according to art. 75 par. 4 lit. g) of the FCE;
 - The chairperson's explanation regarding his erroneous statement about Mr Bin Hammam's death was also not acceptable, in particular since it did not mention whether the other members of the Panel had been informed of the chairperson's error;
 - The question of why Mr Bin Hammam, a key character in the case, was not questioned in the scope of the present proceedings remained, and the adjudicatory chamber did not request such interrogation;
 - Instead, superficial proceedings were conducted by the adjudicatory chamber, with equally superficial investigation results and assertions by the investigatory chamber. This is not in line with the high ethical requirement for officials expressed in the FCE.
67. On 1 December 2020, Mr Zwanziger lodged a complaint (in accordance with art. 58 of the FCE) for violation of art. 13 of the FCE against the chairpersons of the investigatory and adjudicatory chambers, as well as the other members of the Ethics Committee involved in the present case, who were accused to have infringed their

duties and inflicted severe damage to the FIFA by not acting carefully, objectively and independently at all times.

68. On 2 December 2020, Mr Zwanziger was informed that his complaint had been received and that he would not be considered as party to potential ethics proceedings resulting thereof (if any).
69. On 3 December 2020, Mr Zwanziger was reminded by the Chairperson that his right to be heard, as established by art. 69 ff of the FCE, had been duly respected in the present matter, since he had been provided with the opportunity to present his position both in writing and orally, as part of a hearing. Mr Zwanziger was further reminded that he had submitted an objection against the chairperson of the adjudicatory chamber in accordance with art. 35 of the FCE, and that such objection had been dealt with and rejected by decision of the chairperson of the FIFA Appeal Committee (cf. art. 35 par. 5 of the FCE).
70. In view of the above, and taking into account that the hearing in the present matter had ended on 17 November 2020 and that the Panel was in the deliberations phase of the adjudicatory proceedings, Mr Zwanziger was kindly asked to refrain from submitting any further correspondences.
71. On 21 December 2020, Mr Zwanziger referred to various media articles from 18 December 2020 and accused the FIFA President of having lied, claiming that the Ethics Committee should prosecute him for a breach of art. 13 of the FCE.
72. On 1 February 2021, Mr Zwanziger referred to his previous correspondence of 21 December 2020 and criticized the Ethics Committee and the relevant adjudicatory proceedings against him. He also informed that he had filed criminal complaints against the chairpersons of the Ethics Committee for defamation, and that the other members of the adjudicatory chamber involved in the present matter would be also added to that complaint.

II. CONSIDERATIONS OF THE ADJUDICATORY CHAMBER

A. COMPETENCE AND APPLICABLE LAW

a) Competence

73. 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.
74. At the time of the facts relevant to the present case, Mr Zwanziger was a member of the WC OC (2003 – 2006), as well as a high-ranking official of the DFB (between 2001 and 2012). He was also member of various FIFA committees between 2007 and 2015.
75. 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 Schmidt, Mr Zwanziger was one of the members of the presidium of the WC OC since June 2003 (when he replaced Mr Fedor Radmann).

76. Moreover, Mr Zwanziger'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.
77. Consequently, the FIFA Ethics Committee is entitled to investigate and judge Mr Zwanziger'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*

78. 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 Zwanziger. In particular, during the investigations, possible violations of Duty to cooperate (art. 18) and Bribery and corruption (art. 27) in the FCE have been identified. The factual circumstances raise questions of potential misconducts in terms of the FCE.
79. Consequently, the FCE is applicable to the case according to art. 1 of the FCE (*ratione materiae*).

c) Applicability of the FCE *ratione personae*

80. 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.
81. By virtue of his positions within the WC OC and DFB (cf. par. 1 above), Mr Zwanziger was an official within the meaning of the definition given in the FCE and the FIFA Statutes during the period presently relevant.
82. As a consequence, at the time the relevant actions and events occurred, and in view of Mr Zwanziger'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*

83. 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).
84. 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*).
85. 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).
86. 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 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

88. The principle of *lex mitior* foresees that the accused should benefit from the most favourable law, imposing the lesser penalty.
89. 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 favourable to the accused.
90. 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.
91. 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

92. In his various submissions to the adjudicatory chamber, Mr Zwanziger presented a list of procedural issues or requests. Notwithstanding the fact that some of such procedural issues have already been analysed and dealt with previously, for example by the FIFA Appeal Committee (cf. par. 58 above), the adjudicatory chamber would like to hereby address the matters once more, in detail.
- a) **Objection to the chairperson of the adjudicatory chamber**
93. By letter dated 2 November 2020, Mr Zwanziger objected against the chairperson of the adjudicatory chamber in accordance with art. 35 par. 4 of the FCE. In support of his objection, he claimed that the Chairperson's refusal to reschedule the hearing (as requested by Mr Zwanziger) gives the impression that he cannot judge in an impartial manner, and he should therefore recuse himself.
94. In this respect, the Panel would like to first state that, in full accordance with art. 35 par. 5 of the FCE, the objection against the Chairperson was transmitted to and dealt by the chairperson of the FIFA Appeal Committee. The respective chairperson was

also provided with the position of the chairperson of the adjudicatory chamber in this respect.

95. The Panel would like to add that the content of art. 35 par. 5 of the FCE was amended, as part of the 2019 revision of the Code, in order to provide even more transparency and independence to the ethics proceedings. Following the principle of “checks and balances” and separation of powers, any objections against the chairperson of the adjudicatory chamber are decided by the chairperson or deputy chairperson of the FIFA Appeal Committee, a distinct independent judicial body of FIFA.
96. After carefully examining the relevant documents, the chairperson of the FIFA Appeal Committee decided on 11 November 2020 to dismiss the respective objection submitted by Mr Zwanziger against the Chairperson, citing the following arguments:
- contrary to art. 35 par. 4 of the FCE, Mr Zwanziger failed to substantiate his allegations by any documentary evidence demonstrating the lack of independence of the objected member, i.e. the Chairperson.
 - after a careful analysis of the motion at hand, and of the relevant positions, the chairman of the Appeal Committee considered that there are no grounds for questioning the impartiality and/or the independence of the Chairperson.
 - in particular, the Appellant failed to demonstrate that the conditions for a recusal as set for under art. 35 par. 2 of the FCE are met.
 - more fundamentally, on the basis of the documents at the disposal of the chairperson of the Appeal Committee, there is no basis for concluding that the Chairperson has:
 - i. either “a direct interest in the outcome of the case”;
 - ii. “a personal bias or prejudice concerning [the Appellant]; or personal, first-hand knowledge of disputed evidentiary facts material to the proceedings; or has expressed an opinion, other than as part of the proceedings in question, concerning the outcome of the proceedings; or when the immediate family of the member is a party to the subject matter in controversy, is a party to the proceedings or has any other interest that could be substantially affected by the outcome of the proceedings and his impartiality”;
 - iii. “the same nationality” as the Appellant;
 - iv. or “already dealt with the case in a different function other than his function as a member of the Ethics Committee”.
 - As a result of the above considerations, the chairman of the Appeal Committee concluded that the request for recusal of the Chairperson had to be dismissed.
97. In addition to the content of the decision taken by the chairperson of the FIFA Appeal Committee on 11 November 2020, the Panel would like to make the following additional considerations with respect to Mr Zwanziger’s objection dated 2 November 2020.
98. First of all, the Panel would like to stress that the independence of any member of the FIFA Ethics Committee is provided by art. 34 of the FCE, which establishes clear rules and requirements for such membership (in particular the interdiction for

members of the Ethics Committee and their immediate family members to belong to any other judicial body within FIFA, to the FIFA Council or to any standing committee of FIFA, as well as the interdiction – for Ethics Committee members – to belong to any body or carry out any position with regard to FIFA, a confederation or a member association, other than being member of a judicial body at FIFA, confederation or national level). These requirements have evolved over time, becoming more restrictive over the latest revisions of the FCE in 2018 and 2019, during the tenure of the current chairperson of the Ethics Committee.

99. Furthermore, the institutional independence of the judicial bodies of FIFA is explicitly stated/stipulated at art. 50 of the FIFA Statutes - the most important regulations of the organization which also contains specific and strict rules regulating the FIFA judicial bodies, in particular their composition, election and organization (art. 52 and 54). In addition, the FIFA Governance Regulations (in force since 2016) set further conditions concerning eligibility checks conducted by the FIFA Governance/Review Committee on all members of the independent committees of FIFA (including the Ethics Committee) prior to their (re)election or (re)appointment (art. 4), as well as independence requirements (art. 5) and other rules concerning judicial bodies (art. 38) such as eligibility and independence reviews.
100. Finally, the Panel would like to state that Mr Zwanziger's objection does not contain any allegations that are related to ethics proceedings, in particular the present ones. In particular, the allegations concerning the Chairperson are not substantiated with any evidence that would demonstrate any bias towards Mr Zwanziger.
101. The adjudicatory chamber would also like to recall that, since the opening of the adjudicatory proceedings on 9 September 2020, the Chairperson has consistently shown transparency and swiftness in answering all Mr Zwanziger's queries and procedural requests. Such approach and procedure have been made in line with the FCE, the constant practice and the jurisprudence of the adjudicatory chamber.

b) Limitation period for prosecution

102. In his various submissions, Mr Zwanziger 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, but rather that of art. 21 of the 2012 FCE among the charges. According to Mr Zwanziger, 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 Zwanziger also refers to a letter dated 18 August 2016 from the investigatory chamber, in which it was specifically mentioned that "no allegation of corruption" was made against him "at any time".
103. With respect to the letter of 22 March 2016, the following considerations should be made.
104. 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.

105. Second, the list of provisions mentioned in the letter of 22 March 2016 as potential violations 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.
106. Third, it should be stressed that the letter dated 18 August 2016 from the investigatory chamber specified that no "accusation of corruption" against Mr Zwanziger was made **publicly** (emphasis added), meaning that no media statement was made by FIFA in this respect. This does not entail that the investigation was not related to corruption charges, as it was clearly stated in the letter of 22 March 2016, which refers to art. 21 of the 2012 FCE (Bribery and corruption).
107. 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 Zwanziger 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.
108. 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).
109. 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.
110. As mentioned previously, the formal investigation proceedings against Mr Zwanziger 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.
111. Furthermore, as mentioned in the final report, criminal proceedings were opened on 6 November 2015 against Mr Zwanziger (as well as Messrs Beckenbauer, Schmidt, 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.

112. 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 Zwanziger is charged with. In case this date falls after 22 March 2006, the Ethics Committee would be allowed to prosecute and judge Mr Zwanziger 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.
113. 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 Zwanziger, in relation to the hosting and organisation of the 2006 FIFA World Cup by the DFB and WC OC. At the center of this scheme was a payment of CHF 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.
114. 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 Zwanziger (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 Zwanziger 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 Zwanziger, the respective period would be extended accordingly.
115. Notwithstanding the above, a different approach can also be taken into account, and was argued by Mr Zwanziger. 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 Zwanziger), 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.
116. In the case of Mr Zwanziger, 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 Zwanziger would be time-barred as well.

117. 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 Zwanziger's conduct in connection or as part of the scheme dates from 2005, in particular April 2005.
118. Moreover, Mr Zwanziger's actions were strictly related and limited 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.
119. In view of the above, the Panel considers that the individual conduct of Mr Zwanziger 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 Zwanziger'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.
120. 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 Zwanziger's conduct could no longer be prosecuted after 27 April 2015.
121. In the present matter, the investigatory proceedings against Mr Zwanziger 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).

c) Conclusion

122. In light of the considerations and findings above, the adjudicatory chamber holds that the conduct of Mr Zwanziger can no longer be prosecuted, due to the expiry of the respective limitation period established at art. 12 of the FCE.
123. Furthermore, since the investigation against Mr Zwanziger 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

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

125. 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).
126. Since the conduct of Mr Zwanziger cannot be prosecuted, due to the expiration of the limitation period for prosecution, the procedural costs shall be borne by FIFA.
127. According to art. 57 of the FCE, no procedural compensation shall be awarded in proceedings conducted by the Ethics Committee. Consequently, Mr Zwanziger shall bear his own legal and other costs incurred in connection with these proceedings.

III. DECISION OF THE ADJUDICATORY CHAMBER

1. Mr Zwanziger'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 Zwanziger.
3. Mr Zwanziger shall bear his own legal and other costs incurred in connection with the present proceedings.
4. This decision is sent to Mr Zwanziger. 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 are final, subject to appeals lodged with the Court of Arbitration for 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).

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