Decision

of the

Adjudicatory Chamber

of the

FIFA Ethics Committee

Mr Vassilios Skouris [GRE], Chairperson
Mr Jack Kariko [PNG], Member
Mr Flavio Zveiter [BRA], Member

taken on 8 June 2019

in the case of:

Mr Domingo Mituy Edjang [EQG]

Ethics 9/2019 (E19-00002)
I. Inferred from the file

1. Mr Domingo Mituy Edjang (hereinafter: Mr Mituy Edjang, the accused or the official), a national of Equatorial Guinea, has been the President of the Federacion Ecuatoguineana de Futbol ("FEGUIFUT"), a member association of FIFA, in the period 2013-2014. Apart from that, he has served as member of the FIFA Futsal Committee in the period 2013-2015.

2. On 20 March 2019, based on a memorandum of the FIFA Head of Controlling & Strategic Planning and a report from KPMG (hereinafter the "KPMG Report") into the alleged misuse of FIFA Financial Assistance Program ("FAP") funds from the FEGUIFUT and an ensuing preliminary investigation, formal investigation proceedings were opened against Mr Mituy Edjang for possible breaches of articles 13, 15, 19 and 21 of the FCE, 2012 edition (hereinafter "2012 FCE"). Such proceedings were led by Ms Maria Claudia Rojas, the chairperson of the investigatory chamber of the FIFA Ethics Committee, as chief of investigation (see art. 63 of the FCE, 2018 edition – hereinafter "FCE").

3. With regard to the procedural history before the investigatory chamber, reference is made to the relevant section in the final report.

4. Investigation proceedings were concluded on 15 April 2019. The final report and investigation files were subsequently referred to the adjudicatory chamber (art. 65 and 66 of the FCE).

5. On 15 April 2019, Mr Vassilios Skouris, the chairman of the adjudicatory chamber, opened adjudicatory proceedings against Mr Mituy Edjang. Furthermore, the chairman set a deadline for Mr Mituy Edjang to provide his position on the final report and to request a hearing (see art. 71 and art. 69 of the FCE).

6. On 29 May 2019, in view of the absence of the pertinent request, the chairperson informed Mr Mituy Edjang that a hearing would not be held, and that the adjudicatory chamber would decide the case using the file in its possession (see art. 69 par. 2 of the FCE). Finally, the chairperson informed the accused about the composition of the panel.

7. No correspondence was received from Mr Mituy Edjang.

II. and considered

A. Applicability of the FCE ratione materiae (art. 1 of the FCE)

1. The adjudicatory chamber notes that, according to the investigatory chamber’s final report, there were several indications of potential improper conduct by Mr Mituy Edjang. In particular, in the final report, possible violations of arts. 28, 19, 15 and 13 of the FCE (and their analogous provisions of the 2012 FCE) were identified.

2. Consequently, the FCE is applicable to the case according to art. 1 of the FCE (ratione materiae).
B. Applicability of the FCE *ratione personae* (art. 2 of the FCE)

3. It is undisputed that, between 2013 and 2014, Mr Mituy Edjang was the President of the FEGUIFUT and member of a FIFA committee. It is further undisputed that as such, he was subject to the FCE (art. 2 of the FCE).

C. Applicability of the FCE *ratione temporis* (art. 3 of the FCE)

4. The relevant events took place in 2014, at a time before the FCE came into force. With regard to the applicability of the FCE in time, art. 3 of the FCE (see also art. 3 of the 2012 FCE) stipulates that the FCE shall apply to conduct whenever it occurred. Accordingly, the material rules of the FCE shall apply, provided that the relevant conduct was sanctionable at the time (with a maximum sanction that was equal or more) and unless the 2012 FCE would be more beneficial to the party (*lex mitior*).

5. In this context, following the relevant case law and jurisprudence, the adjudicatory chamber notes that the spirit and intent of the 2012 edition of the FCE is duly reflected in the below articles of the FCE, which contain equivalent provisions:
   - Art. 28 of the FCE has a similar provision in the 2012 FCE (art. 21 par. 2);
   - Art. 19 of the FCE has a similar provision in the 2012 FCE (art. 19);
   - Art. 15 of the FCE has a similar provision in the 2012 FCE (art. 15);
   - Art. 13 of the FCE has a similar provision in the 2012 FCE (art. 13).

6. In consideration of all the above, the adjudicatory chamber concludes that the 2012 FCE edition covers the same offence and that the maximum sanctions in the FCE are equal or less. However, from a material point of view and taking into account the minimum sanctions provided by art. 28 of the FCE (fine of at least CHF 100,000 as well as ban on taking part in any football-related activity for a minimum of five years), the adjudicatory chamber notes that, *in casu*, the corresponding provision of the 2012 FCE (art. 21 par. 2) - which does not foresee any such minimal sanctions - would be more beneficial to the accused (principle of “*lex mitior*”), since its application could lead to a lower sanction.

7. Consequently, the 2012 FCE is applicable to the case according to art. 3 of the FCE (*ratione temporis*) and the equivalent provision in the FCE.

D. Jurisdiction of the FIFA Ethics Committee

8. The scope of jurisdiction of the FIFA Ethics Committee is defined in art. 30 of the FCE, which is more restrictive compared to the equivalent provision in the 2012 FCE.

9. Art. 30 of the FCE defines a primary (par. 1) and secondary (par. 2) competence of the FIFA Ethics Committee. According to art. 30 par. 1, if the relevant conduct has been committed by an individual elected, appointed or assigned by FIFA to exercise a function, or if such conduct is related to the use of FIFA funds, the Ethics Committee shall be entitled to investigate and judge the respective matter.
10. The adjudicatory chamber notes that the President of the FEGUIFUT and a FIFA committee member, committed the relevant conduct, which is related to the use of FIFA funds (cf. par. I.1 and I.2 above).

11. Consequently, the FIFA Ethics Committee is entitled to judge his conduct as per art. 30 par. 1 of the FCE.

E. **Assessment of potential infringements of the 2012 FCE committed by Mr Mituy Edjang**

1. **The FIFA development funds received by the FEGUIFUT**

12. During the relevant period in 2014, the FEGUIFUT received, as part of the Financial Assistance Programme (FAP) - through which FIFA offered financial assistance and technical advice to the associations and confederations- the total amount of USD 240,000 for the year 2014 on the FEGUIFUT dedicated FAP bank accounts (at the [Bank 1] and [BANK 2]).

13. At that time, the FEGUIFUT signatories for the mentioned FAP accounts were Mr Mituy Edjang and Mr Andres Jorge Mbomio Tito (former vice-president of the FEGUIFUT).

2. **Possible violation of art. 21 par. 2 of the 2012 FCE (Misappropriation of funds)**

a) **The relevant facts**

14. On 5 May 2014, the former vice-president of FEGUIFUT informed FIFA, that Mr Mituy Edjang withdrew funds in the amount of approximately USD 40,000, which was the exact amount FIFA had just transferred to FEGUIFUT under the FAP program. In addition, because of that withdrawal, the FEGUIFUT failed to pay the salaries of their employees for 3 months.

15. Based on the audit performed by KPMG into the use of 2014 FAP funds by FEGUIFUT, establish that Mr Mituy Edjang withdrew the total amount of USD 36,324 (XAF 17,900,000) from FEGUIFUT bank accounts in connection with the FAP program. Mr Mituy Edjang withdrew in the following days and amounts:

- On 8 April 2014, in the amount of XAF 10,000,000; and
- On 10 April 2014, in the amount of XAF 7,900,000.

16. In addition, it can also be established from the KPMG report that no supporting documentation for that amount was provided which leads to the conclusion that the same was “used for purposes other than those corresponding to FAP Program”.

17. It appears from the investigation files that said amount was used by Mr Mituy Edjang to buy vehicles to the FEGUIFUT which he stated would be given back to the association on 3 January 2015. However, no confirmation was received from FEGUIFUT that in fact those vehicles were indeed returned to the association.
18. As per KPMG, the amount of USD 36,324 represents 15% of the total contribution of USD 240,000 that has been paid to FEGUIFUT as FAP in the year of 2014.

b) Summary of the findings of the investigatory chamber

19. The investigatory chamber concludes that Mr Mituy Edjang misused FIFA funds in the total amount of USD 36,324.

c) Legal assessment

20. Although art. 21 par. 2 of the FCE does not include a specific definition of the concept of misappropriation of funds, a general description could be made in the following legal terms: the illegal use of funds of another person/entity for one's own use or other unauthorized purpose. In the present case, this would translate into the misuse of FIFA funds for private gain (that of Mr Mituy Edjang's or any person or entity related to him) or for a purpose that has not been authorized (by FIFA, as the initial owner, grantor and distributor of such funds).

21. In this respect, as per the relevant regulations, the members associations shall disburse the development funds received from FIFA in compliance with the respective budget approved by the latter, only in connection with the operational needs of a member association, for example, in women's football, referees, training, youth football, etc.

22. The adjudicatory chamber points out that Mr Mituy Edjang, in his position as president of the FEGUIFUT, and as signatory/approval authority of all the relevant transactions in relation to FIFA funds, was personally responsible for the decisions taken in respect of the FIFA development projects, in particular the use of the respective funds.

23. In the present case, by withdrawing the amount of USD 36,324 (XAF 17,900,000) from the FEGUIFUT bank accounts dedicated for FAP funds in April 2014, without providing any supporting documents for such, Mr Mituy Edjang has mismanaged a significant portion (15%) of the FAP funds received by the FEGUIFUT in 2014.

24. In addition, the Panel finds that the purpose for which the FAP funds withdrawn by Mr Mituy Edjang were actually used – the purchase of vehicles – had no relation to any football development projects of FEGUIFUT, or even to the association itself, since no evidence could indicate the respective vehicles being provided to or used by FEGUIFUT.

25. Equally, Mr Mituy Edjang failed to involve, consult or seek prior approval by FEGUIFUT’s competent bodies, i.e. executive committee, prior to withdrawing the aforementioned amount of FAP funds. Mr Mituy Edjang decided alone to withdraw the funds, without the knowledge of the members of the FEGUIFUT executive committee. This is particularly serious since, according to the letter of FEGUIFUT dated 5 May 2014, the relevant funds would have been used to pay the salaries of the association’s employees for three months and, as a result, such salaries remained unpaid.
26. Consequently, Mr Mituy Edjang did not perform his duties in the best interests of the FEGUIFUT and neither of FIFA: the adjudicatory chamber therefore concludes that the relevant FAP funds have not been used in accordance to their objective (or even in relation to any projects of the FEGUIFUT). To the contrary, Mr Mituy Edjang’s conduct as president of the FEGUIFUT demonstrated a blatant disregard towards the welfare of the very institution he was responsible to protect, by preventing the payment of salaries to its employees for three months.

27. In the light of the foregoing, the adjudicatory chamber finds that Mr Mituy Edjang misappropriated funds of FIFA, and has therefore breached art. 21 par. 2 of the 2012 FCE.

3. Possible violation of art. 13, 15 and 19 of the 2012 FCE

28. With regard to the obligations set forth in art. 13 (General rules of conduct), art. 15 (Loyalty) and art. 19 (Conflicts of interest) of the 2012 FCE, the adjudicatory chamber is of the opinion that Mr Mituy Edjang’s conduct presently relevant clearly falls short of the ethical standards provided by those articles of the FCE as described above.

29. Notwithstanding the foregoing, bearing in mind that the relevant conduct took place within the same context, the adjudicatory chamber considers that the relevant conduct (which is in breach of arts. 13, 15 and 19 of the 2012 FCE) is sufficiently covered by the provisions of arts. 21 par. 2 of the 2012 FCE, violation for which Mr Mituy Edjang has already been found guilty.

30. In the light of the aforementioned, any further legal considerations in this respect are redundant.

4. Overall conclusion

31. Taking the above considerations into account in their entirety, the adjudicatory chamber is comfortable to conclude that Mr Mituy Edjang has violated the following provisions of the 2012 FCE:
   - Art. 21 par. 2 (Bribery and corruption);
   - Art. 19 (Conflicts of interest);
   - Art. 15 (Loyalty);
   - Art. 13 (General rules of conduct).

32. Nevertheless, as explained above, the adjudicatory chamber considers that the conduct incriminated by arts. 13, 15 and 19 of the 2012 FCE are included/assimilated in the content of arts. 21 par. 2 of the 2012 FCE.

F. Sanctions and determination of sanctions

33. First, the adjudicatory chamber would like to highlight that officials must behave honestly, worthily, respectably and with integrity. It is evident that in exercising his functions at FEGUIFUT and FIFA, Mr Mituy Edjang disregarded those ethical principles for purposes such as obtaining a benefit for himself and related parties.
34. As a president of the FEGUIFUT and a FIFA Committee member, Mr Mituy Edjang held a significant position in association football both at national and international level. As such, he had a special responsibility to serve as a role model. Yet, Mr Mituy Edjang has been found guilty of misappropriation of FIFA funds.

35. The adjudicatory chamber stresses that the accused acted in an intentional manner, Mr Mituy Edjang’s actions were deliberate actions, which involved private and personal interests (financial benefits) of himself. Another relevant aspect is the fact that, as a result of Mr Mituy Edjang’s selfish conduct, his association was deprived of significant funds, which could have enabled the payment of FEGUIFUT employees’ salaries (for a period of three months).

36. The adjudicatory chamber further notes the absence of remorse or confession during the present proceedings. Furthermore, Mr Mituy Edjang has not showed any intention to repay the above-mentioned misappropriated amounts to the FEGUIFUT or FIFA.

37. In view of all these circumstances, Mr Mituy Edjang’s degree of guilt must be regarded as very serious.

38. With regard to the type of sanction to be imposed on Mr Mituy Edjang, the adjudicatory chamber deems – in view of the serious nature of his misconduct (cf. par. II.15 et seqq. above) – only a ban on taking part in any football-related activity to be appropriate in view of the inherent, preventive character of such sanction in terms of potential subsequent misconduct by the official. In the light of this, the adjudicatory chamber has chosen to sanction Mr Mituy Edjang by banning him from taking part in any football-related activity (art. 7 par. 1(j) of the FCE; art. 56 par. 2(f) of the FIFA Statutes; art. 11(f) and art. 22 of the FDC). In addition, in relation to the scope and duration of the ban (see art. 9 par. 2 and 3 of the FCE), after having taken into account all relevant factors of the case, the adjudicatory chamber deems that a four-year ban is adequate for the seriousness of the infringements of the FCE committed by Mr Mituy Edjang. Furthermore, considering that the breaches took place while Mr Mituy Edjang served as president of the FEGUIFUT and FIFA committee member, and that FIFA funds are at stake, the adjudicatory considers that only a worldwide scope would be appropriate.

39. In the present case, the adjudicatory chamber is of the opinion that the imposition of a ban on taking part in any football-related activity is not sufficient to sanction the misconduct of Mr Mituy Edjang adequately, in particular since a personal financial motive and gain were involved. Mr Mituy Edjang made significant profits by misappropriating funds of FIFA to himself or persons/entities related to him. Hence, the adjudicatory chamber considers that the ban imposed on Mr Mituy Edjang should be completed with a fine.

40. The amount of the fine shall not be less than CHF 300 and not more than CHF 1,000,000 (art. 6 par. 2 of the FCE in conjunction with art. 15 par. 1 and 2 of the FDC). Moreover, as mentioned previously (cf. par. II.6 above), art. 21 par. 2 of the 2012 FCE does not foresee any minimal (financial) sanctions. In the case at hand – in view of the amount misappropriated by Mr Mituy Edjang, as well as the various
circumstances described above –, the adjudicatory chamber determines that a fine of CHF 80,000 would be proportionate.

41. In conclusion, Mr Mituy Edjang is hereby banned for four years from taking part in any football-related activity (administrative, sports or any other) at national and international level. The ban shall come into force as soon as the decision is communicated (art. 42 par. 1 of the FCE). In addition, Mr Mituy Edjang shall pay a fine of CHF 80,000.

G. Procedural costs and procedural compensation

42. The procedural costs are made up of the costs and expenses of the investigation and adjudicatory proceedings (art. 54 of the FCE). As a principle, procedural costs shall be borne by the party that has been sanctioned (cf. art. 56 par. 1 of the FCE).

43. In the light of the above, the adjudicatory chamber rules that Mr Mituy Edjang shall bear the procedural costs, and that in the present case, the costs and expenses of the investigation and the adjudicatory proceedings add up to CHF […]

44. According to art. 57 of the FCE, no procedural compensation shall be awarded in proceedings conducted by the Ethics Committee. Consequently, Mr Mituy Edjang shall bear his own legal and other costs (if any).

III. has therefore decided

1. Mr Mituy Edjang is found guilty of infringement of art. 21 par. 2 (Bribery and corruption) of the 2012 FCE.

2. Mr Mituy Edjang is hereby banned from taking part in any kind of football-related activity at national and international level (administrative, sports or any other) for four years as of notification of the present decision, in accordance with Article 7 lit. j) of the FIFA Code of Ethics in conjunction with Article 22 of the FIFA Disciplinary Code.

3. Mr Mituy Edjang shall pay a fine in the amount of CHF 80,000 within 30 days of notification of the present decision. Payment can be made either in Swiss francs (CHF) to account no. […] or in US dollars (USD) to account no. […], with reference to case no. 9/2019 (E19-00002) in accordance with art. 7 let. e) of the FIFA Code of Ethics.

4. Mr Mituy Edjang shall pay costs of these proceedings in the amount of CHF […] within 30 days of notification of the present decision, which shall be paid according to the modalities stipulated under point 3. above.

5. Mr Mituy Edjang shall bear his own legal and other costs incurred in connection with the present proceedings.
6. This decision is sent to Mr Mituy Edjang. A copy of the decision is sent to the CAF and to the FEGUIFUT, as well as to the chairperson of the investigatory chamber, Ms Maria Claudia Rojas.

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LEGAL ACTION:

In accordance with art. 82 par. 1 of the FCE and art. 58 par. 1 of the FIFA Statutes, this decision 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. RS1 of the Code of sports-related arbitration).

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION

Vassilios Skouris
Chairperson of the Adjudicatory Chamber
of the FIFA Ethics Committee