



**Arbitration CAS 2016/A/4501 Joseph S. Blatter v. Fédération Internationale de Football Association (FIFA), award of 5 December 2016**

Panel: Mr Manfred Nan (The Netherlands), President; Mr Patrick Lafranchi (Switzerland); Mr Andrew de Lotbinière McDougall (France)

*Football*

*Disciplinary sanctions for infringements to the Code of Ethics*

*Principle “tempus regit actum” and prohibition against retroactivity*

*Admissibility of a witness statement of a witness not appearing at the hearing*

*Potential conclusive and preclusive effects of a previous award rendered in a closely connected case*

*Burden of proof*

*Standard of proof of “personal conviction”*

*Prohibition of bribery*

*Conflict of interests*

*Limited discretion to review sanctions imposed by disciplinary bodies of federations*

1. Pursuant to the legal principle of *tempus regit actum* or non-retroactivity, procedural matters are governed by the regulations in force at the time of the procedural act in question. The prohibition against retroactivity is a fundamental principle of Swiss law and forms part of international public policy (*ordre public*). An exception in this respect may however be if more recent regulations than the one in force at the time of the violation are more favourable to the accused (*lex mitior*).
2. According to article 4(7) of the IBA Rules on the Taking of Evidence in International Arbitration, “[i]f a witness whose appearance has been requested pursuant to Article 8.1 fails without a valid reason to appear for testimony at an Evidentiary Hearing, the Arbitral Tribunal shall disregard any Witness Statement related to that Evidentiary Hearing by that witness unless, in exceptional circumstances, the Arbitral Tribunal decides otherwise”.
3. For an arbitral award to have conclusive and preclusive effects it must comply with the traditional triple identity test (identity of the claims, of the causes of action and of the parties), and if there are different parties in the further arbitration proceedings, the prior award will not have conclusive and preclusive effects on a different party. There are however several published awards in which arbitral tribunals have given some effects to a prior decision, even though it did not qualify as *res judicata*. This was typically done in situations where the prior decision involved a case that was not identical but was closely connected to the case before the arbitral tribunal. The effects given to such prior decisions varied among arbitral tribunals. While some tribunals considered themselves bound by a prior decision that was not *res judicata*, others were more cautious holding that they would take the prior decision into consideration. In a case where only a media

release but not the reasoning of the previous award was available at the time of the hearing, the press release and previous award were not submitted into evidence and were not relied upon by the parties in making their submissions and requests for relief in the further arbitration proceedings, the panel shall not be bound by the previous award.

4. The principle of burden of proof applies if the requisite degree of conviction that an alleged fact is fulfilled is not reached. In such a case, the principle of burden of proof defines which party has to bear the consequences of such a state of non-conviction on the part of the arbitral tribunal with respect to the establishment of an alleged fact. Except where an agreement would determine otherwise, the arbitral tribunal shall allocate the burden of proof in accordance with the rules of law governing the merits of the dispute, *i.e.* the *lex causae*.
5. The standard of proof is defined as the level of conviction that is necessary for a panel to conclude in the arbitral award that a certain fact happened. Article 51 of the FIFA Code of Ethics (FCE), 2012 edition, determines that the standard of proof to be applied should be one of “personal conviction”. In practical terms, this standard of proof of personal conviction coincides with the “comfortable satisfaction” standard widely applied by CAS panels in disciplinary proceedings. According to this standard of proof, the sanctioning authority must establish the disciplinary violation to the comfortable satisfaction of the judging body bearing in mind the seriousness of the allegation. It is a standard that is higher than the civil standard of “balance of probability” but lower than the criminal standard of “proof beyond a reasonable doubt.
6. Irrespective of which version of the FCE comes into play, the general prohibition against bribery does not only cover undue gifts given by a FIFA official to external third parties, *i.e.* persons “outside FIFA”, but also encompasses undue gifts or benefits given by a FIFA official to another FIFA official, *i.e.* a person “within FIFA”. Any other reading would suggest that FIFA officials are able to give each other unlimited gifts without any justification whatsoever being required, which cannot be accepted as a reasonable interpretation of the provision. No culpable intent is required in order for a violation of the provision to be established.
7. By approving a payment on behalf of FIFA without any contractual basis and failing to fully inform FIFA’s Finance Committee about the circumstances of the payment, a FIFA official creates a conflict of interest between himself and FIFA as an organisation. This indeed constitutes a violation of the FCE.
8. CAS panels have limited discretion to review sanctions imposed by disciplinary bodies of federations when such panels make similar findings and such discretion should only be exercised when the sanction is evidently and grossly disproportionate to the offence.

## **I. PARTIES**

1. Mr Joseph S. Blatter (the “Appellant” or “Mr Blatter”) was President of the *Fédération Internationale de Football Association* between 1998 and 2015. Before being elected as President, Mr Blatter had already served the same organisation in various positions for twenty-three years, including as its Secretary General from 1981 to 1998. Mr Blatter is of Swiss nationality.
2. The *Fédération Internationale de Football Association* (the “Respondent” or “FIFA”) is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the governing body of international football at a worldwide level. It exercises regulatory, supervisory and disciplinary functions over continental federations, national associations, clubs, officials and football players worldwide.

## **II. FACTUAL BACKGROUND**

### **A. Background Facts**

3. Below is a summary of the main relevant facts, as established on the basis of the parties’ written submissions and the evidence examined in the course of the present appeal arbitration proceedings and during the hearing. This background is set out for the sole purpose of providing a synopsis of the matter in dispute.
4. On 25 September 2015, the office of the Swiss Federal Attorney General opened criminal proceedings against Mr Blatter. These proceedings were initiated in connection with an alleged “disloyal” payment by FIFA to Mr Michel Platini, Vice-President of FIFA and member of the FIFA Executive Committee as well as President of the *Union des Associations Européennes de Football* (“UEFA”), a confederation recognised by FIFA in accordance with article 20 of the FIFA Statutes. Said payment in the amount of CHF 2,000,000 was made in early 2011 and was allegedly remunerating work performed by Mr Platini for FIFA between January 1999 and June 2002.
5. On the same day, Mr Blatter was questioned by the Swiss Federal Attorney General as an accused person. Mr Platini was questioned by the Swiss Federal Attorney General also on the same day, as a person providing information in accordance with article 178 of the Swiss Code of Criminal Procedure.

### **B. Proceedings before the Adjudicatory Chamber of the FIFA Ethics Committee**

6. Based on the opening of said proceedings by the Swiss Federal Attorney General, the Deputy Chairman of the Investigatory Chamber of the FIFA Ethics Committee (the “Investigatory Chamber”) initiated preliminary investigations against Mr Blatter in accordance with article 62(3) of the FIFA Code of Ethics (the “FCE”).
7. On 28 September 2015, the Deputy Chairman of the Investigatory Chamber determined that there was, based on the findings of the preliminary investigation, a *prima facie* case that Mr

Blatter had committed violations of the FCE. Mr Blatter was notified that formal proceedings were opened against him relating to possible violations of article 13 (General rules of conduct), 15 (Loyalty), 18 (Duty of disclosure, cooperation and reporting), 19 (Conflicts of interest) and 21 (Bribery and corruption) of the FCE (2012 edition). Justice Robert Torres, Member of the Investigatory Chamber, was assigned as Chief of Investigation.

8. On the same day, formal proceedings were also opened by the Investigatory Chamber against Mr Platini.
9. On 1 October 2015, Mr Blatter was interviewed by the Chief of Investigation, by video-conference.
10. On 7 October 2015, Mr Blatter was provisionally banned from taking part in any football-related activity at national and international level for a period of 90 days.
11. On 5 November 2015, the Chief of Investigation sent Mr Blatter a list of questions, with a deadline to reply.
12. On 12 November 2015, Mr Blatter was informed by the Investigatory Chamber that there was a *prima facie* case that he might have committed additional FCE violations, namely possible violations of article 17 (Forgery and falsification) and 20 (Offering and accepting gifts and other benefits) of the FCE (2012 edition), as well as article 4(3) (Failure to comply with the FCE or severely fail to fulfil, or inadequately exercise duties and responsibilities) of the FCE (2009 edition).
13. On 16 November 2015, Mr Blatter provided his responses to the questions posed by the Chief of Investigation's letter dated 5 November 2015.
14. On 20 November 2015, Mr Blatter was informed by the Investigatory Chamber that the investigation proceedings were concluded and a final report was submitted by the Investigatory Chamber to the adjudicatory chamber of the FIFA Ethics Committee (the "Adjudicatory Chamber").
15. On 23 November 2015, the Adjudicatory Chamber informed Mr Blatter that adjudicatory proceedings had been opened against him and asked for his position on the Investigatory Chamber's final report.
16. On 6 December 2015, Mr Blatter provided his position to the Chairman of the Adjudicatory Chamber.
17. On 17 December 2015, a hearing took place before the Adjudicatory Chamber.
18. Also on 17 December 2015, the Adjudicatory Chamber rendered its decision (the "First Instance Decision"), with the following operative part:

- “1. [Mr Blatter] is found guilty of infringements of art. 13 (General rules of conduct), art. 15 (Loyalty), art. 19 (Conflicts of interest) and art. 20 (Offering and accepting gifts and other benefits) of the FIFA Code of Ethics.
  2. [Mr Blatter] is hereby banned from taking part in any football-related activity (administrative, sports or other) at national and international level for eight (8) years as from 8 October 2015, in accordance with art. 6 par. 1 let. H of the FIFA Code of Ethics in conjunction with art. 22 of the FIFA Disciplinary Code.
  3. [Mr Blatter] shall pay a fine in the amount of CHF 50'000 within 30 days of notification of the present decision. [...]”.
19. On 8 January 2016, the grounds of the First Instance Decision were communicated to Mr Blatter, determining, *inter alia*, the following:

“[...] At this point, the Adjudicatory Chamber of the FIFA Ethics Committee also notes that the Investigatory Chamber charged the accused with a violation of art. 4 par. 3 of the 2009 edition of the FCE. However, this particular provision is no longer in force (as is the 2009 edition of the FCE as a whole). But persons subject to the FCE may, in principle, only be sanctioned for violations of FCE provisions currently in force. Under certain exceptional circumstances, however, such persons may also be sanctioned for violations of provisions of previous editions of the FCE. Yet, this is only possible if such a previous provision has a corresponding provision in the current edition of the FCE. With regard to art. 4 par. 3 of the 2009 edition of the FCE, the Adjudicatory Chamber notes that this is not the case. Therefore, the accused may not be sanctioned for violations of art. 4 par. 3 of the 2009 edition of the FCE in the context of the present proceedings.

*As an overall result, the FCE (edition 2012) is applicable to the factual circumstances of the present matter as well as to the accused according to art. 1 to 3 of the FCE, with the exceptions specified in par. 57 et seq. above. [...]*

**Possible violation of art. 21 of the FCE (Bribery and corruption)**

“[...] All in all, and in the light of the considerations and findings above, the Adjudicatory Chamber reaches the conclusion that the payment of CHF 2'000'000 to Mr Platini, which was authorised solely by the accused, constitutes an undue pecuniary advantage within the meaning of art. 21 par. 1 of the FCE. However, the Chamber does not reach the conviction that the payment was made in order to obtain Mr Platini's support of the accused's candidacy in the 2011 FIFA presidential elections or to incite him to refrain from submitting a candidacy of his own, respectively. Therefore, while more likely than not that there was an unethical motive for the payment, the Adjudicatory Chamber does not find that the evidence available is sufficient to establish, to the extent required, that the accused has sought the execution or omission of an official act within the meaning of art. 21 par. 1 of the FCE. As a consequence, the Adjudicatory Chamber holds that a violation of this provision has not been sufficiently established in the present case.

**Possible violation of art. 20 of the FCE (Offering and accepting gifts and other benefits)**

[...] *In the light of the preceding considerations, the Adjudicatory Chamber reaches the conclusion that the conduct of the accused – giving undue benefits in the form of contributions to his retirement fund – constitutes a breach within the meaning of art. 20 par. 1 of the FCE.*

*Furthermore, there can also be no doubt as to the fact that the violation of art. 20 par. 1 of the FCE by the accused was committed deliberately (see art. 5 par. 2 of the FCE).*

**Possible violation of art. 19 of the FCE (Conflicts of interest)**

[...] *In the light of the above, by authorising the undue CHF 2'000'000 payment to Mr Platini, the accused is found to have violated art. 19 par. 1 to 3 of the FCE.*

**Possible violation of art. 15 of the FCE (Loyalty)**

[...] *In the light of the above, by failing to place FIFA's interest first and abstaining from doing anything which could be contrary to FIFA's interests, the accused is found to have violated his fiduciary duty to FIFA and thus breached art. 15 of the FCE.*

**Possible violation of art. 13 of the FCE (General rules of conduct)**

[...] *As an overall result, the Adjudicatory Chamber finds that the accused has failed to act with complete credibility and integrity, showing unawareness of the importance of his duties and concomitant obligations and responsibilities. His actions did not display commitment to an ethical attitude, failing to respect all applicable laws and regulations as well as FIFA's regulatory framework to the extent applicable to him and demonstrating an abusive execution of his position as Vice-President of FIFA [sic] and member of the FIFA Executive Committee [sic]. Consequently, by this conduct, the accused committed violations of art. 13 par. 1 to 4 of the FCE. [...]*

**Determination of the sanction**

*Therefore, with regard to the type of the sanction to be imposed on the accused, the Adjudicatory Chamber – in view of the serious nature of his misconduct – believes a warning, a reprimand or a return of awards to be inappropriately mild sanctions. Moreover, a ban from dressing rooms, the substitutes' bench or on entering a stadium appear to be inadequate in view of the fact that the accused's misconduct was not limited to activities relating to a sporting match but related to football organisation and administration in a wider context. A ban on taking part in any football-related activity therefore appears appropriate on account of the inherent, preventive character of such a sanction in terms of potential subsequent misconduct by the accused, in order to protect organised football against further damage caused by him. In the light of the above, the Adjudicatory Chamber has chosen to sanction the accused by banning him from taking part in any football-related activity (art. 6 par. 1 let. H of the FCE; art. 65 par. 2 let. F of the FIFA Statutes; art. 11 let. F and art. 22 of the FDC).*

*With regard to the scope and duration of the ban on taking part in any football-related activity (see art. 9 par. 2 of the FCE), neither the FCE nor the FIFA Statutes nor the FDC set forth any minimum or maximum limits. According to the case law of the Adjudicatory Chamber, which has repeatedly been upheld by the Court of Arbitration for Sport (CAS), life-time bans are admissible under the Code.*

*However, when determining the scope and duration of such ban, the Adjudicatory Chamber has to be guided by the principle of proportionality. In this connection, the Adjudicatory Chamber additionally points out that FIFA as a private association (see art. 60 et seqq. of the Swiss Civil Code) has considerable discretion, freedom and leeway with regard to excluding persons subject to its jurisdiction from its field of activity in cases of severe misconduct. Furthermore, this type of sanction is not purely of a penal but also of a preventive nature. It should also be noted that one of FIFA's objectives is to prevent all methods and practices that might give rise to abuse of association football (art. 2 let. E of the FIFA Statutes); FIFA undoubtedly has to take this duty very seriously and perform it with dedicated efficiency.*

*In the present case, and after having taken into account all relevant factors of the case as outlined above (cf. par. 195 et seqq. above), the Adjudicatory Chamber deems a ban on taking part in any football-related activity for five (5) years to be appropriate for the violation of art. 20 of the FCE committed by the accused. With regard to the scope, only a worldwide effect is appropriate, since the accused has committed the violations as FIFA President. Limiting the scope to association or confederation level would neither prevent the accused from future misconduct nor adequately reflect the Adjudicatory Chamber's disapproval of his conduct.*

*After having determined the sanction for the most serious breach committed by the accused as well as its scope and duration, the Adjudicatory Chamber now has to increase the sanction as appropriate depending on the specific circumstances (art. 11 par. 1 of the FCE).*

*As established above, the accused breached not only art. 20 of the FCE, but also art. 19, art. 15 and art. 13 of the FCE. With regard to these violations, the Adjudicatory Chamber deems, for the same reasons as with regard to the violation of art. 20 of the FCE (cf. par. 206 and par. 209 above), a ban on taking part in any football-related activity at national and international level as the appropriate type of sanctions.*

*Although the violation of art. 20 of the FCE is the most serious breach which has been committed by the accused, this does not mean that the other breaches appear insignificant or negligible. All these violations were, too, committed deliberately. The Adjudicatory Chamber therefore decides to increase the ban on taking part in any football-related activity imposed on the accused for the violation of art. 20 of the FCE by three (3) years for the violations of art. 19, art. 15 and art. 13 of the FCE.*

*The Adjudicatory Chamber notes in the present context that the Investigatory Chamber has requested that the ban on taking part in any football-related activity to be imposed on the accused be for life. In the opinion of the Adjudicatory Chamber, however, a life-time ban on the accused would clearly be disproportionate since he has not been found guilty of bribery and corruption (art. 21 of the FCE; cf. par. 133 above), which would – also according to recent jurisprudence of CAS (see, for example the cases of Mr Vernon Manilal Fernando and Mr Mohamed Bin Hamman) – justify considerably longer suspensions.*

*In conclusion, and in the light of all the above considerations and findings, the accused is to be banned from taking part in any football-related activity (administrative, sports or any other) at national and international level for eight (8) years. Against the background that the accused has already been provisionally banned from taking part in any of football-related activity from 8 October 2015 on, the*

*period of the ban imposed on the accused by the present decision starts on that day (cf. art. 85 par. 2 of the FCE).*

*Pursuant to art. 6 par. 1 of the FCE, breaches of this Code or any other FIFA rules and regulations by persons bound by this Code are punishable by one or more sanctions. Accordingly, more than one type of sanction can be imposed.*

*Persons bound by the FCE can be ordered to pay a fine (art. 6 par. 1 lit. c of the FCE). In the present case, the Adjudicatory Chamber is of the opinion that the mere imposition of a ban on taking part in any football-related activity is not sufficient to adequately sanction his misconduct. Therefore, a fine is to be additionally imposed on the accused.*

*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. 2 of the FDC). Taking into account the various relevant circumstances of the case, including the accused's financial situation (see as to their relevance mutatis mutandis art. 34 par. 2 and art. 106 par. 3 of the Swiss Criminal Code), the fact that the accused has committed several violations of the FCE and is holding the most prominent position in association football worldwide, the Adjudicatory Chamber considers a fine of CHF 50,000 to be proportionate”.*

### **C. Proceedings before the FIFA Appeal Committee**

20. On 11 January 2016, Mr Blatter notified the FIFA Appeal Committee of his intention to file an appeal against the First Instance Decision.
21. On the same day, the Chief of Investigation notified the FIFA Appeal Committee of his intention to file an appeal against the First Instance Decision.
22. On 18 January 2016, Mr Blatter and the Chief of Investigation submitted their petitions and grounds for appeal.
23. On 21 January 2016, Mr Blatter and the Chief of Investigation were informed that the right to reply to the respective written statements would be duly granted in the course of the hearing, during which both parties would be granted the opportunity to respond orally to the appeal brief of the other party.
24. On 16 February 2016, a hearing took place before the FIFA Appeal Committee.
25. Also on 16 February 2016, the FIFA Appeal Committee rendered its decision (the “Appealed Decision”), with the following operative part:

*“1. The appeal filed by [Mr Blatter] [...] is rejected.*

*2. The appeal filed by the chief of investigation [...] is rejected.*



3. *The decision [...] taken by the adjudicatory chamber of the FIFA Ethics Committee on 17 December 2015 is partially confirmed.*
  4. *[Mr Blatter] is found guilty of infringements of art. 13 (General rules of conduct), art. 15 (Loyalty), art. 19 (Conflicts of interest) and art. 20 (Offering and accepting gifts and other benefits) of the FIFA Code of Ethics.*
  5. *[Mr Blatter] is banned from taking part in any football-related activity (administrative, sports or other) at national and international level for six (6) years as from 8 October 2015, in accordance with art. 6 par. 1 let. H of the FIFA Code of Ethics in conjunction with art. 22 of the FIFA Disciplinary Code.*
  6. *[Mr Blatter] shall pay a fine in the amount of CHF 50'000 within 30 days of notification of the present decision. [...]*
26. On 24 February 2016, the grounds of the Appealed Decision were notified to Mr Blatter, determining, *inter alia*, the following:

**“Submissions by Mr Joseph S. Blatter**

[...]

***Alleged non-prohibition of gifts to FIFA officials before 2012 – Art. 20 par. 1, Offering and Accepting Gifts and Other Benefits***

[...] *The appellant claims, essentially, that the adjudicatory chamber has erred in finding a violation of art. 20 of the FCE because the FCE edition applicable at the relevant time did only prohibit gifts to “third parties” (art. 10 of the FCE 2009). According to the appellant, FIFA officials, or other persons within FIFA respectively, were not to be considered such third parties. In the light of this, the appellant concludes that the CHF 2 million payment to Mr Platini was not prohibited under the FCE edition applicable at the relevant time.*

[...] *All in all, the term “third parties” used and in article 10 of the FCE 2009 is to be interpreted to the effect that it covers “persons within or outside FIFA”, as used now in art. 20 par. 1 of the FCE. This conclusion is well supported and established by relevant case-law of the FIFA judicial bodies as well as of CAS. Moreover, it is perfectly in line with the relevant approach used in legal materials, or language respectively, in general. [...]*

***Alleged existence of an oral agreement between the appellant and Mr Platini***

[...] *One of the key claims submitted by the appellant in the context of the present appeal is that there has actually been an oral agreement between himself and Mr Michel Platini that would provide a proper basis for the CHF 2 million payment at issue. In this respect, the appellant refers, in particular, to evidence that has been available to the adjudicatory chambers and claims an erroneous evaluation of such evidence.*

[...] *At this point, the Appeal Committee points out that after having assessed the relevant considerations and findings of the adjudicatory chamber, it found the considerations and findings concerned to be sound, detailed and well-founded. Consequently, the Appeal Committee confirms the findings of the Ethics Committee relevant here in their entirety, therefore also rejects the appellant's claim that there was an oral agreement providing a proper basis for the CHF 2 million payment concerned and is also satisfied to its personal conviction that the investigatory chamber has proven that there was no oral contract between the appellant and Mr Platini. [...]*

***Submissions regarding the pension fund for FIFA Executive Committee members***

[...] *With regard to the findings of the adjudicatory chamber according to which the decision of the appellant to include Mr Platini in the FIFA pension fund for Executive Committee members also for the years 1998 to 2002 constituted a violation of art. 20 of the FCE, the appellant claims that they are flawed since no proof had been established demonstrating that such a decision was inappropriate.*

[...] *[W]hen pressed by the Appeal Committee as to the reason why such decision was made, Mr Blatter indicated: "[...] this is one of the exceptions which is in this pension fund [...]". In this particular [sic], Mr Blatter's indication clearly confirms the conclusion reached by the adjudicatory chamber, i.e. that the respective pension fund was exclusively applicable for Executive Committee members and that it was supposed to only include those years served as such. Mr Blatter's characterization of his decision as "an exception" unmistakably confirms that he was fully aware that his decision was outside the conceived rule applicable for the calculation of the pension fund. Finally, the Appeal Committee would like to clarify that pension funds may only be claimed by the insured person if and once he reaches retirement age. Until that moment, in turn, the relevant funds are not actual assets of the insured person, but rather entitlements to future pensions. However, contrary to the view of the appellant, such entitlements are also to be qualified as "benefits" within the meaning of art. 20 par. 1 of the FCE, since they constitute, without any doubt, an economic betterment of the recipient. [...] As a consequence, the advantages granted to Mr Platini constituted benefits within the meaning of art. 20 of the FCE. The conclusion reached by the adjudicatory chamber according to which the appellant has committed a violation of art. 20 of the FCE by his conduct presently relevant is therefore, in its result, to be confirmed. [...]*

***Submissions with regard to art. 19 of the FCE – Conflicts of interest***

[...] *With regard to the considerations and findings of the adjudicatory chamber related to art. 19 of the FCE, the appellant refers, first, once again to the alleged oral agreement between him and Mr Platini and claims that, in view of such agreement, he has not committed a violation of art. 19 of the FCE. Moreover, the appellant claims that the interpretation of the concept of a conflict of interest established by the adjudicatory chamber were inappropriately broad and therefore impracticable. Furthermore, the appellant challenges the "theory of conflict of interest via inadequate disclosure" allegedly established by the adjudicatory chamber. Also, the appellant claims that the decision to grant Mr Platini the CHF 2 million payment in question was a reasonable business decision that served FIFA's interests in avoiding litigation. Finally, the appellant claims in the present context that he did not seek any personal advantage by his conduct.*

[...] *[T]he Committee has already established that it considers it not proven that such an oral agreement actually existed (see par. 93 et seqq. above). [...] [T]he private and personal interests involved in casu*

*did indeed detract the appellant from performing his duties as FIFA President with integrity in an independent and purposeful manner. Consequently, the adjudicatory chamber was correct in finding that the appellant has been in a conflict of interest within the meaning of art. 19 of the FCE in the circumstances presently relevant. The appellant's submission in this respect is to be dismissed. Furthermore, as far as the appellant's critics to the "theory of conflict of interest via inadequate disclosure" allegedly established by the adjudicatory chamber, the appellant seems to have failed to grasp the actual considerations and findings of the chamber and the contents of the legal provisions relevant in this respect. [...] [T]he appellant failed to explain the fact that he reached such an important "business judgment" which dealt with an allegedly serious legal issue (potential litigation with Mr Platini) without consulting first a legal expert (or at the very least requesting a memorandum on the matter from the relevant legal department within FIFA which would deal with such issues). Finally, with regard to the appellant's claim that he did not seek any personal advantage by his conduct presently relevant, the FIFA Appeal Committee notes that the appellant challenges certain considerations and findings contained in par. 198 of the contested decision. However, the adjudicatory chamber has made the relevant considerations and findings in the context of determining the sanction and not in the context of assessing possible violations of art. 19 of the FCE. Unlike the appellant, the FIFA Appeal Committee sees no connection between the two matters. Consequently, the appellant's submission in this respect is dismissed as baseless. [...]*

#### ***Submissions with regard to art. 15 of the FCE – Loyalty***

*[...] With regard to the considerations and findings of the adjudicatory chamber related to art. 15 of the FCE, the appellant claims that the CHF 2 million payment to Mr Platini was not disloyal since there was a valid basis for that payment in form of an oral agreement and, in any event, the payment was made in order to avoid costly, lengthy and time-consuming litigation.*

*[...] [T]he FIFA Appeal Committee has already held that the relevant representations and considerations in the appeal brief contain mere speculations and hypotheses without providing any proof or supporting evidence and that, consequently, the relevant claims are not sufficiently substantiated and therefore to be rejected (see par. 136 above). This also applies to the corresponding claims in the present context. In the light of this, the Committee does not reach the conviction that the relevant claims are sufficiently substantiated. As a consequence, they are to be rejected.*

#### ***Submissions with regard to art. 13 of the FCE – General rules of conduct***

*[...] With regard to the considerations and findings of the adjudicatory chamber on art. 13 of the FCE, the appellant claims, in essence, that they should be revoked since they were entirely derivative of other FCE violations and no such other violations were to be established.*

*[...] In the light of the foregoing, the Appeal Committee is of the opinion that the obligations set forth in art. 13 of the FCE are of an appropriate specificity and sufficiently predictable. Accordingly, the provision may very well serve as a basis for sanctioning officials subject to the FCE, as it is also the established case-law of both the FIFA Ethics and the Appeal Committee. In this sense, the Appeal Committee fully agrees with the argumentation of the adjudicatory chamber at par. 179 – 189 of the appealed decision and, in particular, with the following conclusion: "the accused has failed to act with complete credibility and integrity, showing unawareness of the importance of his duties and concomitant obligations and responsibilities. His actions did not display commitment to an ethical attitude, failing to respect all*

*applicable laws and regulations as well as FIFA's regulatory framework to the extent applicable to him and demonstrating an abusive execution of his position as President of FIFA and member of the FIFA Executive Committee. [...]*

***Submissions with regard to the likelihood of misconduct – art. 21 of the FCE, Bribery and Corruption***

*[...] The appellant claims that the adjudicatory chamber has held, in the contested decision, "that it was 'more likely than not' that bribery occurred". In this respect, the appellant submits certain considerations and explanations aimed at demonstrating that there was no evidence of bribery.*

*[...] In view of the above, the FIFA Appeal Committee recalls that pursuant to art. 121 of the FDC, appeals lodged with the FIFA Appeal Committee may object to inaccurate representation of the facts and/or wrong application of the law by the first instance. However, as presented before, the appellant's submissions related to an intermediary analysis made by the Adjudicatory Chamber while reaching a final of conclusion as to the application of the FCE. The issue at hand does not refer to objections regarding an alleged inaccurate representation of the facts and is not based on the wrong application of the law either, as the adjudicatory chamber correctly applied art. 21 and 51 of the FCE. Consequently, the submissions remitted in this regard are to be disregarded in the context of the present appeal proceedings. [...]*

***Submissions with regard to alleged defects in the proceedings***

*[...] With regard to the proceedings before the FIFA Ethics Committee, the appellant claims that they have been defective in several different respects. In this context, the appellant refers, in particular, to alleged leaking of information by the FIFA Ethics Committee and failure to produce evidence.*

*[...] [T]he FIFA Appeal Committee is entitled to carry out a full, separate and new examination of the facts of the case in the light of the applicable legal provisions where it deems appropriate. In such circumstances, the Appeal Committee can go beyond simply reviewing the considerations and findings of the first instance and subject the relevant issues to a free, separate examination. (cf. par. 78 above). Therefore, any possible defects of the proceedings before the lower instances can be remedied in the context of appeal proceedings. [...]*

***Submissions by the chief of investigation***

***Submissions with regard to Art. 21 of the FCE – Bribery and Corruption***

*As far as the chief of investigation challenges the considerations and findings of the adjudicatory chamber, the core argument submitted by the chief of investigation in the context of the present appeal is that there actually was a quid pro quo relation between the CHF 2 million payment in question and the support for Mr Joseph S. Blatter by Mr Michel Platini with regard to Mr Blatter's candidacy in the context of the FIFA Presidential elections 2011, that is, there was bribery and corruption. In this respect, the chief of investigation submits that the decisive factor is that Mr Platini did not specify the precise sum of money he requested from FIFA, or Mr Blatter respectively, until late 2010. In conjunction with the fact that the relevant payment has been effected in February 2011 and that Mr Platini expressed his support for Mr Blatter's candidacy at the beginning of May 2011 at the latest, this is – according to the chief of*

*investigation – sufficient to establish the required link between the payment and the support and, consequently, to establish a violation of art. 21 of the FCE.*

*[...] [T]he Committee does not share the view that this point in time is the decisive factor in determining whether there actually has been a quid pro quo between the payment in question and the support of Mr Blatter by Mr Platini. The chief of investigation himself acknowledges that Mr Platini approached FIFA as early as February 2010 with the issue of allegedly outstanding payments (appeal brief, p. 7). It is equally undisputed that Mr Blatter has been informed of Mr Platini's initial request soon thereafter and that his reaction was affirmative (appeal brief, p. 7, including a reference to the testimony of FIFA's Finance Director). This particular circumstance shows that Mr Blatter was, in early 2010 already, not opposed to Mr Platini's claim. Therefore, it appears inadequate to put the main emphasis on the events that occurred in 2011, i.e. on Mr Platini's specific request for CHF 2 million and the effectuation of the payment (with the latter following the approval of the payment by Mr Blatter). As a consequence, the FIFA Appeal Committee rejects the chief of investigation's submission that there actually was a quid pro quo relation between the CHF 2 million payment in question and the support for Mr Joseph S. Blatter by Mr Michel Platini with regard to Mr Blatter's candidacy in the context of the FIFA Presidential elections 2011. At this point and on the basis of the elements presently on file, the Appeal Committee does not consider itself in a position to reach the conviction (see in this respect art. 97 of the FDC) that the established facts of the case support such a conclusion. [...]*

### **Sanctions**

*As previously mentioned (cf. par. 76 and 158 above), the FIFA Appeal Committee is entitled to carry out a full, separate and new examination of the facts of the case in the light of the applicable legal provisions where it deems appropriate. This can relate to individual aspects of a particular case or the entire case. In such circumstances, the Appeal Committee can go beyond simply reviewing the considerations and findings of the first instance and subject the relevant issues to a free, separate examination.*

*In the present matter, although it has dismissed all submissions of both Mr Joseph S. Blatter and the chief of investigation, the Appeal Committee considered as necessary to conduct a separate and new determination of the sanctions to be imposed on Mr Blatter.*

*In particular, the Appeal Committee considered that it should carefully (re)analyse the issue of proportionality of the sanction.*

*In this regard, the Appeal Committee stressed that, in accordance with art. 9 par. 2 of the FCE, when determining the sanction, the adjudicatory chamber has to take into account all relevant factors in the case, including the offender's assistance and cooperation, the motive, the circumstances and the degree of the offender's guilt. This would include any mitigating circumstances.*

*In the present case, the Appeal Committee notes that the three mitigating circumstances taken into account by the adjudicatory chamber were the accused's assistance and cooperation, his unblemished record, and "the fact that the accused has, doubtlessly, rendered meritorious services to FIFA and to football for several years".*

*With regard to the third mitigating factor found by the Adjudicatory chamber, the Appeal Committee would like to make the following considerations.*

*As previously mentioned (cf. par. 1 above), Mr Joseph S. Blatter has been a very high ranked football official for more than forty years, serving as, most notably, FIFA Secretary General for seventeen years (1981 – 1998) and then FIFA President for another seventeen years (1998 -2015). All in all, through his functions as a football official, Mr Blatter has performed a remarkable work towards the development and promotion of football, so as for FIFA as an organization.*

*In this sense the Appeal Committee considers that Mr Blatter’s activity, as well as its services rendered to FIFA and football in general over the years, should deserve a high recognition in the matter at stake, as a mitigating factor.*

*Consequently, and while agreeing with the principles and arguments brought forward by the adjudicatory chamber in its calculation of the sanction, the Appeal Committee, after carefully analysing and taking into consideration the above circumstances, deems a ban on taking part in any football-related activity for four (4) years to be appropriate for the violation of art. 20 of the FCE committed by the appellant. Furthermore, the Appeal Committee decides to increase the ban on taking part in any football-related activity imposed on the appellant for the violation of art. 20 of the FCE by two (2) years for the violations of art. 19, art. 15 and art. 13 of the FCE.*

*Finally, the Appeal Committee agrees and confirms all the other considerations of the adjudicatory chamber in relation to the sanctions imposed on the appellant (cf. par. 192 – 217 of the appealed decision), and considers, in particular, the fine of CHF 50,000 to be proportionate”.*

### **III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

27. On 16 March 2016, Mr Blatter lodged a Statement of Appeal with the Court of Arbitration for Sport (the “CAS”) in accordance with Article R48 of the 2016 edition of the CAS Code of Sports-related Arbitration (the “CAS Code”). In this submission, Mr Blatter nominated Mr Patrick Lafranchi, Attorney-at-Law in Bern, Switzerland, as arbitrator.
28. On 29 March 2016, Mr Blatter lodged his Appeal Brief in accordance with Article R51 of the CAS Code. The Appeal Brief contained a request for CAS to order FIFA to produce certain documents allegedly relevant for his defence. The Appeal Brief contained a statement of the facts and legal arguments and included the following requests for relief:
  1. “Reverse the FIFA Appeal Committee’s decision,
  2. acquit Mr. Blatter of all ethics charges,
  3. vacate Mr. Blatter’s ban, and
  4. order FIFA to pay Mr. Blatter’s costs and attorney’s fees in this matter”.

29. On 18 April 2016, FIFA nominated the Hon. Michael Beloff QC, Barrister in London, United Kingdom, as arbitrator.
30. On 28 April 2016, FIFA filed its Answer, pursuant to Article R55 of the CAS Code. The Answer contained a request for CAS to order Mr Blatter to produce certain documents and objection to the admissibility of Mr Battaini's evidence. FIFA addressed the procedural requests of Mr Blatter and requested CAS to decide as follows:
  1. *“Dismissing Mr. Blatter’s prayers for relief.*
  2. *Confirming the Decision under appeal.*
  3. *Ordering Mr. Blatter to pay a significant contribution towards the legal fees and other expenses incurred by FIFA in connection with these proceedings”.*
31. Also on 28 April 2016, Mr Blatter filed an unsolicited additional written submission, arguing that Mr Damiani, one of the members of the Adjudicatory Chamber that decided Mr Blatter's case in first instance, was biased as a consequence of which the Adjudicatory Chamber was improperly constituted. Mr Blatter requested this submission to be added to the file based on the basis of exceptional circumstances, pursuant to Article R56 of the CAS Code. Mr Blatter admitted that the defects of an improperly constituted tribunal and a deprivation of due process can be cured by a fresh review and that he did not seek a remand, but an acquittal. This information was brought to the Panel's attention as additional evidence that the proceedings appealed from were irregular and unworthy of confidence.
32. On 6 May 2016, Mr Blatter asked for a hearing to be held, whereas FIFA indicated that it had no objection to a hearing being held.
33. On 10 May 2016, FIFA informed the CAS Court Office that it had no objection in principle to Mr Blatter's submission of 28 April 2016 to the extent that the factual circumstances underpinning the submission relate to material that would have only come to light after Mr Blatter filed his Appeal Brief. FIFA however stressed that the subject matter of the submission is in no way material to the present arbitration, also because the decision under appeal is a decision of the FIFA Appeal Committee, in which Mr Damiani played no role. FIFA indicated that given (i) the lack of materiality of the subject matter, (ii) Mr Blatter's inaccurate presentation of the FIFA proceedings and the FDC and (iii) the undisputed *de novo* nature of this arbitration, the Panel will not be inclined to give any weight to the contentions of Mr Blatter's submission.
34. On 1 June 2016, following a petition for challenge filed by Mr Blatter against Mr Beloff, the CAS Court Office provided the parties with a reasoned decision of the ICAS Board, upholding the petition.
35. On 9 June 2016, FIFA nominated Mr Andrew de Lotbinière McDougall, Attorney-at-Law in Paris, France, as arbitrator.

36. On 16 June 2016, in accordance with Article R54 of the CAS Code, and on behalf of the Deputy President of the CAS Appeal Arbitration Division, the CAS Court Office informed the parties that the Panel appointed to decide the present matter was constituted as follows:
- Mr Manfred Nan, Attorney-at-Law in Arnhem, the Netherlands, as President;
  - Mr Patrick Lafranchi, Attorney-at-Law in Bern, Switzerland; and
  - Mr Andrew de Lotbinière McDougall, Attorney-at-Law in Paris, France, as arbitrators
37. On 4 July 2016, following a request from the Panel, Mr Blatter addressed the procedural requests set out in the Answer filed by FIFA. Mr Blatter also reiterated his own procedural requests, filed new evidence and addressed the admissibility of Mr Battaini's evidence.
38. On 8 July 2016, FIFA objected to Mr Blatter's letter dated 4 July 2016 to the extent that he exceeded the opportunity given to respond to FIFA's procedural requests. FIFA also objected to the admissibility of the new exhibits filed.
39. On 12 July 2016, the CAS Court Office, on behalf of the Panel, informed the parties that Mr Blatter indeed exceeded the scope of the instructions given and that his submissions would be disregarded insofar the scope was exceeded. The exhibits newly filed by Mr Blatter were declared inadmissible. Mr Battaini's evidence was declared admissible, but the parties were informed that the Panel would duly take into account both parties' comments with respect to the credibility and the weight to grant to such evidence.
40. On 22 July 2016, further to a request from the Panel, both parties specified their own requests for production of documents via a so-called Redfern Schedule.
41. On 4 and 8 August 2016 respectively, Mr Blatter and FIFA returned a completed Redfern Schedule addressing the counter-party's requests for production of documents.
42. On 11 August 2016, both parties returned duly signed copies of the Order of Procedure.
43. On 12 August 2016, the CAS Court Office, on behalf of the Panel, informed the parties, *inter alia*, as follows in respect of the several requests for production of documents:

“Appellant's 1<sup>st</sup> request for production of documents [i.e. the entire file of the FIFA Ethics proceedings against Mr Platini, including the file (with hearing transcripts) from Mr Platini's appeal to CAS]:

*The Appellant's request is partially granted. The Respondent is ordered to produce the entire file of the FIFA Ethics proceedings, except for the parties' submissions and correspondence between the parties. [...]*

*In view of the Respondent's reliance on the confidentiality of the case file in TAS 2016/A/4474 as its sole objection to the production thereof, the Panel orders the Appellant to take whatever steps are necessary to obtain permission from Mr Platini to lift the confidentiality of the case file in TAS 2016/A/4474 and to provide the CAS Court Office with the relevant correspondence by 17 August 2016 at the latest.*



*Should permission be granted, the Respondent is ordered to produce the case file in TAS 2016/A/4474 within two (2) days from receipt of such confirmation.*

*Appellant's 2<sup>nd</sup> request for production of documents [i.e. communications between Mr Blatter and Mr Platini between 1998 and 2011]:*

*The Appellant's request is granted to the extent that such communication may have somehow been related to the alleged oral agreement between the Appellant and Mr Platini, the payment to Mr Platini or to the pension fund for FIFA's Executive Committee. [...]*

*Appellant's 3<sup>rd</sup> request for production of documents [i.e. documents related to the creation and regulation of FIFA's special ExCo pension fund, including its eligibility criteria]:*

*The Appellant's request is dismissed based on the Respondent's confirmation that no additional information exists.*

*Appellant's 4<sup>th</sup> request for production of documents [i.e. identity of the employees of FIFA's legal and finance divisions from 1998 to 2002]:*

*The Appellant's request is granted, but narrowed down to the name(s) of any possible drafter(s) of the written agreement within the legal and finance divisions of FIFA between 1998 and 2002. [...]*

*Appellant's 5<sup>th</sup> request for production of documents [i.e. detailed log of the documents withheld based on a claim of privilege]:*

*The Appellant's request is considered moot in the light of the Panel's decision regarding the Appellant's 1<sup>st</sup> request for production of documents above.*

*Appellant's 6<sup>th</sup> request for production of documents [i.e. the 8 February 2016 letter sent by Mr Villar Llona to the Swiss authorities]:*

*Regardless of the inclusion of this letter in the case file of CAS in TAS 2016/A/4474 that may be produced following the Panel's decision in respect of the Appellant's 1<sup>st</sup> request for production of documents above, the Appellant is ordered to contact Mr Villar Llona to seek leave to produce his letter dated 8 February 2016 addressed to the Swiss authorities to the case file in the present arbitration by 19 August 2016 at 4pm (CET) at the latest and to provide the CAS Court Office with the relevant correspondence.*

*Respondent's 1<sup>st</sup> request for production of documents [i.e. the Swiss criminal file in the Appellant's possession related to the proceedings instigated by the Swiss criminal authorities which deals with the same factual matrix as the case before CAS]:*

*In view of the Appellant's reliance on the confidentiality of the Swiss criminal file, the Panel orders the Appellant to request from the competent Swiss Federal Public Prosecutor – under presentation of this Order of Procedure – the hand out of all the minutes of the testimonies of Mr Blatter and Mr Platini in the proceedings against Mr Blatter and Mr Platini instigated by the Swiss Attorney General's Office. The Appellant is granted a deadline until 19 August 2016 at 4pm (CET) the latest to provide the*

*CAS Court Office with the relevant correspondence and the aforementioned minutes received from the Federal Prosecutor.*

Respondent's 2<sup>nd</sup> request for production of documents [i.e. all documents exchanged between Mr Blatter and Mr Battaini personally in relation with the present proceedings]:

*The Respondent's request (including communication between Mr Battaini and counsel to the Appellant) is granted, subject to confidentiality restrictions. [...]*

44. On 15 August 2016, FIFA sought certain clarifications from the Panel and asked it to reconsider its order dated 12 August 2016 in certain respects. FIFA further provided explanations as to how it would conduct itself in attempting to comply with the order and indicated its intention to produce the list of all relevant (legal and finance) employees as initially requested by the Mr Blatter in respect of the latter's 4<sup>th</sup> request for production of documents. In respect of the Appellant's 2<sup>nd</sup> request for production of documents, and if the Panel were minded to maintain its order as it is, FIFA expressed its intention to conduct an email search of the specified time frame (*i.e.* 1998 until 2011) for emails exchanged between Mr Blatter and Mr Platini that contain the following key words: "agreement", "accord", "oral", "2M", "2 Million", "2 Millions", "payment" and "paiement".
45. On 16 August 2016, the Panel confirmed its order dated 12 August 2016 and expressed its satisfaction with FIFA's intention to produce the list of all relevant (legal and finance) employees as initially requested by Mr Blatter.
46. On 18 August 2016, the CAS Court Office provided the parties with an indicative hearing schedule and invited them to express any objection or comment on such schedule.
47. Also on 18 August 2016, Mr Blatter informed the CAS Court Office that Mr Platini did not consent to the lifting of the confidentiality of the case file in the other CAS proceedings (TAS 2016/A/4474) and provided the relevant correspondence in this respect.
48. On 19 August 2016, the CAS Court Office, on behalf of the Panel, informed the parties that it was the Panel's understanding that no confidentiality issue was involved related to the FIFA Ethics file as FIFA confirmed in the Redfern schedule that it provided Mr Blatter with that file, except for the written submissions and correspondence between the parties, and deemed it appropriate to be provided with such documents that both parties were already familiar with.
49. Also on 19 August 2016, FIFA produced a list of employees of FIFA's legal and finance divisions from 1998 to 2002. FIFA informed the CAS Court Office that searching the key words "agreement", "accord", "oral", "2M", "2 Million", "2 Millions", "payment" and "paiement" in the emails resulted in 1,246 direct hits (with 1,715 related items). FIFA requested an extension of its deadline to produce certain documents and said that it would need about three to four weeks to search all the relevant faxes in respect of Mr Blatter's 2<sup>nd</sup> request for production of documents. FIFA also sought clarification as to whether it should continue with its search in view of the likely production date.

50. Also on 19 August 2016, Mr Blatter provided an update of his correspondence with Mr Villar Llona, but said that he had not received a reply yet. Mr Blatter also informed the CAS Court Office that the Swiss Office of the Attorney General denied the request to lift the confidentiality of “*all the minutes of the testimonies of Mr Blatter and Mr Platini in the proceedings against Mr Blatter and Mr Platini instigated by the Swiss Attorney General’s Office*”, with the relevant correspondence enclosed thereto.
51. Also on 19 August 2016, FIFA submitted an interpretation of the Panel’s order in respect of Mr Blatter’s request for the FIFA Ethics file regarding Mr Platini.
52. On 22 August 2016, Mr Blatter requested that FIFA’s search in respect of the faxes be continued and did not object to the indicative production date mentioned by FIFA.
53. On the same date, the CAS Court Office, on behalf of the Panel, confirmed that FIFA should produce the documents from Mr Platini’s FIFA Ethics file already provided to Mr Blatter. However, the Panel also clarified that should Mr Platini’s FIFA Ethics file contain documents (besides the parties written submissions and the correspondence between the parties) that were not previously provided to Mr Blatter, FIFA was ordered to do so. Finally, in the light of Mr Blatter’s implicit agreement, the Panel invited FIFA to file the relevant faxes by 16 September 2016.
54. Also on 22 August 2016, FIFA submitted the documents related to Mr Platini’s FIFA Ethics file which were provided to Mr Blatter and confirmed that the only other documents related to Mr Platini’s FIFA Ethics file were the parties’ submissions and procedural correspondence, which fell outside the scope of the production order. FIFA also confirmed that it had reviewed over 1,700 documents and had not found any other communication that may somehow have been related to the alleged oral agreement between Mr Blatter and Mr Platini, the payment to Mr Platini or the pension fund for FIFA’s Executive Committee than those already filed by the parties in this arbitration.
55. On 25 August 2016, a hearing was held in Lausanne, Switzerland. At the outset of the hearing, both parties confirmed that they had no objection to the constitution and composition of the Panel.
56. In addition to the Panel, Mr Fabien Cagneux, Counsel to the CAS, and Mr Dennis Koolgaard, *Ad hoc* Clerk, the following persons attended the hearing:

For the Appellant:

- Mr Joseph S. Blatter, the Appellant;
- Dr Lorenz Erni, Counsel

For the Respondent:

- Prof. Antonio Rigozzi, Counsel;
- Prof. Sébastien Besson, Counsel;

- Mr Fabrice Robert-Tissot, Counsel
57. The Panel heard evidence from the following persons in order of appearance with all but Mr Blatter being excluded from the hearing room when not testifying:
- Mr Angel Villar Llona, Member of FIFA's Executive Committee, witness called by the Appellant;
  - Mr Flavio Battaini, Swiss lawyer, former FIFA employee and former personal advisor to Mr Blatter, witness called by the Appellant;
  - Ms Christine Botta, FIFA employee, witness called by the Appellant;
  - Mr Markus Kattner, former Acting Secretary General and Director of Finance of FIFA, witness called by the Appellant;
  - Mr Michel Platini, former President of UEFA and Vice President of FIFA, witness called by the Appellant;
  - Prof. Sylvain Marchand, Swiss lawyer and Professor of private law at the Universities of Geneva and Neuchâtel, expert witness called by the Respondent; and
  - Mr Joseph S. Blatter, the Appellant.
58. Although the Appellant initially announced that it would call Mr Jacques Lambert, Director General of the Organization Committee of the France World Cup 1998 and former FIFA Ethics Committee member, as witness by video-conference, at the outset of the hearing it was announced that Mr Lambert was not available.
59. All other witnesses and the expert witness were invited by the President of the Panel to tell the truth subject to the sanctions of perjury. Both parties and the Panel had the opportunity to examine and cross-examine the witnesses and the expert. The parties also had ample opportunity to present their case and submit their arguments in opening statements and closing arguments, as well as to answer the questions posed by the Panel.
60. At the outset of the hearing, a discussion emerged as to the witness statement of Mr Lambert. Whereas FIFA maintained that the witness statement would have to be excluded from the file as it did not have the opportunity to cross-examine him, the Appellant argued that the transcripts of the interrogation before the FIFA Ethics Committee are in any event part of the file and that Mr Lambert's witness statement should not be excluded.
61. During the hearing, Mr Villar Llona agreed that his letter dated 8 February 2016 to the Swiss Office of the Attorney-General would be translated and added to the case file. A translation was made during the hearing and, with the permission of both parties, the letter was added to the case file.
62. Before the hearing was concluded, all parties expressly stated that they did not have any objection with the procedure adopted by the Panel and that their right to be heard had been respected.

63. The Panel confirms that it carefully heard and took into account in its decision all of the submissions, evidence and arguments presented by the parties, even if they have not been specifically summarised or referred to in the present arbitral award.
64. On 7 September 2016, upon invitation of the Panel, FIFA provided an updated list of the FIFA Legal and Finance Department's staff and the FIFA Organisational Rules from 1998 onwards, clarifying that the first edition only entered into force in 2004.
65. On 14 September 2016, upon invitation of the Panel, the Appellant provided a translation into English of the letter of the Swiss Office of the Attorney-General dated 17 August 2016.
66. Also on 14 September 2016, FIFA informed the CAS Court Office that FIFA retrieved around 180,000 faxes in respect of the Appellant's 2<sup>nd</sup> request for production of documents. FIFA proposed to conduct a search of the converted faxes with a number of key words as it had done with the emails and requested an extension of its deadline to do so.
67. On 16 September 2016, the CAS Court Office, on behalf of the Panel, informed the parties that the Appellant should get in contact with FIFA in order to try and find a common understanding regarding feasible modalities for FIFA's search.
68. On 23 September 2016, with the permission of the Panel, FIFA filed a three-page submission on the FIFA Organisational Rules.
69. On 29 September 2016, with the permission of the Panel, the Appellant filed a three-page submission on the FIFA Organisational Rules.
70. On 30 September 2016, the Appellant informed the CAS Court Office that the parties had not reached a common understanding regarding the on-going search for requested documents and requested that the Panel order that FIFA:
- 1) *Answer the question whether the correspondence in the record between Mr. Platini's advisors, Mr. Kennel and Mr. Turrian, and FIFA's finance department were identified in the email search. If not, the search terms FIFA has proposed are too narrow.*
  - 2) *Add to its proposed list of search terms the names "Platini", "Turrian" and "Kennel".*
  - 3) *Apply those search terms both to the emails and the facsimiles, a task I anticipate will be relatively straightforward given that both categories of documents are electronically searchable, and the initial email search returned so few documents".*
71. On the same day, FIFA objected to the Appellant's request:
- 1) *Mr. Turrian and Mr. Kennel have no direct knowledge of the alleged oral agreement. They were allegedly involved much later on, i.e. only when Mr. Platini took the initiative to claim for the payment of the 2 million in 2010. Any emails from those persons, e.g. related to the payment of taxes in Switzerland related to the 2 million payment, have no relevance in the context of the present*

*arbitration, in particular to prove that Mr. Blatter and Mr. Platini entered into the alleged oral agreement 12 years before in 1998.*

- *The word “Platini” is too broad and, in any event, the word “oral agreement” is specific enough to capture the alleged “oral agreement” between Mr. Blatter and Mr. Platini.*
- *The Appellant is not entitled to “reopen” the search in the retrieved email. In its email of 15 August 2016 and its letter of 19 August 2016, FIFA clearly set out the process followed for the search into the retrieved email as well as the “key words” that were used. The Appellant did neither object nor comment on this. The Appellant is therefore belated in coming now with requests for further searches.*
- *[...] If the Appellant insists on making such research despite the above, this time FIFA will have to request the payment of a security for costs for an amount of at least CHF 100,000”.*

72. On 14 October 2016, the CAS Court Office, on behalf of the Panel, informed the parties as follows:

- “1. The Appellant’s first request is dismissed insofar this would require the Respondent to conduct new searches into the email correspondence. No reason has been advanced by the Appellant (i) as to why this request could not have been made before and (ii) why the latter did not object to the Respondent’s proposal regarding the modalities of the searches made on 15 and 19 August 2016.*
- 2. The Appellant’s second request is granted and the Respondent is ordered to add the names “Platini”, “Turrian” and “Kenel” to the searches to be conducted on the faxes.*
- 3. The Appellant’s third request is dismissed as the latter did not raise any objection to the modalities of the searches proposed by the Respondent in its letters of 15 and 19 August 2016 and the conclusions of the search presented by the Respondent on 22 August 2016.*

*Moreover, regarding the aforementioned point no. 2, the Panel is well aware that granting such request may be burdensome for the Respondent since the search word “Platini” is very broad and may well yield thousands of irrelevant “hits”. In light of the foregoing, and although granting a security for costs is not considered appropriate, I kindly invite FIFA, no later than 21 October 2016, to provide an intermediate overview of the costs incurred and to likely be incurred by the searches if the word “Platini” were to be included. The Panel will take such costs, the relevance of the final results of the searches, as well as the burden of proof into consideration when awarding costs at the end of the procedure.*

*Finally, the Appellant will, upon receipt of the intermediate overview of FIFA, be invited to state whether he insists that the name “Platini” be added to the searches despite the fact that this may lead to a significant contribution in the legal fees and other expenses being awarded towards the Respondent if no relevant results are yielded, even if the Appellant’s appeal were upheld”.*

73. On 21 October 2016, FIFA informed the CAS Court Office, with reference to earlier correspondence, that a moderate estimate for the minimum costs likely to be incurred by reviewing the documents is CHF 100,000 and that the addition of “Platini” to the search words would “not significantly increase the originally estimated costs”.

74. On 3 November 2016, Mr Blatter indicated that he deferred to the Panel's judgment regarding the remaining discovery issues.
75. On 7 November 2016, the CAS Court Office, on behalf of the Panel, informed the parties that FIFA was requested to add the names "Platini", "Turrian" and "Kenel" to the searches to be conducted on the faxes in accordance with the letter of the CAS Court Office dated 14 October 2016.
76. On 8 November 2016, FIFA provided the CAS Court Office with an update on the modalities of the search conducted on the faxes.
77. On 16 November 2016, FIFA informed the CAS Court Office that it had "*completed the search contemplated in our letter of 8 November 2016 and that no relevant responsive document was identified*".
78. On 25 November 2016, the CAS Court Office, on behalf of the Panel, informed the parties that the evidentiary phase of the proceedings was closed.

#### IV. SUBMISSIONS OF THE PARTIES

79. Mr Blatter provided the following summary of his written submissions:
  - *"In 1998, appellant Joseph "Sepp" Blatter was elected as President of FIFA. In connection with taking the new position, he made an oral agreement to hire French football great Michel Platini as an advisor and ambassador for FIFA for a salary of CHF 1 million per year. Because of FIFA's troubled finances at that time, Mr. Blatter and Mr. Platini agreed that some portion of the salary would be deferred until the organization could afford to pay the balance. The agreement worked as hoped. Mr. Platini represented FIFA with great success for four years. When FIFA's finances had improved markedly some years later, he requested the balance that he was due. In 2011, FIFA's finance organization processed Mr. Platini's invoice, and FIFA paid him CHF 2 million for his earlier service.*
  - *These facts are contradicted by nothing except the rank speculation of the FIFA Ethics Committee. Mr. Blatter and Mr. Platini have both provided the same explanation for the 2011 payment and several FIFA officials corroborated their versions of events, including the oral agreement. No one has offered evidence that the agreement did not exist. Notwithstanding the uncontroverted record, the FIFA Ethics Committee found ethics violations based solely on its determination that Mr. Blatter, Mr. Platini and their corroborating witnesses are simply lying about the oral agreement. We ask CAS to consider the full record, including the powerful evidence that the Ethics Committee chose to ignore, and acquit Mr. Blatter of all ethics charges.*
  - *From 1998 to 2016, Mr. Blatter was the President of FIFA, and, as such, the leader of world football. A FIFA World Congress first elected him President of FIFA in 1998 and decisively re-elected him at four year intervals thereafter, most recently in 2015. On May 27, 2015, the United States announced criminal charges against numerous football officials. Since then, FIFA has endured unprecedented and withering public criticism, including from its most important sponsors. Some of that*

*criticism was directed at Mr. Blatter and at FIFA's Ethics Committee for the same shortcoming: failing to do more to protect FIFA from corruption. In the aftermath of the criminal charges, for the good of the organization and world football, Mr. Blatter agreed to step down once an extraordinary FIFA Congress elected his successor. In order to oversee an orderly transition and the first steps in FIFA's reform efforts, Mr. Blatter pledged to remain in office until the arrival of his successor.*

- *In September 2015, Swiss authorities announced an investigation into FIFA's payment to Mr. Platini. In an apparent attempt to rebut criticism of its historical weakness and shore up its own reputation, FIFA's Ethics Committee swiftly launched its own investigation of the matter and went about demonstrating ruthless efficiency in targeting the now-disfavored Mr. Blatter and his long-anticipated successor. Its Investigatory Chamber proposed a lifetime ban of Mr. Blatter for alleged violations of the FIFA's Code of Ethics ("FCE" or "the Code"), including bribery, gift-giving, breach of loyalty, conflict of interests, falsifying financial statements, and general unethical behavior. This smorgasbord of charges all stemmed from Mr. Blatter's authorization of payment of deferred compensation by FIFA to Mr. Platini – then the sitting President of FIFA's powerful European confederation – for services Platini indisputably rendered as a FIFA official from 1998 to 2002. The Ethics Committee's Adjudicatory Chamber rejected the bribery charge as unsupported and the falsification charge as legally flawed, but sustained the remaining charges and imposed an eight-year ban. FIFA's Appeal Committee shortened the ban to six years but otherwise upheld the decision. Although Mr. Blatter is no longer President, the Ethics Committee's finding is a stain on his career and the six-year ban imposed precludes him from serving the sport to which he has dedicated his life.*
- *At its core, this case is about the arrangement between Mr. Blatter and Mr. Platini that harnessed Mr. Platini's profile and talents in the service of FIFA. In 1998, Mr. Platini successfully oversaw the World Cup in France. Even before his election, Mr. Blatter sought to partner with Mr. Platini, who openly campaigned in favor of Mr. Blatter's candidacy. Ultimately, the two orally agreed that Mr. Platini would be paid CHF 1 million per year for his service as technical advisor to Mr. Blatter and an ambassador for FIFA. Mr. Blatter believed that this salary was justified by the value of Mr. Platini's tremendous stature in world football. Because FIFA's financial circumstances were compromised when Mr. Blatter took office, the two agreed that FIFA could not pay Mr. Platini's full salary at that time.*
- *As a result of FIFA tenuous financial condition, Mr. Platini agreed, pursuant to a 1999 written agreement that supplemented the oral agreement, to be paid only a portion of this annual amount due. The parties agreed the balance would be paid at a later, unspecified date. In 2010, Mr. Platini contacted FIFA to collect the balance. In 2011, at FIFA's request, he sent an invoice for the balance; Mr. Blatter acknowledged the oral agreement for compensation totaling CHF 1 million per year and approved the payment to Mr. Platini accordingly. Numerous senior FIFA employees, including Deputy Secretary General Marcus Kattner, with input from Mr. Platini's tax counsel and his senior advisor at UEFA, assessed, validated and processed the payment to Mr. Platini. The payment was subsequently approved by Chairman of the Finance Committee Julio Grondona. None of these officials raised any concerns that it was improper.*
- *It is undisputed that Mr. Blatter had authority to make a binding oral compensation agreement on FIFA's behalf. Pursuant to that authority, Mr. Blatter and Mr. Platini entered a valid and proper oral agreement, so the ethics charges against Mr. Blatter must fail: there is no gift, disloyalty, conflict*



*of interest, or other unethical behavior in paying valid compensation for services. Notwithstanding the evidence that the two men and those around them acted in good faith, FIFA's ethics officials concluded that no oral agreement existed, instead of finding that those who offered direct evidence in support of an oral agreement were lying. That conclusion is wrong and so at odds with the rules and evidence that one can only conclude it was solely in response to criticism that the Ethics Committee has been a sleeping watchdog. Even though neither Mr. Blatter nor Mr. Platini bore the burden of proof, both produced substantial evidence of the oral agreement and that the payment of CHF 2 million to Mr. Platini in 2011 was in final fulfilment of the agreement. A former FIFA Ethics Committee member, Jacques Lambert, attested in his contemporaneous awareness of the oral agreement in 1998, and to the agreed-upon salary. In Mr. Platini's case, Ángel María Villar Llona testified that he learned of the agreement long ago from Mr. Grondona, the finance committee chairman. UEFA and FIFA Executive Committee ("ExCo") members were aware of it in 1998. Importantly, the direct parties to the agreement, Mr. Blatter and Mr. Platini, gave materially identical accounts of the agreement's essential terms – not only before the Ethics Committee, but also in simultaneous, surprise interviews with the Swiss Office of Attorney General. And Mr. Blatter will introduce additional newly-discovered, corroborative evidence of the existence of the oral agreement in these proceedings.*

- *Nothing in the evidence offered in the Ethics proceedings suggests that Mr. Blatter's 2011 approval for the payment to Mr. Platini was motivated by an improper purpose. Two separate FIFA judicial bodies – the Ethic Committee's Adjudicatory Chamber and the Appeal Committee – conceded that there was insufficient evidence that the CHF 2 million payment was intended by Mr. Blatter to induce Mr. Platini to support Mr. Blatter's presidential campaign, or to forego running as a challenger to Mr. Blatter. But FIFA's judicial bodies failed to acknowledge that this concession leaves a gaping hole in the remaining charges. Without the unsupported bribery theory, neither body offered any plausible motive for Mr. Blatter to approve an unmerited payment to Mr. Platini. Thus, the only logical explanation for the payment is that it was due to Mr. Platini under the oral agreement for his prior service to FIFA, as both men consistently maintained.*
- *In light of the compelling case that there was an oral agreement struck in 1998 and that the parties to the agreement considered it to have survived even after they signed a written contract in 1999, the sanctions against Mr. Blatter must be reversed because he engaged in no unethical conduct. Payment for services actually rendered is not gratuitous, disloyal, conflicted, or otherwise unethical.*
- *By today's standards, and in hindsight, perhaps Mr. Blatter and Mr. Platini should have memorialized their complete understanding in 1999, when the written contract was signed. But FIFA was a far less sophisticated enterprise nearly twenty years ago. And both Mr. Blatter and Mr. Platini were firm believers in the honorable sentiment that an oral promise was every bit as binding as one reduced to writing. Otherwise-lawful business conduct is not unethical simply because it is informal.*
- *In any event, hindsight is irrelevant. Whether or not an oral agreement was the most prudent course, oral agreements are permissible under Swiss law and even today under FIFA's Organizational Regulations. And, as the Adjudicatory Chamber acknowledged, Mr. Blatter clearly had the power to enter into agreements on behalf of FIFA.*
- *Even if the record demonstrating the existence of an oral agreement was less convincing, there would still be ample basis to conclude that Mr. Blatter did not breach the Code. The evidence shows that*

*Mr. Blatter believed that Mr. Platini was due this money and that Mr. Blatter had the authority to approve payment. Mr. Blatter did not act with any bad purpose or motive to further personal interests, nor did he seek to circumvent FIFA's approval process. Those facts are sufficient to acquit Mr. Blatter of ethics charges.*

- *FIFA also faulted Mr. Blatter for allegedly authorizing Mr. Platini to receive credit towards his FIFA ExCo pension for his service to FIFA from 1998 to 2002. But the evidence that this was an improper gift is woefully insufficient. Most critically, FIFA's judicial bodies never bothered to consult the special ExCo pension plan's governance documents to verify whether the FIFA President (or anyone else) had discretion to award such credit. That alone is fatal to a gift charge. Moreover, the Ethics Committee did not prove to any level of satisfaction Mr. Blatter's involvement in this process. At the Appeal Committee, Mr. Blatter admitted that he approved, in principle, the grant of retroactive pension credit to Mr. Platini – but the idea was propounded by Mr. Valcke and the FIFA Secretariat, and Mr. Blatter approved it only on the condition that it was proper under the governing regulations. On the latter point, FIFA offered no evidence whatsoever of what information or reasons might have been provided to Mr. Blatter in support of the alleged authorization. Without such a record of what Mr. Blatter thought he was approving at the time and why, the approval cannot be condemned as ethically culpable.*
- *What is absent from this record is any evidence that Mr. Blatter placed his personal interests above FIFA's interests. None of Mr. Blatter's actions was corrupt, gratuitous, conflicted, or disloyal, and therefore none was unethical. As a result, he should be exonerated and his ban lifted.*
- *Under CAS Rules, the appeals arbitration panel must independently evaluate the evidence and pass judgment on the basis of the heightened "personal conviction" standard. We ask the panel to decide this matter without regard to the recent extraordinary external pressures on FIFA. If the panel follows the law and the evidence faithfully, it must conclude that, like the bribery and corruption charges already rejected by FIFA's judicial bodies, the gifts, conflict of interest, and breach of loyalty charges against Mr. Blatter are without legal or evidentiary support. These charges too must be dismissed and Mr. Blatter's ban immediately lifted". (Emphasis original)*

80. FIFA provided the following summary of its written submissions:

- *"This is a case which has its origins in the highly publicised detentions of FIFA officials in Zurich in May 2015. The officials were detained at the request of the US Department of Justice which was investigating suspected incidents or racketeering, wire fraud and money laundering conspiracy.*
- *As a consequence, the Swiss criminal authorities carried out an investigation into FIFA and uncovered a suspicious CHF 2 million payment. The payment was requested by [Mr. Platini] and approved by Mr. Blatter in 2011, allegedly in relation with Mr. Platini's work as an advisor to Mr. Blatter back in 1999-2002.*
- *Criminal proceedings were opened in Switzerland with respect to the CHF 2 million payment in favour of Mr. Platini. Mr. Blatter was heard and has been accused of criminal mismanagement under Article 158 Swiss Penal Code (SPC), and alternatively for misappropriation under Article 138 SPC. Mr. Platini was also investigated and was heard and is, to this date, considered a person*

*requested to provide information (“personne appelée à donner des renseignements”) with the meaning of Article 178 of the Swiss Code of Criminal Procedure (SCCP).*

- *Given the striking concomitance between the payment of 1 February 2011 and Mr. Blatter’s re-election as President of FIFA on 1 June 2011, the Investigatory Chamber of the FIFA Ethics Committee requested that – in addition to the obvious disloyalty of the payment – Mr. Blatter and Mr. Platini be charged for bribery within the meaning of the [FCE].*
- *The Adjudicatory Chamber of the FIFA Ethics Committee (“EC”) and the Appeal Committee (“AC”) found that, despite being more likely than not that there was an unethical motive for the payment (and thus a violation of Article 21 of the FCE), the evidence available was not sufficient to conclude to the comfortable satisfaction of the Committee members that the payment was a quid pro quo connected to Mr. Blatter’s re-election.*
- *FIFA has not appealed the AC Decision, which means that the present proceedings are limited to whether or not the payment of the monies in 2011 constituted a violation of Article 20, 19, 15, and 13 of the FCE. For the sake of clarity, FIFA wishes to emphasize at the outset that should new evidence surface, in particular from the pending criminal investigation, suggesting that there was in fact a connection between the solicitation of the payment received in 2011 and the election campaign of Mr. Blatter, it reserves the right to open fresh proceedings for a violation of Article 21 FCE (both against Mr. Blatter and Mr. Platini).*
- *Mr. Blatter’s defence is that the CHF 2 million payment executed in 2011 was due under (concealed) contractual terms (orally) agreed with Mr. Platini in 1998 for services the latter performed between 1998-2002. Mr. Blatter brings this defence notwithstanding the fact that he and Mr. Platini had entered into a written Contract on 25 August 1999 providing for a salary of CHF 300,000 per year for the same services.*
- *In response to Mr. Blatter’s defence FIFA submits:*
  - (i) *It is undisputed that the CHF 300,000 yearly remuneration which was contractually stipulated for Mr. Platini for his activity as Mr. Blatter’s advisor in 1999-2002 was paid in full by FIFA at the relevant time. The payment, 10 years after the fact, of an additional amount of CHF 2 million, based on an alleged oral agreement providing for a yearly remuneration of CHF 1 million (instead of CHF 300,000 as indicated in the written contract signed by Mr. Blatter and Mr. Platini), defies any logic. FIFA submits that such ex post justification concocted by Mr. Blatter and Mr. Platini is simply not credible by any standard and that the CHF 2 million payment constitutes at least an undue benefit prohibited by Article 20 FCE.*
  - (ii) *Even assuming that Mr. Blatter and Mr. Platini could be believed by this Panel when they try to justify the litigious payment by reference to their alleged oral agreement, the contents of this oral agreement and the circumstances in which the remuneration was subsequently requested by Mr. Platini and authorized by Mr. Blatter still constitute a conflict of interest under Article 19 FCE and, in any event, disloyal and unethical conduct within the meaning of Articles 15 and 13 FCE.*

- *Finally, it is important to emphasize that this is not a criminal case. This is not a case where Mr. Blatter's livelihood is at stake, still less his liberty. This is a case where a sports international governing body is seeking to regulate the fitness of one of its officials to continue acting in that role, in accordance with consensually accepted and reasonable ethical rules, and before an independent and impartial tribunal in the form of CAS, which will apply those rules based on its own assessment of the facts. It is important not to lose sight of this.*
- *In this Answer, FIFA will first set out the factual and procedural background of this case and address jurisdiction and applicable law. Then, in the main part of this Answer, FIFA will demonstrate that Mr. Blatter's actions breached the FCE. FIFA will then set out why the sanction is proportionate and set out FIFA's evidentiary requests. Finally, FIFA will conclude by requesting that the Panel confirm the Decision under appeal and order Mr. Blatter to pay a contribution towards FIFA's legal fees and other expenses".*

## **V. JURISDICTION**

81. The jurisdiction of CAS, which is not disputed, derives from article 64(3) of the FIFA Statutes (2015 edition), article 81(1) of the FCE (2012 edition) and Article R47 of the CAS Code.
82. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the parties.
83. It follows that CAS has jurisdiction to adjudicate on and decide the present dispute.

## **VI. ADMISSIBILITY**

84. The appeal was filed within the 21 days set by article 67(1) of the FIFA Statutes. The appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fee.
85. It follows that the appeal is admissible.

## **VII. APPLICABLE LAW**

86. Article R58 of the CAS Code provides the following:

*"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".*

87. It is common ground that the dispute before CAS is primarily governed by FIFA regulations and in particular the FCE.

88. FIFA maintains that the present dispute is also governed by Swiss law pursuant to article 62(2) of the FIFA Statutes and objects to any application of US law to these proceedings.
89. Mr Blatter also referred to and relied upon Swiss law in his submissions in this arbitration.
90. The Panel accepts the primary application of the various regulations of FIFA and the FCE more particularly and, subsidiarily, Swiss law, should the need arise to fill a possible gap in the various regulations of FIFA. US law is not applicable.
91. The Panel observes that four different versions of the FCE are possibly relevant in the matter at hand. The first edition of the FCE was implemented in 2004. Revised versions of the FCE were implemented in 2006, 2009 and 2012, respectively.
92. Notwithstanding the above, pursuant to the legal principle of *tempus regit actum* or non-retroactivity, the Panel is satisfied that procedural matters are governed by the regulations in force at the time of the procedural act in question, *i.e.* the FCE (2012 edition).
93. In respect of the material aspects of the case and the different editions of the FCE, the Panel considers it important that Mr Blatter is accused for two distinct sets of facts, *i.e.* the circumstances related to the payment of CHF 2 million and the circumstances related to the credits granted to Mr Platini under the FIFA ExCo retirement scheme.
94. Notably, the oral agreement justifying the payment of CHF 2 million was allegedly concluded in 1998, whereas the payment was only executed in 2011. In legal terms, the *causa* (*i.e.* the act creating the legal obligation) arose in 1998, whereas the *traditio* (*i.e.* the transaction fulfilling the obligation) was executed in 2011.
95. The Panel observes that FIFA argues that the payment of CHF 2 million in 2011 was made without *causa*. If this argument were upheld, the alleged violation of the FCE (*i.e.* the payment of CHF 2 million without contractual basis) would have to be examined under the 2009 version of the FCE as the 2012 version was not yet in force when the payment was made in 2011. If the Panel were however to decide that an oral agreement was concluded in 1998, justifying the payment of CHF 2 million in 2011, no version of the FCE would be applicable in view of the general legal principle of non-retroactivity, as the first version of the FCE only entered into force in 2004. The prohibition against retroactivity is a fundamental principle of Swiss law and forms part of international public policy (*ordre public*) (WAGNER PFEIFER B., Haftungsrisiken durch rückwirkende Anwendung umweltrechtlicher Normen?, in: Risiko und Recht, 2004, p. 552). An exception in this respect may however be if more recent regulations than the one in force at the time of the violation are more favourable to the accused (*lex mitior*).
96. In respect of the circumstances related to the FIFA ExCo retirement scheme, these benefits were allegedly granted to Mr Platini in 2007, concerning benefits over the years 1998-2001. In respect of this charge, the Panel finds that the alleged violation of the FCE was clearly committed in 2007 as a consequence of which the 2006 version of the FCE is applicable.

## VIII. PRELIMINARY ISSUES

### A. Is Mr Lambert's witness statement admissible?

97. As already mentioned *supra*, at the beginning of the hearing, counsel for Mr Blatter announced that Mr Lambert was not available to attend the hearing, although he had provided a witness statement. Whereas FIFA maintained that the witness statement would have to be excluded from the file as FIFA did not have the opportunity to cross-examine Mr Lambert, counsel for the Appellant argued that the transcripts of the interrogation before the FIFA Ethics Committee are in any event part of the file and that Mr Lambert's witness statement should not be excluded.
98. The Panel thus has to rule on the admissibility of Mr Lambert's witness statement.
99. The Panel finds guidance in article 4(7) of the IBA Rules on the Taking of Evidence in International Arbitration (which Rules were relied upon by the parties in the arbitration):

*"If a witness whose appearance has been requested pursuant to Article 8.1 fails without a valid reason to appear for testimony at an Evidentiary Hearing, the Arbitral Tribunal shall disregard any Witness Statement related to that Evidentiary Hearing by that witness unless, in exceptional circumstances, the Arbitral Tribunal decides otherwise".*

100. The Panel finds that no valid reason was submitted by Mr Blatter for Mr Lambert's failure to appear. However, as argued by Mr Blatter, the Panel notes that Mr Lambert did provide evidence in person before the FIFA Ethics Committee and that this forms part of the case file. Upon a careful review of Mr Lambert's witness statement and the record of the interrogation of Mr Lambert before the FIFA Ethics Committee, including questioning by counsel for the Appellant, Mr Torres, Mr Mussenden, Mr Gonzalez and Mr Smith, the Panel notes that the two do not materially differ in aspects considered important by the Panel.
101. In view of the above, the Panel deems that there are exceptional circumstances justifying the admission of Mr Lambert's witness statement. The Panel will however take into account that FIFA was not able to cross-examine Mr Lambert during the hearing in assessing the weight to be allocated to Mr Lambert's witness statement.
102. Consequently, Mr Lambert's witness statement is admissible and is not excluded from the case file.

### B. Is the present CAS Panel prevented from looking at the merits of this case due to the fact that another CAS panel already issued the operative part of its decision in respect of Mr Platini regarding very similar factual circumstances?

103. Prior to the constitution of this CAS Panel, on 29 April 2016, the CAS panel in the appeal by Mr Platini against FIFA held a hearing, which was followed on 9 May 2016 by a CAS Media Release announcing that the panel's decision with reasons would follow in an arbitral award at a later date. The other CAS panel rendered its award on 16 September 2016, after the

hearing in the present arbitration. While the decision and award of the other CAS panel have been referred to by the parties in the present arbitration, they were not submitted into evidence and the parties did not rely upon them. Nonetheless, for the sake of good order, the Panel makes the following observations.

104. In its Final Report on the topic of *res judicata* and arbitration, the International Law Association's International Commercial Arbitration Committee states that for an arbitral award to have conclusive and preclusive effects it must comply with the traditional triple identity test (identity of the claims, of the causes of action and of the parties), and if there are different parties in the further arbitration proceedings, the prior award will not have conclusive and preclusive effects on a different party (DE LY/SHEPPARD, ILA Final Report on Res Judicata and Arbitration, Arbitration International, Vol. 25, No. 1, 2009, p. 76).
105. There are however several published awards in which arbitral tribunals have given some effects to a prior decision, even though it did not qualify as *res judicata*. This was typically done in situations where the prior decision involved a case that was not identical but was closely connected to the case before the arbitral tribunal. The effects given to such prior decisions varied among arbitral tribunals. While some tribunals considered themselves bound by a prior decision that was not *res judicata*, others were more cautious holding that they would take the prior decision into consideration (SCHAFFSTEIN, Res Judicata in International Commercial Arbitration – A Problem, in: International Commercial Arbitration, 2016, para. 4.173).
106. Applying the above legal framework to the matter at hand, the Panel finds that it is not bound by the CAS Media Release or award issued in the proceedings related to Mr Platini (TAS 2016/A/4474). This is particularly so because (1) only the CAS Media Release was issued at the time of the hearing in the matter at hand and no further reasoning was available until after the hearing in this arbitration, (2) the CAS Media Release and award were not submitted into evidence in this arbitration, and (3) they were not in any event relied upon by the parties in making their submissions and requests for relief in this arbitration.
107. Consequently, the Panel finds that it is not prevented from looking at the merits of this case independently from any decision and reasoning of the other CAS panel.

## **IX. MERITS**

### **A. The Main Issues**

108. The main issues to be resolved by the Panel are:
  - i. Which party carries the burden of proof?
  - ii. What is the standard of proof?
  - iii. Was an oral agreement concluded between Mr Blatter and Mr Platini in 1998 regarding an annual remuneration for Mr Platini in the amount of CHF 1 million?
    - a. The positions of the parties.
    - b. The evidence on record.

- c. The findings of the Panel.
- iv. What is the consequence of the fact that a written employment contract was concluded between Mr Platini and FIFA in 1999?
  - a. The positions of the parties.
  - b. The evidence on record.
  - c. The findings of the Panel.
- v. Was Mr Platini unlawfully awarded contributions under FIFA's ExCo retirement scheme?
  - a. The positions of the parties.
  - b. The evidence on record.
  - c. The findings of the Panel.
- vi. Was FIFA's payment of CHF 2 million to Mr Platini made without contractual basis?
  - a. The positions of the parties.
  - b. The evidence on record.
  - c. The findings of the Panel.
- vii. Did Mr Blatter violate article 11 of the FCE (2006 edition) and article 10 of the FCE (2009 edition)?
- viii. Did Mr Blatter violate article 5 of the FCE (2009 edition)?
- ix. Did Mr Blatter violate article 3 and/or 9(1) of the FCE (2009 edition)?
- x. If Mr Blatter is found guilty of violating one or more provisions of the FCE, what sanction shall be imposed?

***i. Which party carries the burden of proof?***

- 109. The principle of burden of proof applies if the requisite degree of conviction that an alleged fact is fulfilled is not reached. In such a case, the principle of burden of proof defines which party has to bear the consequences of such a state of non-conviction on the part of the arbitral tribunal with respect to the establishment of an alleged fact (SFT BGE 132 III 626).
- 110. Except where an agreement would determine otherwise, the arbitral tribunal shall allocate the burden of proof in accordance with the rules of law governing the merits of the dispute, *i.e.* the *lex causae* (BERGER/KELLERHALS, International and Domestic Arbitration in Switzerland, 2015, No. 1316).
- 111. As set out *supra*, the *lex causae* in the matter at hand are primarily the various regulations of FIFA, most notably the FCE, and subsidiarily Swiss law.
- 112. Article 52 of the FCE (edition 2012) determines as follows:

*"The burden of proof regarding breaches of provisions of the Code rests on the Ethics Committee"*.
- 113. In the versions of the FCE preceding the 2012 edition, no burden of proof was allocated. However, in cases related to alleged ethical violations prior to the entry into force of the 2012 edition of the FCE, for example in CAS 2011/A/2625, CAS panels have nevertheless held that FIFA carries the burden of proof by analogy to article 99(1) of the FIFA Disciplinary Code.



114. Consequently, the Panel finds that FIFA carries the burden of proof.
115. Notwithstanding this, the circumstances in the present case are somewhat more complicated as it is not disputed that FIFA was able to establish that Mr Blatter approved a payment of CHF 2 million to Mr Platini without any written contractual basis. The question is rather whether the payment was made in accordance with an oral agreement between Mr Blatter and Mr Platini concluded in 1998. Simply put, is FIFA required to prove that no such oral agreement existed, or is Mr Blatter required to prove that such oral agreement existed?
116. Although this question is intriguing and raises interesting questions, as will be set out in more detail below, the Panel finally does not deem it necessary to enter into more detail in this respect as it is not decisive for the outcome of the present arbitral award.

**ii. What is the standard of proof?**

117. The standard of proof is defined as the level of conviction that is necessary for the Panel to conclude in the arbitral award that a certain fact happened (BGer 5C\_37/2004, 3.2.3) and is a question of Swiss substantive law (HASENBÖHLER, Kommentar zur Schweizerischen Zivilprozessordnung, 2016, No. 20 to Art. 147 SPC).
118. As set out *supra*, the *lex causae* in the matter at hand are primarily the various regulations of FIFA, most notably the FCE, and subsidiarily Swiss law.
119. Article 51 of the FCE (edition 2012) determines as follows:
- “The members of the Ethics Committee shall judge and decide on the basis of their personal convictions”.*
120. The parties do not dispute that the standard of proof to be applied should be one of “personal conviction”.
121. The Panel notes that the standard of “personal conviction” has been interpreted as follows by another CAS panel:
- “The applicable standard of proof is the “personal conviction” of the Panel (in the French version “intime conviction”, but according to article 143 para. 2 FDC the English version prevails). The Panel is of the view that, in practical terms, this standard of proof of personal conviction coincides with the “comfortable satisfaction” standard widely applied by CAS panels in disciplinary proceedings. According to this standard of proof, the sanctioning authority must establish the disciplinary violation to the comfortable satisfaction of the judging body bearing in mind the seriousness of the allegation. It is a standard that is higher than the civil standard of “balance of probability” but lower than the criminal standard of “proof beyond a reasonable doubt” (CAS 2011/A/2625, para. 53).*
122. The Panel fully adheres to this interpretation and consequently finds that the standard of proof to be applied is one of “personal conviction”, which coincides with the standard of “comfortable satisfaction”.

**iii. Was an oral agreement concluded between Mr Blatter and Mr Platini in 1998 regarding an annual remuneration for Mr Platini in the amount of CHF 1 million?**

*a. The positions of the parties*

123. Commencing with the analysis of the actual merits of the case, the Panel considers it appropriate to first assess the pertinent factual circumstances in detail (subchapter iii, iv, v and vi), before examining whether the actions of Mr Blatter resulted in any violations of the FCE as contended by FIFA (subchapter vii, viii, ix and x).
124. As set out above, whereas Mr Blatter contends that he concluded an oral agreement with Mr Platini in 1998 regarding an annual remuneration for Mr Platini in the amount of CHF 1 million, FIFA maintains that this was not the case.
125. Mr Blatter submits that the record presents no less than five pillars of evidentiary support for the oral agreement: i) the consistent and mutually-corroborating testimony of Mr Blatter and Mr Platini; ii) the statement of former FIFA Ethics Committee member Mr Lambert; iii) and iv) the statements of two other football officials with contemporaneous knowledge (Mr Villar Llona and Mr Battaini); and finally v) the contemporaneous UEFA documents manifesting widespread awareness of the arrangement.

*b. The evidence on record*

126. After having examined all the evidence on record, including the transcripts of interviews conducted by the Investigatory Chamber, the documentary evidence submitted, the witness statements submitted in the proceedings before CAS and the testimony given by the witnesses during the hearing, the Panel finds that the following facts have been established to its comfortable satisfaction in respect of the alleged conclusion of an oral agreement on an annual remuneration in the amount of CHF 1 million for Mr Platini.
127. Mr Blatter worked at FIFA for 40 years, from when he joined in 1975 until he was suspended and then banned from football by the FIFA Ethics Committee in 2015 and 2016, respectively, in the matter that is the subject of this appeal. He testified forcefully at the hearing before the Panel, as did other witnesses, about his commitment and many contributions to FIFA over his four decades in the organisation, including spear-heading the transformation of FIFA into a larger, more sophisticated international sports organisation. Mr Blatter was described by witnesses as a senior executive who was the first one to arrive at the office and the last one to leave every day, paid attention to the details, was well-informed and on top of everything, and was a valued mentor. Mr Blatter testified with emotion that FIFA was his life and family.
128. The key events relevant for this appeal begin around the FIFA Presidential election in 1998. At that time, Mr Blatter was FIFA's Secretary General, a position he had held since 1981. FIFA's long time President since 1974, Dr João Havelange, had announced at the end of 1996 that he would not seek re-election, and an election was going to be held at the FIFA Congress in Paris in June 1998. This was just prior to the FIFA World Cup in France, for which Mr Platini was co-president of the organising committee.

129. Mr Battaini (former FIFA in-house counsel and marketing director and later personal advisor to Mr Blatter), in respect of whom the Panel took into account its reservation regarding the credibility as communicated to the parties by letter of the CAS Court Office dated 12 July 2016, testified at the hearing that it was obvious that, once Dr Havelange would not continue as President, Mr Blatter might decide to run. He also testified that Mr Blatter asked him to verify Mr Blatter's eligibility to run for President given that he was the sitting Secretary General.
130. According to Mr Blatter at the hearing, however, Dr Havelange did not think that Mr Blatter should run because Dr Havelange's philosophy was that "*paid officials should not serve in committees*", and "*he had difficulty to understand, as a patriarch, that one of his employees should serve as President*". Mr Blatter testified at the hearing that Dr Havelange wished Mr Platini to succeed him as President with Mr Blatter continuing as Secretary General.
131. Mr Blatter also said at the hearing that he was told separately that the European football federations would not support him staying on as Secretary General and wished to see both Dr Havelange and Mr Blatter replaced at the same time. Mr Blatter said that the European football federations had a preferred candidate for FIFA President in Mr Lennart Johansson from Sweden who was then UEFA's long-serving President.
132. At the same time, though, Mr Blatter said at the hearing that he understood that he had the support from others to succeed Dr Havelange and did not want to "abandon" FIFA.
133. It is in this context that at some point in the months leading up to the June 1998 election Mr Blatter and Mr Platini met to discuss the election. The evidence in the record regarding the specifics of this discussion is somewhat inconsistent.
134. The version of events supported by the testimony at the hearing of Mr Blatter and Mr Platini as well as by the prior testimony in the record of Mr Lambert is that Mr Blatter and Mr Platini met on the top floor of the Ritz Carlton Hotel in Singapore in January 1998 where Mr Blatter explained Dr Havelange's idea to Mr Platini and, following discussion, proposed a so-called "reverse ticket" of Mr Blatter for President with Mr Platini as his Special Advisor.
135. The version of events supported at the hearing and in his witness statement by FIFA's former in-house lawyer and marketing director, Mr Battaini, is that Mr Battaini proposed the idea of Mr Platini taking on the role as Special Advisor to Mr Blatter who liked it and that he, Mr Battaini, presented the idea to Mr Platini at a meeting together with Mr Blatter in Monaco in the spring of 1998. However, Mr Platini said at the hearing that he did not recall such a meeting in Monaco, and Mr Battaini said at the hearing that he knew nothing of a previous meeting in Singapore. Mr Platini's and Mr Battaini's evidence also differed in that Mr Battaini said that he later worked closely and intensely with Mr Platini, while Mr Platini said that they did not.
136. In any event, according to the hearing testimony, sometime in 1998 before the June 1998 election, Mr Blatter and Mr Platini met to discuss the FIFA presidency. Moreover, at the FIFA Executive Committee meeting in Zurich on 13 March 1998, Mr Blatter was asked to step

down as Secretary General if he was going to run for President, which he did, and this was followed just over two weeks later by a press conference in Paris on 30 March 1998 at which Mr Blatter and Mr Platini announced their President-Special Advisor ticket.

137. At the hearing, Mr Platini testified that when Mr Blatter first approached him with the idea to run together it began with an interesting discussion on the future of FIFA. He said that Mr Blatter asked him what they would do for the future presidency of FIFA with Dr Havelange stepping down after the World Cup. Mr Platini said that he did not quite understand the question and asked what Mr Blatter meant. According to Mr Platini, Mr Blatter replied that Dr Havelange had suggested that Mr Platini as President and Mr Blatter as Secretary General would have a certain elegance. Mr Platini testified that he told Mr Blatter that he, Mr Platini, could not be President because he did not know enough about FIFA and in any event was co-president of the organising committee of the World Cup (which he stressed numerous times in the hearing he did for free as a volunteer) and the other co-president, Mr Sastre, was ill (he passed away at the beginning of the World Cup).
  
138. Mr Platini said that Mr Blatter then proposed that they be co-Presidents of FIFA together and that he, Mr Platini, replied no because he did not want to move from Paris to Zurich. He testified further at the hearing that Mr Blatter said he “*needed*” Mr Platini and asked how they could proceed. Mr Platini said that he asked Mr Blatter to let him think about it and that he would come back to Mr Blatter in a couple of months.
  
139. Mr Platini said at the hearing that a few months later he saw Mr Blatter “*maybe in Zurich, I am not sure, but obviously it was before the election*” and told Mr Blatter that he had thought about it and would like to be a special advisor to Mr Blatter as FIFA President on technical matters. Mr Platini’s evidence was that it was during this discussion that Mr Blatter asked him what compensation he, Mr Platini, would like and that he said “*one million*” in reply. Mr Platini also said that Mr Blatter asked “*one million of what?*” and that he, Mr Platini, replied “*of what you want*”, listing off a number of different currencies, e.g. Swiss francs, US dollars, Russian roubles (the example of roubles was mentioned several times in evidence). Mr Platini testified at the hearing that Mr Blatter then said “*ok, one million Swiss francs*”. Mr Platini testified further that he recounted the story about telling Mr Blatter that he would take whatever currency Mr Blatter wanted to a few people as an anecdote because he found it was amusing. He recalled in particular recounting this to Mr Lambert.
  
140. At the hearing, Mr Blatter said that his recollection was not quite the same but that these events happened 18 years ago. Mr Blatter testified that he remembered Mr Platini saying that he would work for Mr Blatter but also saying that he was very expensive. Mr Blatter said that he asked how much and that Mr Platini replied one million and then added of whatever Mr Blatter wanted. Mr Blatter said that he remembered this last bit about the choice of currency as a joke and that it was obvious that it was CHF 1 million, which is what FIFA’s accounts were in. Mr Blatter testified that he replied to Mr Platini “*ok, we will see what will happen*” and made no other comments on the remuneration amount.

141. Mr Blatter also said at the hearing that he considered this an agreement with Mr Platini on what Mr Platini would earn if Mr Blatter was elected. He testified as well that he said to Mr Platini *“first I must be elected and then we will see also what you are doing”*.
142. Mr Blatter emphasised in his testimony at the hearing that this situation with Mr Platini was exceptional and that this arrangement was made *“because of the election”*, which *“was a tight election”*. Mr Blatter said that he thought Mr Platini’s image was worth this amount and explained that he wanted someone with him from the football hierarchy who was a star to counter the views of those who would perceive him as a former *“servant”* trying to become the *“commander”* of the FIFA Executive Committee.
143. Mr Platini testified at the hearing that he had no idea what his role was going to be and that he did not know anything about FIFA. He said that he was not prepared for Mr Blatter’s question about compensation and gave the one million figure without thinking, that he could have said another number, lower or higher.
144. Mr Platini explained at the hearing that after the above discussion was concluded he campaigned for Mr Blatter until the June 1998 election.
145. The Panel considers the above summary to be not entirely consistent with Mr Blatter’s recollection of the timing of events that he gave when interviewed in the investigation on 1 October 2015. In that interview he recollected that it was *“soon after the World Cup was finished and we made some briefings about the results”* that Mr Platini told him: *“Listen, I would like to be your, to work with you and to be your technical con-science – that’s exactly the term he has used – and I have said: “Great. Great. We shall, this is a good idea that you have””*. In that interview, Mr Blatter said that it was then that the compensation of CHF 1 million per year was discussed, *i.e.* after the 1998 election and not before.
146. Mr Blatter and Mr Platini testified at the hearing that Mr Platini started working with Mr Blatter immediately after the 1998 World Cup ended but that they did not again speak about Mr Platini’s remuneration until a meeting in Mr Blatter’s office in August 1999. Mr Blatter also said that he told Mr Platini after the election: *“ok, now you are working for me and you know the price”*.
147. Mr Platini said at the hearing that he travelled a lot with Mr Blatter from the outset and started to understand what FIFA was about. He explained that he looked after technical matters and had two specific projects: (1) improving the international calendar of play, which remains an issue today and depends on the release of players from their clubs to play for their national teams, and (2) the GOAL project, which was put in place by Mr Blatter and still exists today regarding the development and distribution of money to football associations around the world. A third project, the FIFA 2000 referee project, was also mentioned by Mr Blatter elsewhere in the evidence in the record.
148. Mr Platini continued to live in France, and FIFA opened an office in Paris from which Mr Platini worked with two of his colleagues from the World Cup organising committee who

also joined FIFA, Mr Alain Leiblanc (also referred to in the record as Leblanc) and Ms Odile Lanceau. FIFA paid for the cost of the office and of the additional employees.

149. Mr Villar Llona, long-serving head of the Spanish football federation as well as Vice President and at the time of the hearing Acting President of UEFA, testified at the hearing that the UEFA members of the FIFA Executive Committee were all aware in 1998 that Mr Platini would take on an advisory role to Mr Blatter from January 1999 and that a figure of CHF 1 million Swiss francs or US dollars per year was mentioned. He said that rumours were already circulating during the World Cup in France in 1998 with Mr Blatter's election and that these rumours were confirmed in a 1998 UEFA Executive Committee meeting.
150. Submitted as exhibit A-21 are documents regarding a Bureau Meeting of the UEFA Executive Committee on 12 November 1998 in Stockholm and a preparatory meeting with the UEFA President on 3 December 1998 in Zurich in advance of the FIFA Executive Committee meeting on 3 and 4 December 1998. Among these documents is one that is dated 19 September 1998, entitled "Key Issue: Role of Michel Platini". It states:

*"Platini was involved in the election **campaign in favour of J.S.B.** The latter announced already then, that Platini would be the future **Sports Director** of FIFA. Platini would therefore become an **employee** of FIFA. This is an interesting constellation, since as a future employee, **Platini's behaviour** towards certain members of the Executive Committee during the months prior to the elections was **quite unacceptable**.*

*On the other hand one has to have doubts about Platini's **qualifications** as Sports Director, which would require him to manage all sports related matters, including competitions and to guide the personnel in question. Therefore, the question must be asked, **what is the profile of the position** as projected by J.S.B.?*

*Moreover, there are rumours that Platini wishes to have his **working place in Paris**. This seems impossible, if the position is supposed to be the one as described above. There has been talk about **SFr. 1 million as salary**. Who will decide on this?*

*Other rumours indicate that the relationship between J.S.B. and Platini has cooled off. For many observers this comes not as a surprise, considering their personality. Both like to be the main actors. Therefore, it might be meeting J.S.B.'s secret wish, if a majority of the Executive Committee were opposed to Platini being given the role originally proposed.*

*For quite a few members of the Executive Committee, the question whether Platini is given the promised position or not, may not represent a matter of great importance. Other issues may be considered of higher priority.*

*Conclusion: Irrespective of the above reflections, **FIFA required high quality personnel**. Therefore, all key positions should be subject to an open recruitment process after the **exact profile** of the position has been determined by the Executive Committee" (Emphasis original).*

151. Mr Platini testified at the hearing that these UEFA papers were found in the UEFA archives and mention a telephone conversation that he had with former UEFA and FIFA Vice-President Antonio Matarrese (a listed attendee at the meetings referred to above) “*who wanted to hire me and I said no I have an agreement with Mr. Blatter and have asked him for one million*”.

*c. The findings of the Panel*

152. On the basis of all the evidence referred to above, the Panel is satisfied that Mr Blatter and Mr Platini had discussions about Mr Platini being employed by FIFA in 1998. Whether an agreement related to an annual remuneration in the amount of CHF 1 million finally came about at this stage is not clear from the evidence. Indeed, the witnesses other than Mr Blatter and Mr Platini that allege to have been aware of the fact that an agreement was reached are based on hearsay, because none of them was actually present in the meeting. This applies to Mr Lambert, who allegedly heard about the agreement from Mr Platini; to Mr Villar Llona, who allegedly heard about the agreement from the late Mr Julio Grondona, former chairman of the FIFA Finance Committee; and to Mr Battaini, who was allegedly consulted by Mr Blatter in respect of the CHF 1 million salary.

153. Mr Blatter’s argument that more than one-dozen UEFA and FIFA Executive Committee members learned about Mr Platini’s consultancy and salary in 1998, remained unsubstantiated with evidence.

154. First, the whole of the evidence suggests that if any such oral agreement were reached it was made prior to the June 1998 election, when Mr Blatter was not yet able to bind FIFA as its President.

155. Second, the Panel considers the UEFA document dated 19 September 1998 (i.e. dated approximately two and a half months after the end of FIFA World Cup 1998) to be important, as this is the only document on file referring to an agreement between Mr Blatter and Mr Platini and specifically alluding to a compensation of CHF 1 million. This document speaks literally of “rumours”, which only implies that there was no certainty within UEFA about the situation yet at the time. The Panel finds that this document certainly does not prove that an oral agreement was reached between Mr Blatter and Mr Platini.

156. Accordingly, the Panel finds that there is no evidence proving that an agreement was reached before or shortly after the FIFA World Cup 1998, besides the testimonies of Mr Blatter and Mr Platini. As set out *supra*, Mr Blatter however also partially contradicts his contention that an oral agreement had been reached by stating things as “*ok, we will see what will happen*”, which implies that he may have had the intention to remunerate Mr Platini with CHF 1 million per year for his services, but that this was still subject to final confirmation. Also as set out *supra*, anything that was agreed prior to the June 1998 election was in any event not binding on FIFA as Mr Blatter was not yet its President.

157. Considering all of the evidence as a whole, the Panel finds to its comfortable satisfaction that, while the UEFA document is objective evidence proving that **discussions** took place between Mr Blatter and Mr Platini about the latter receiving an annual salary of CHF 1 million, it does

not prove the existence of a definitive **agreement** on this amount and there is no other sufficient evidence of such a definitive agreement that would be binding on FIFA.

158. Moreover, as will be set out in more detail below, the Panel does not consider it crucial whether or not an oral agreement was reached between Mr Blatter and Mr Platini in 1998. The Panel finds that, even if an oral agreement had been concluded, the terms of such agreement were superseded by means of the written contract entered into in August 1999.
159. Consequently, the Panel finds that it can be left open whether or not an oral agreement was concluded between Mr Blatter and Mr Platini regarding an annual remuneration for Mr Platini of CHF 1 million in 1998. The Panel is however convinced that such an arrangement was discussed between the two but that no definitive agreement on this amount was made that is binding on FIFA.

**iv. *What is the consequence of the fact that a written employment contract was concluded between Mr Platini and FIFA in 1999?***

*a. The positions of the parties*

160. Mr Blatter argues that because of FIFA's troubled finances at that time, he and Mr Platini agreed that some portion of the annual salary of CHF 1 million allegedly agreed upon, would be deferred until the organisation could afford to pay the balance. Subsequently, when FIFA's finances had improved markedly some years later, Mr Platini requested the balance that he was due. In 2011, FIFA's finance organisation processed Mr Platini's invoice, and FIFA paid him CHF 2 million for his earlier service.
161. Mr Blatter maintains that no one has offered evidence that the oral agreement did not exist. Notwithstanding the uncontroverted record, the FIFA Ethics Committee found ethics violations based solely on its determination that Mr Blatter, Mr Platini and their corroborating witnesses are simply lying about the oral agreement.
162. Mr Blatter submits that, by means of the written contract concluded in 1999, he agreed with Mr Platini that the balance would be paid at a later, unspecified date. In 2010, Mr Platini contacted FIFA to collect the balance. In 2011, at FIFA's request, he sent an invoice for the balance; Mr Blatter acknowledged the oral agreement for compensation totalling CHF 1 million per year and approved the payment to Mr Platini accordingly. Numerous senior FIFA employees, including then Deputy Secretary General Mr Kattner, with input from Mr Platini's tax counsel and his senior advisor at UEFA, assessed, validated and processed the payment to Mr Platini. The payment was subsequently approved by the Chairman of the Finance Committee Mr Grondona. None of these officials raised any concerns that it was improper.
163. Mr Blatter concludes that, in light of the compelling case that there was an oral agreement struck in 1998 and that the parties to the agreement considered it to have survived even after they signed a written contract in 1999, the sanctions against Mr Blatter must be reversed because he engaged in **no unethical conduct**. Payment for services actually rendered is not gratuitous, disloyal, conflicted, or otherwise unethical. Mr Blatter however admits that, by



today's standards, and in hindsight, perhaps Mr Blatter and Mr Platini should have memorialized their complete understanding in 1999, when the written contract was signed. But FIFA was a far less sophisticated enterprise nearly twenty years ago. And both Mr Blatter and Mr Platini were firm believers in the honourable sentiment that an oral promise was every bit as binding as one reduced to writing. Otherwise-lawful business conduct is not unethical simply because it is informal.

164. Finally, Mr Blatter argues that nothing in the written agreement indicates that it was the sole source of the terms of the agreement or that it superseded any prior or contemporaneous agreements between the parties. An explicit integration clause is not required, but its absence is probative evidence that the writing did not contain all the terms. More importantly, the parties to the oral agreement denied any intention to supersede their oral agreement with the writing and Mr Villar Llona's and Mr Battaini's evidence corroborates the rationale for deferred payment. The written agreement was clearly designed for one purpose: to enable the processing of Mr Platini's invoices. It did not supersede the oral promise, but supplemented it.
165. FIFA however submits that it is undisputed that the CHF 300,000 yearly remuneration which was contractually stipulated for Mr Platini for his activity as Mr Blatter's advisor in 1999-2002 was paid in full by FIFA at the relevant time. The payment, 10 years after the fact, of an additional amount of CHF 2 million, based on an alleged oral agreement providing for a yearly remuneration of CHF 1 million (instead of CHF 300,000 as indicated in the written contract signed by Mr Blatter and Mr Platini), defies any logic. FIFA submits that such *ex post* justification concocted by Mr Blatter and Mr Platini is simply not credible by any standard and that the CHF 2 million payment constitutes at least an undue benefit prohibited by article 20 FCE.

*b. The evidence on record*

166. After having examined all the evidence on record, including the transcripts of interviews conducted by the Investigatory Chamber, the documentary evidence submitted, the witness statements submitted in the proceedings before CAS and the testimony given by the witnesses during the hearing, the Panel finds that the following facts have been established to its comfortable satisfaction in respect of the written contract concluded in 1999.
167. Submitted as exhibit R-7 is the only written contract in the record between FIFA and Mr Platini, which is dated 25 August 1999 and stated to have effect from 1 January 1999 at an annual compensation of CHF 300,000. It sets out Mr Platini's functions and status as Special Advisor to the FIFA President. The contract is in French and is typed on FIFA letterhead save for the annual compensation and some of the expense amounts, which instead are handwritten. Mr Blatter said at the hearing that he does not know who drafted the typed text of the written contract with Mr Platini, and no other evidence has identified the drafter with any degree of certainty. Mr Blatter speculated that it might have been his successor as Secretary General, Mr Zen-Ruffinen, but was unable to say this with any certainty, and the prior testimony of Mr Zen-Ruffinen in the record is to the contrary. The handwritten amounts on the contract were written in by Mr Blatter, and the contract was signed by both Mr Blatter and

Mr Platini. Mr Blatter testified in his October 2015 investigation interview that Mr Platini and he signed it together, at the same time.

168. Mr Platini testified at the hearing that a year after Mr Blatter's election, in 1999, he went into Mr Blatter's office to see him alone and said: *"I think we have got a slight problem cause we still have not worked out all my contractual relationships"* and *"what are we going to do"*. Mr Platini explained that he needed a contract to prove that he was working for FIFA. According to Mr Platini, Mr Blatter pulled a contract on blue paper out of his desk and announced that he had a big problem to pay the amount of money Mr Platini was asking for. Mr Platini said that Mr Blatter told him that because the new FIFA Secretary General was earning *"something around"* CHF 300,000 Mr Platini's contract should be for around the same amount. Mr Platini explained at the hearing that he did not know if this was true but had no reason not to believe Mr Blatter. He also confirmed that FIFA's financial difficulties were not given by Mr Blatter as the reason for deferring payment of part of his compensation.
169. Mr Platini said at the hearing that he told Mr Blatter that he thought that they had agreed on a figure of CHF 1 million and that Mr Blatter replied *"Yes, but I cannot provide you with that"*. Mr Platini's evidence is that he accepted this and said he would sign the contract presented to him by Mr Blatter for CHF 300,000 for the time being, which he and Mr Blatter did. Mr Platini's evidence at the hearing was that they agreed that they would *"see about the rest later on"*, *"discuss the rest later on"*. In answer to a question from the President of the Panel, Mr Platini also confirmed his evidence that Mr Blatter said that he could not provide him with CHF 1 million and that he replied *"we will see about the rest"* adding: *"but I did not know how it would be sorted out"*.
170. Mr Platini also said at the hearing that he did not see any problem with the amount of CHF 1 million not appearing in FIFA's accounts or with his agreement being in part in writing and in part oral. On the other hand, he accepted that there was no written contract for the deferred CHF 700,000 of his compensation and confirmed his evidence that FIFA should not disperse funds without a written contract. Also, after being asked several times in cross-examination if he had ever seen such a situation before, he stated that his case was *"unique"*.
171. Mr Platini was unable to explain at the hearing why his written contract was retroactive to January 1999 when he had been involved in his role from June 1998. And in his interview in the investigation he said that he did not recall ever reading the contract.
172. Mr Blatter testified at the hearing that the meeting in August 1999 was the first time that he told Mr Platini that he could not pay him the full amount. He said that he told Mr Platini at the meeting that the CHF 300,000 was *"all we can give you now"* and that Mr Platini agreed. Mr Blatter denied that the deferral of part of Mr Platini's compensation had anything to do with the new Secretary General's compensation and insisted that this was done because FIFA was having liquidity issues at the time. Mr Blatter also stated that he did not have any time frame in mind to pay Mr Platini the rest of his compensation.
173. In his investigation interview on 1 October 2015, Mr Blatter stated in this regard:

Mr Torres: “OK, and so the balance of the million-dollar contract, was there an agreement of when that would be paid?”

Mr Blatter: “When the one million will be paid? No, that was ...”.

Mr Torres: “Yeah, the balance, because this is the only thing ...”.

Mr Blatter: “The balance, there was never a discussion on when the balance will be paid. Never”.

Mr Torres: “OK. There was no discussion”.

Mr Blatter: “No discussion” (Emphasis added by the Panel).

174. Similarly, Mr Platini in his interview in the investigation said that he did not ask when the balance would be paid; neither he nor Mr Blatter proposed when it would be paid; and he did not know when or how it would be paid.
175. Mr Blatter testified at the hearing that this was the only agreement he did this way in FIFA and that looking back there should have been a mention if not in the contract then in the FIFA accounts that there was still a sum owed to Mr Platini. At the hearing, he referred to this as “an oversight”, admitting that it was “an error not to have it... mentioned somewhere that this was not the end of the contract” and that he should have written somewhere in the FIFA accounts that “we still owe something to one of our people”. Nonetheless, he questioned whether this was a matter of ethics.
176. Mr Blatter also testified at the hearing that the new FIFA Secretary General, Mr Zen-Ruffinen, was not aware of the oral agreement with Mr Platini at that time, and he could not remember if Mr Zen-Ruffinen would have learned of it at all.
177. In his investigation interview, Mr Zen-Ruffinen said that the he had never seen a contract between FIFA and Mr Platini before and did not know how much Mr Platini was paid. He also said that he had never seen an arrangement where there was a written contract and an oral agreement; he was not aware of an agreement like this between Mr Blatter and Mr Platini; and he was surprised to learn of it.
178. It was noted during Mr Blatter’s examination at the hearing that he had sole signature authority for FIFA at that time as President and up until 2013, and Mr Zen-Ruffinen stated in his investigation interview that Mr Blatter used this authority to sign documents alone during the time that Mr Zen-Ruffinen was Secretary General (1998-2002). Mr Zen-Ruffinen also referred to strong disagreements with decisions taken by the President, particularly related to finances and the appointment of advisors and personnel.

c. *The findings of the Panel*

179. As set out *supra*, the Panel is convinced that a salary of CHF 1 million for Mr Platini was discussed between Mr Blatter and Mr Platini in 1998. The Panel however finds that there is at

least no clear evidence proving that the discussions between Mr Blatter and Mr Platini resulted in a final and binding agreement and that even if they did, this was before the 1998 election and thus before Mr Blatter could bind FIFA as its President. Be this as it may, whether or not a final and binding oral agreement was finally concluded can be left open for the reasons set out below.

180. Regardless of whether or not an oral agreement was definitively concluded between Mr Blatter and Mr Platini in 1998, the Panel is convinced that Mr Platini, for whatever reason, accepted in August 1999 to be employed by FIFA for an annual remuneration of CHF 300,000 retroactively to 1 January 1999. Importantly, the written agreement does not make any reference to a prior agreement of any kind, written or oral, or to the fact that the written contract did not contain all the relevant terms.
181. Although Mr Blatter and Mr Platini testified that they had concluded an oral agreement about an annual compensation of CHF 1 million, the Panel deems it crucial that, based on their testimony before it, they themselves did not consider the oral agreement (to the extent there was one) to be binding after the conclusion of the written agreement in August 1999. Exemplary for this are Mr Platini's repeated statements that *"I said I thought we agreed on figure of 1 million; he said yes, but I cannot provide you that. So I said we can sign the contract for the 300,000 for the time being and we will see about the rest later on"*, *"Mr Blatter said he would sign for 300K for the immediate future and thought then we would then discuss the rest later on"*, and *"but how it would be sorted out I did not know"* (emphasis added by the Panel).
182. The Panel finds that these statements show to its comfortable satisfaction that the oral agreement, assuming that an oral agreement was actually concluded, was not considered to be a binding agreement by Mr Platini and was superseded by the written agreement.
183. Mr Blatter testified that he told Mr Platini in August 1999 that he could not provide a salary of CHF 1 million. Analysing this statement in conjunction with Mr Platini's statements about that they would see about the rest later, the Panel understands that they may have settled for an annual salary of CHF 300,000, with a possible non-binding intention to pay more at a later stage. However, if this was indeed the intention, they should have incorporated a clause in the written contract stating that FIFA had an obligation to try and pay Mr Platini an additional amount of CHF 700,000 per year, if possible. Mr Blatter himself testified that this was *"an oversight"* and an *"error not to have it"*, and Mr Platini acknowledged that FIFA should not disperse funds without a written contract.
184. Furthermore, the Panel noted the argument of Mr Blatter in his written submissions that the written contract was clearly designed for one purpose: to enable the processing of Mr Platini's invoices. The Panel finds that this implies that both Mr Blatter and Mr Platini were of the view that Mr Platini's invoices could not be processed without a written contract. The Panel finds that this argument is not consistent with the views expressed by Mr Blatter and Mr Platini that the invoice sent to FIFA by Mr Platini in 2011 did not require a written contract.

185. Consequently, the Panel finds that even if there was a binding oral agreement between Mr Blatter and Mr Platini in 1998, this agreement was superseded by the written agreement concluded in August 1999.
- v. *Was Mr Platini unlawfully awarded contributions under FIFA's ExCo retirement scheme?***
- a. The positions of the parties*
186. In respect of the contributions made to Mr Platini under FIFA's ExCo retirement scheme, Mr Blatter argues that the evidence that this was an improper gift is woefully insufficient. Most critically, FIFA's judicial bodies never bothered to consult the special ExCo retirement scheme's governance documents to verify whether the FIFA President (or anyone else) had discretion to award such credit. That alone is fatal to a gift charge.
187. Moreover, Mr Blatter submits that the FIFA Ethics Committee did not prove to any level of satisfaction Mr Blatter's involvement in this process. At the FIFA Appeal Committee, Mr Blatter admitted that he approved, in principle, the grant of retroactive pension credit to Mr Platini – but the idea was propounded by Mr Valcke and the FIFA Secretariat, and Mr Blatter approved it only on the condition that it was proper under the governing regulations. On the latter point, Mr Blatter contends that FIFA offered no evidence whatsoever of what information or reasons might have been provided to Mr Blatter in support of the alleged authorisation. Without such a record of what Mr Blatter thought he was approving at the time and why, the approval cannot be condemned as ethically culpable.
188. Mr Blatter also refers to another exception made as referred to by Mr Kattner in his examination by Justice Torres in respect of the FIFA ExCo retirement scheme. Mr Slim Aloulou, former FIFA Executive Committee member, was retroactively credited by the pension plan for years of prior service that pre-dated the plan's creation. This shows that the credit to Mr Platini was not unique and that the decision was in Mr Blatter's discretion as FIFA President.
189. FIFA argues that Mr Blatter does not deny that he ordered his staff to award these contributions to Mr Platini. FIFA finds that the contributions clearly constitute an advantage to Mr Platini as it clearly constitutes an economic betterment of the recipient.
190. FIFA reiterates the findings of the FIFA Appeal Committee in the Appealed Decision in arguing that, since Mr Platini only became a member of the FIFA Executive Committee in 2002, there can be no doubt that Mr Platini was not entitled to any type of pension fund granted to the members of the FIFA Executive Committee for the seasons 1998/1999 to 2001/2002. FIFA maintains that individuals who were not members of the FIFA Executive Committee cannot benefit from such retirement scheme and it is therefore quite logical that Mr Platini's contributions could not be calculated on the basis of services provided before his appointment as member of such committee, *i.e.* prior to 2002.

191. FIFA considers Mr Blatter's reliance on the example of Mr Slim Aloulou misplaced, since Mr Aloulou indeed served on the FIFA Executive Committee from 1988 to 2004. Furthermore, at the FIFA Executive Committee meeting of 7 and 8 March 2005, where the pension regulations were considered, there was a formal discussion on including "former long-serving members of the Executive Committee who were still alive and had played a crucial role in laying the foundations of FIFA's recent financial successes would benefit from the retirement scheme". It therefore appears that the exception created for Mr Aloulou was justified as an exception on this basis.
192. FIFA concludes that the extension of the pension ordered by Mr Blatter in favour of Mr Platini constitutes an undue advantage.

*b. The evidence on record*

193. After having examined all the evidence on record, including the transcripts of interviews conducted by the Investigatory Chamber, the documentary evidence submitted, the witness statements submitted in the proceedings before CAS and the testimony given by the witnesses during the hearing, the Panel finds that the following facts have been established to its comfortable satisfaction regarding the FIFA retirement scheme.
194. In their interviews in the investigation, Mr Blatter and Mr Platini stated that Mr Platini's role as Special Advisor to Mr Blatter came to an end on 25 April 2002, when he was elected to both the UEFA and FIFA Executive Committees, and Mr Blatter stated in his interview that the agreement with Mr Platini was terminated at that time.
195. Three years later, in March 2005, a retirement scheme was presented to a meeting of the FIFA Executive Committee. FIFA's former Finance Director and Deputy Secretary General, Mr Kattner, testified at the hearing that he was at the meeting and may have presented on this topic (he believed so but could not say for certain whether he made a presentation at the meeting).
196. The retirement scheme presented to the FIFA Executive Committee on 7 and 8 March 2005 contains, *inter alia*, the following rules:

*"From 1 January 2005 onwards, an annual retirement payment will be made to long-serving FIFA Executive Committee members who retire in 2005 or thereafter.*

*In order to qualify for such a payment, a FIFA Executive Committee member who has been installed by the FIFA Congress must have served at least 8 years as such".*

197. Mr Kattner explained that this was not a pension fund but rather a retirement scheme creating an obligation that FIFA had towards members of its Executive Committee to pay out retirement monies in accordance with the scheme. He stressed that there was no pension fund as such. He explained further that there were no regulations regarding this retirement scheme and that FIFA introduced it because UEFA had the same mechanism in place, which was to pay retired members of the Executive Committee every year an amount equivalent to 3% of

their final year's salary multiplied by the number of years of service on the Executive Committee, with a minimum of eight years of service required.

198. In other words, as in the example given in the meeting minutes, a final FIFA Executive Committee annual compensation of USD 100,000, multiplied by 3%, multiplied by 10 years of service, would entitle a member of the FIFA Executive Committee to a payment of USD 30,000 per year for 10 years following retirement from the Committee, for a total benefit of USD 300,000.
199. In 2007, Mr Platini was elected UEFA President and moved to Switzerland where UEFA is based. At that point, Mr Platini had five years of service as a FIFA Executive Committee member.
200. Mr Platini testified at the hearing that 2007 was the first time he had to pay tax in Switzerland and also the first time that he thought about paying tax on a retirement fund, as such funds did not exist for him in France. Mr Platini said that he wondered if there was some continuity with the four years that he had served as Mr Blatter's Special Advisor from 1998 to 2002. Indeed, if those years were included, Mr Platini already would have met the eight-year requirement to be eligible for the annual payment. Mr Platini also testified that he thought someone at UEFA other than himself must have asked FIFA what his status was regarding the FIFA retirement scheme.
201. Mr Blatter was also re-elected FIFA President in 2007 and testified at the hearing that FIFA's Secretary General asked him what they should do with Mr Platini in connection with the retirement scheme and the 1998-2002 period. He said that he replied that Mr Platini was working with him and that he was always in the Executive Committee meetings and that if the regulations permitted then they should extend Mr Platini's time served back to 1998 rather than only back to 2002. Mr Blatter said there were no regulations, so it was his decision and he decided to include Mr Platini for those extra four years. Mr Blatter's decision was reflected in an e-mail dated 24 September 2007 from FIFA's then Secretary General Mr Valcke to Ms Christina Collenberg, former head and director of FIFA's human resources, with Mr Kattner in copy.
202. Mr Kattner confirmed at the hearing that FIFA had informed Mr Platini by correspondence in April and October 2009 about how the plan was calculated and that Mr Platini's four years as a consultant would be included. He also said he was aware of one other exception to the eligibility criterion where a former FIFA Executive Committee member, Mr Aloulou, was included even though he had left before the plan was put in place. Mr Kattner said that the decision to include Mr Platini's years as a Special Advisor in the calculation was Mr Blatter's decision as President and that this was within his power as the plan was not regulated and left room for some discretion. He testified further that these additional four years would improve Mr Platini's retirement payment by USD 12,000 per year.
203. According to the 2005 meeting minutes, the annual compensation of FIFA Executive Committee members was USD 50,000 and was proposed to be doubled to USD 100,000. According to another exhibit setting out a summary of payments to FIFA Executive

Committee members in 2010, FIFA Executive Committee members' annual compensation had by then increased to USD 300,000 per year.

204. The Panel observes that, assuming Mr Platini had served for 17 years from 1998-2015, and assuming his last year's remuneration on the Executive Committee was USD 300,000, this would generate a retirement benefit of USD 153,000 per year (USD 300,000 x 3% x 17 years) to be paid each year for 17 years, i.e. a total of USD 2,601,000.
205. The Panel also observes that, if instead Mr Platini had served for 13 years from 2002-2015, and again assuming his last year's remuneration on the Executive Committee was USD 300,000, this would generate a retirement benefit of USD 117,000 per year (USD 300,000 x 3% x 13 years) to be paid each year for 13 years, i.e. a total of USD 1,521,000.
206. In other words, based on these assumptions, including Mr Platini in the retirement scheme for the additional period of four years would generate an additional annual retirement benefit to him of USD 36,000 per year (USD 153,000 minus USD 117,000 equals USD 36,000) for 13 years and an additional annual retirement benefit to him of USD 153,000 per year for four more years, for a total additional retirement benefit of USD 1,080,000. It also would have continued to generate more benefit had he continued at FIFA for additional years.
207. The Panel notes that this leaves a somewhat different impression than Mr Kattner's USD 12,000 per year number as the difference in value to Mr Platini if the additional four years are included.
208. All of this said, Mr Platini testified at the hearing that he would willingly renounce his additional retirement benefit due to the extra four years of service included in the calculation if doing otherwise would create a problem. He noted that he had not received it yet anyway.

*c. The findings of the Panel*

209. The Panel observes that it is not in dispute between the parties that the FIFA ExCo retirement scheme was implemented in order to reward long-serving members of the FIFA Executive Committee. The fact that this retirement scheme was limited to FIFA Executive Committee members derives clearly from the "Rules" of the "Retirement payment scheme for long-serving FIFA Executive Committee members" as communicated to the FIFA Executive Committee members prior to or during their meeting of 7 and 8 March 2005.
210. The Panel therefore finds that, in principle, no benefits can be awarded on the basis of this scheme to persons who do not serve as FIFA Executive Committee members.
211. Mr Platini only became a member of the FIFA Executive Committee in 2002. He was therefore in principle not entitled to any benefits related to any preceding period.
212. The Panel notes that Mr Valcke's email to Ms Collenberg, referring to a request of Mr Platini to be awarded retirement credit over the years 1998-2002, is dated 24 September 2007. From this email it derives that Mr Blatter had already approved Mr Platini's request at this time:



*“For your information, at Michel Platini’s request, the P [President] has agreed to include in Michel pension fund or retirement fund th [sic] years from 1998 to 2007, so that is to say the years Michel has been P’s [the President’s] advisor post 1998”.*

213. Following this, only on 15 April 2009 (*i.e.* approximately one and a half years later), Mr Valcke informed Mr Platini that Mr Blatter had decided to approve his request, which was reconfirmed on 30 October 2009.
214. Although the Panel is somewhat puzzled by the above timing, it does not have any evidence to conclude that this may have been linked to FIFA presidential elections in May 2007.
215. The Panel finds that the example given by Mr Blatter of additional benefits being granted to Mr Aloulou is not comparable, as Mr Aloulou was awarded benefits over a period that he indeed served as member of the FIFA Executive Committee, but before the implementation of the retirement scheme. The exception created for Mr Aloulou is further justified by the fact that this exception was discussed by the FIFA Executive Committee in March 2005, where it was apparently considered appropriate to make an exception for Mr Aloulou. There is no evidence on record based on which it can be concluded that a similar decision was made by the FIFA Executive Committee in respect of Mr Platini, but rather that this decision was taken by Mr Blatter himself without consulting the FIFA Executive Committee.
216. The credit awarded to Mr Platini therefore certainly amounted to a gift as he was not entitled to such credit. Although the Panel accepts that Mr Platini had apparently attended all the FIFA Executive Committee meetings between 1998 and 2002, the fact remains that he was not a member of the FIFA Executive Committee and that there is no evidence on file proving that the exception to be made for Mr Platini was discussed in the FIFA Executive Committee.
217. The Panel does not dispute that Mr Blatter had single-signing authority at the time, but he was subject to the rules and the rules are clear in stating that the retirement scheme was only for FIFA Executive Committee members. Mr Blatter’s single-signing authority is no justification to act contrary to the rules set up by the FIFA Executive Committee. In order to make an exception for Mr Platini, this should have been decided by the FIFA Executive Committee.
218. Consequently, the Panel finds that Mr Blatter unlawfully awarded contributions to Mr Platini under FIFA’s ExCo retirement scheme and that this amounted to an undue gift.

**vi. Was FIFA’s payment of CHF 2 million to Mr Platini made without contractual basis?**

*a. The positions of the parties*

219. Mr Blatter submits that nothing in the evidence offered in the FIFA Ethics Committee proceedings suggests that his 2011 approval for the payment to Mr Platini was motivated by an improper purpose. Two separate FIFA judicial bodies – the FIFA Ethics Committee’s Adjudicatory Chamber and the FIFA Appeal Committee – found that there was insufficient evidence that the CHF 2 million payment was intended by Mr Blatter to induce Mr Platini to support Mr Blatter’s presidential campaign, or to forego running as a challenger to Mr Blatter.

But FIFA's judicial bodies failed to acknowledge that this concession leaves a gaping hole in the remaining charges. Without the unsupported bribery theory, neither body offered any plausible motive for Mr Blatter to approve an unmerited payment to Mr Platini. Thus, the only logical explanation for the payment is that it was due to Mr Platini under the oral agreement for his prior service to FIFA, as both men consistently maintained.

220. Mr Blatter maintains that, in any event, hindsight is irrelevant. Whether or not an oral agreement was the most prudent course, oral agreements are permissible under Swiss law and even today under FIFA's Organisational Regulations. And, as the Adjudicatory Chamber acknowledged, Mr Blatter clearly had the power to enter into agreements on behalf of FIFA.
221. FIFA on the other hand argues that the existence of an oral agreement regarding an annual remuneration for Mr Platini of CHF 1 million has not been established and that the payment of CHF 2 million in 2011 was therefore made without any contractual basis and forms a violation of the FCE in several respects.

*b. The evidence on record*

222. After having examined all the evidence on record, including the transcripts of interviews conducted by the Investigatory Chamber, the documentary evidence submitted, the witness statements submitted in the proceedings before CAS and the testimony given by the witnesses during the hearing, the Panel finds that the following facts have been established to its comfortable satisfaction regarding FIFA's payment of CHF 2 million to Mr Platini in 2011.
223. As Special Advisor to the FIFA President, Mr Platini had received payment from 1999-2002 of approximately CHF 1.05 million in compensation and USD 90,000 in expenses as per the written contract dated 25 August 1999 referred to above, as well as the use of an office in Paris shared with his two former World Cup organising committee colleagues.
224. From the time of his election to the FIFA Executive Committee in 2002, Mr Platini was no longer paid under his written contract dated 25 August 1999 but rather was paid as a member of the FIFA Executive Committee.
225. According to the evidence in the record, the awarding of year-end bonuses to FIFA Executive Committee members was habitual, and on 30 November 2010, the FIFA Finance Committee decided to award a year-end bonus of USD 200,000 for 2010 to each member of the FIFA Executive Committee, including Mr Platini.
226. Two days later, on 2 December 2010, the vote was held to award the FIFA World Cups of 2018 and 2022, which were awarded to Russia and Qatar, respectively. Mr Platini said in his investigation interview that he had voted for both Russia and Qatar and that Mr Blatter told him that he had not. Mr Blatter explained in correspondence in the investigation that in December 2010 his relationship with Mr Platini became "strained" over a difference of opinion.

227. The next month, on 17 January 2011, almost nine years after he stopped being Special Advisor to Mr Blatter and was elected to FIFA's Executive Committee, Mr Platini sent Mr Kattner an invoice for CHF 2 million for salary payments "*deferred by mutual agreement*" for the years 1998-1999, 1999-2000, 2000-2001, and 2001-2002 in the amount of CHF 500,000 for each year, net of all social charges. The invoice was signed by Mr Blatter the next day, 18 January 2011.
228. Mr Platini testified at the hearing regarding this invoice that in 2009/2010, upon learning of "*golden parachutes*" received by Mr Urs Linsi and Mr Jérôme Champagne from FIFA (they left in 2007 and 2010, respectively), he went to see either the Secretary General or Finance Director of FIFA to say "*you know FIFA owes me money*". Mr Platini said that he "*had the impression they had forgotten*". Mr Platini said that he did not speak with Mr Blatter about this and did not know what happened internally after that at FIFA but that he was then asked to send an invoice, which he asked his advisors to send, and that he was paid right after the invoice was sent. Mr Platini also testified at the hearing that "*if Mr. Kattner said we cannot pay it would be over*". Mr Platini testified further that he knew he had signed a contract but thought it was for CHF 500,000 a year rather than CHF 300,000 per year.
229. In his interview in the investigation, Mr Platini said that he had not realised he had made a mistake about how much money was owed to him until the Swiss prosecutor showed him a copy of the August 1999 contract in September 2015. And in correspondence dated November 2015 from the investigation proceeding, Mr Platini stated that he was not aware of the precise sums that had been paid to him. Moreover, Mr Platini stated in his interview in the investigation that he had no intention of claiming the additional CHF 200,000 per year, i.e. a total of CHF 800,000 for the four-year period.
230. Mr Blatter said at the hearing that he was aware that Mr Platini had sought this money but that Mr Platini never contacted him about it. He testified that Mr Kattner told him about it in 2010 and could not recall what his answer was at the time other than saying "*ok let him ask*". Mr Blatter said that the next time he knew about this was upon receipt of the January 2011 letter from Mr Platini with the message and invoice for CHF 2 million. Mr Blatter also said that he had forgotten that they had a written contract but not that they had an oral agreement.
231. At the same time, Mr Blatter testified at the hearing that he was surprised when Mr Platini came forward to claim money and that he was surprised when he saw the invoice, but that he signed the invoice for payment because he thought it was a debt that needed to be paid. As Mr Blatter stated in writing in answer to questions in the investigation:

*"[...] [I]t was unclear whether Mr Platini would ever seek to collect the balance due him, especially as time elapsed. We never discussed or agreed to a time when such a deferred amount would become due and payable. Indeed, the possibility that he would seek these funds became increasingly more remote and contingent as time went on... When Mr Platini sought to collect the balance, I was surprised".*

232. And as Mr Blatter stated at the FIFA appeal hearing:

*"[...] [W]e saw it also that he would be happy with that and he would **never** come back to ask the outstanding amount that we owed him by this oral contract"* (Emphasis added by the Panel).

233. As to why Mr Blatter did not pay Mr Platini the money Mr Platini was owed in 2002 rather than waiting for Mr Platini to raise it almost nine years later, Mr Blatter said in the FIFA appeal hearing that he *“just forgot it”* and did not follow the second of his father’s cardinal rules to pay his debts:

*“I just forgot it. I just forgot it. It’s something I cannot remember why I did not follow my father’s otherwise my father would have come back and give me a kick that I should do it”.*

234. Mr Blatter also said at the hearing that he did not check that the amount claimed of CHF 2 million was correct and that he did not think to tell Mr Platini that he had not claimed the full amount.

235. At one point in the hearing, Mr Blatter testified that he did not understand why this payment *“has made such a noise around the world when at same time we have made turnover of billions”*, *“when you look at the grandeur of what has been done”*, and lamented *“do you think that one person would say thank you Blatter for what you have done – yes will say at my passing away maybe”*. Mr Blatter claimed that this gave him *“a bitter taste”* and that he has *“put FIFA from zero to one of the biggest organizations – all wrong because I put two million somewhere – there was an agreement”*.

236. Mr Kattner testified at the hearing that the written contract with Mr Platini was one of the documents in the handover file prepared by his predecessor, Mr Linsi, when he left FIFA in 2007 and that he, Mr Kattner, had seen the contract by the time he received Mr Platini’s invoice in January 2011.

237. Mr Kattner said at the hearing that he first recollected that Mr Platini approached him around the beginning of 2010 but that Mr Platini may have approached him before that and that at that time Mr Kattner did not have the details of Mr Platini’s contract in his mind and asked his colleagues to research what payments had been made to Mr Platini. Mr Kattner testified that Mr Platini said that FIFA still owed him some money from the period when he was a consultant. Mr Kattner said *“I told Mr. Platini I did not know about this, went to see Mr. Blatter who told me this was the case, Mr. Blatter said this is possible, this is true”*. Mr Kattner said there was no discussion of deferred payment details at that time. He also confirmed that he realised that the payment asked for was not based on the written agreement in his file, because those amounts had been paid in full.

238. At the hearing, Mr Kattner could not recall if Mr Platini mentioned the amount of the claim to him in advance of sending the invoice but said it was possible that it was mentioned in late 2010. In his investigation interview, Mr Kattner first said that he had not heard before that the agreement between Mr Platini and Mr Blatter was for CHF 1 million per year, but then later said that, while he did not think any amount was discussed on the last occasion before Mr Platini submitted the invoice, he was not *“100% sure”*. He then said that Mr Blatter never discussed the amount with him prior to Mr Platini’s invoice and that he believed the first time he knew of the amount was upon receipt of Mr Platini’s invoice.

239. Mr Kattner said at the hearing that when he received the invoice he took it to Mr Blatter’s office to show it to him and discuss it with him; that Mr Blatter looked at it and said yes this

is true; and that he asked Mr Blatter to sign it because he needed Mr Blatter's signature. Mr Kattner testified that Mr Blatter's signature "*confirms the invoice and the matter, confirms the amount is correct, confirms I can proceed with the payment*". Mr Kattner testified also that Mr Blatter did not ask him to refresh Mr Blatter's recollection or memory by showing him the written contract but rather just looked at the invoice and signed it. Mr Kattner was not aware of any specific verification that Mr Blatter did before signing the invoice. He also said that Mr Blatter did not ask if CHF 2 million was the correct figure.

240. Mr Kattner testified further at the hearing that the payment had to be in accordance with an oral agreement, because if it had been further to a written contract he would have asked for it and because this was discussed beforehand. With respect to the payment being net of certain deductions, which was contrary to the directly opposite provisions of the written contract, Mr Kattner said that this was because of FIFA's compliance requirements with respect to the withholding of sums paid to Executive Committee members.
241. As to any review by the legal department, Mr Kattner said at the hearing that in principle any new contract in 2010 or 2011 above a certain threshold needed to go through the legal department but that in this case it was not necessary because it dated back to a time when this was not required. Mr Kattner said that he believed he had discussed this with the FIFA General Counsel at least shortly because they met every morning to exchange information.
242. However, Mr Kattner said in his investigation interview that there should have been an accrual in the financial statements of CHF 2 million going forward from at least the end of 2002, but one was not made and he was not told about it when he joined in 2003. Ms Jeannine Erni, a senior accountant in FIFA's consolidation and compliance department, stated in her investigation interview that "*this should have been in the accounts since 1999... but there was never an accrual for that*". Mr Zen-Ruffinen said the same thing in his investigation interview that the deferred compensation should have been reflected in the financial statements but was not. Mr Ivo Bischofsberger, FIFA's former head of consolidation and compliance, explained in his investigation interview that he was responsible for FIFA's consolidated financial statements but did not book Mr Platini's deferred compensation until the payment of CHF 2 million was made because he did not know about it before then. Mr Kattner testified at the hearing that had this been done it would have been clearly visible in the financial statements from at least 2003 onwards. He also said that he did not think that FIFA had ever made payments over CHF 500,000 based on an oral agreement or had ever paid for services rendered more than eight years before, which he said was "*rather unusual*".
243. Mr Kattner said further in his investigation interview that from at least 2004 through 2011 there was no reason related to FIFA's financial capacity that prevented the CHF 2 million payment to Mr Platini (Mr Zen-Ruffinen said the same thing for the 1999-2002 period) and that he did not verify at the time whether the prescription period for payment had expired. He agreed that had this been treated as concluding a contract and had it gone to the legal affairs division then there might have been a different analysis and recommendation.
244. Mr Kattner explained further in his investigation interview that no amount was budgeted for the CHF 2 million payment; that no budget amount was allocated to it; and that they had to

allocate it to an item called “Special Projects”, which was used for unforeseen costs and expenses.

245. Ms Collenberg, former head and director of FIFA’s human resources from 2004-2014, said in her investigation interview that she was not aware of any employee or consultant invoices being paid without a contract and that she would have expected a contract to be in place for an invoice to be paid. She also said that she had never come across a contract between FIFA and Mr Platini and was never made aware of any such contract or payment. She said she was “surprised” and that it was “strange” that someone would wait for eight years to claim payment.
246. Mr Zen-Ruffinen also was not aware of the payment and found it “strange” that someone would wait for so long before claiming payment; he had never seen such an arrangement. Nor had FIFA’s head of controlling and strategic planning, Mr Remo Hospenthal.
247. Ms Erni too said that it was “strange” and “odd” that such a payment was booked in 2010 for services rendered in 1999-2002. She described “the Platini payment” as “odd” and “unusual”, and she could not remember another payment that was for services so long before, the most she remembered being for services two or three years before. She also said that documentation was normally required to verify that funds were actually due and that they did not just book accruals because someone told them they owed someone money.
248. Mr Bischofsberger said in his investigation interview that he “definitely raised questions” about “the correctness of the transaction”, which he said was “definitely an unusual transaction”. As he put it in his investigation interview: “I always had doubts about the whole story”. Ultimately, he was satisfied because they had the signatures of Mr Blatter and of Mr Grondona, which were sufficient authority to make the payment under FIFA’s internal Organisational Regulations. He felt awkward about the payment of Mr Platini’s invoice nonetheless and raised his concerns at least with Mr Kattner:

Mr Bischofsberger: *“My concern when I got this document was anyway that I did, that was my main question: What is it really for, because always, **to be frank, I didn’t really feel well when I got this letter.** And it was more kind of trying to get a ... to check how can we do it, is it really in line with our regulations, but **I had big concerns when I got this letter**”.*

Mr Torres: *“So, you had some very serious concerns regarding making a payment for 2 million dollars based on this letter for performance of past services”.*

Mr Bischofsberger: *“Yes. And as you know, we have now in, FIFA has now established in the reform process, this kind of, how is it called, remuneration committee and there was also one of the proposals that was developed in the working group where I was also attending. And of course, **in my mind, transactions like this was just something which is just anyway whether it’s now consulting or employment contract, it’s just not good, just not the way how you should act as a company. But at this stage, the President had this authority and that’s something I didn’t feel well, to pay to an***

**Executive Committee member 2 million for work that he has done 10 years ago, that he claims he has done 10 years ago**

Mr Torres: “Yeab”.

Mr Bischofsberger: “Even when we would have a contract from this stage. **It’s just not the way what you should do in my view**” (Emphasis added by the Panel).

249. In his investigation interview, Mr Blatter testified that he was the only one who could confirm that he and Mr Platini had an agreement for compensation of CHF 1 million per year and that in his opinion the payment of the office and two colleagues in Paris were part of the compensation along with the CHF 300,000 per year set out in the written contract. Mr Blatter said that Mr Platini had never asked him for more after the agreement on CHF 300,000 per year, that is until the letter in January 2011. He said he was surprised at Mr Platini’s request nine years later, which he could not explain other than to say that maybe Mr Platini wanted to claim the money before the 2011 election in case Mr Blatter lost.
250. On 1 February 2011, two weeks after receipt of Mr Platini’s invoice, FIFA paid Mr Platini CHF 2 million. Ms Erni stated in her investigation interview that this was “a huge amount which was not common at all”. When asked in his investigation interview if the payment to Mr Platini passed the “smell test”, Mr Bischofsberger answered: “Did it smell? Yes”. He also said that it was “just not good governance”.
251. On 24 February 2011, one of the members of the FIFA Finance Committee, Mr Marios Lefkaritis, wrote an e-mail to Mr Platini stating that he would not be able to attend a FIFA Finance Committee meeting the following week for health reasons and wishing Mr Platini “the best and good luck”.
252. On 2 March 2011, Mr Platini attended a meeting of the FIFA Finance Committee in place of Mr Lefkaritis, which Mr Kattner described in correspondence in the investigation as “very unusual”; this was the only time that Mr Platini had ever attended a meeting of the FIFA Finance Committee. And as Mr Kattner explained in his investigation interview, if a person is ill on the FIFA Finance Committee the person is normally not replaced.
253. Shortly thereafter, on 22 March 2011, a UEFA Congress was held at which Mr Platini was re-elected President of UEFA and at which Mr Blatter promised that the further FIFA presidential mandate he was seeking in 2011 would be his last. According to Mr Platini in correspondence in the investigation: “This meant that UEFA would be free to present a candidate at the 2015 FIFA presidential election and have a reasonable chance to win. On the contrary, if Mr. Bin Hammam was elected, he would almost certainly run for a second term and be reelected. Consequently, the Committee decided to give its support to Mr. Blatter”.
254. In his investigation interview, Mr Blatter said that he had intended to run again in 2011 from the outset of his mandate in 2007 and that “[i]t was not secret that I wished to continue in office”. He also said that he had announced at the UEFA Congress in 2011 that his candidacy would be

his last and that this was following a prior discussion with Mr Platini who suggested that Mr Blatter say this.

255. At the hearing, when asked when he believed that Mr Platini had his sights on becoming FIFA President, Mr Villar Llona testified yes, “*from the beginning*” and at least since 2002 when Mr Platini joined the FIFA Executive Committee. Also, in his testimony from one of Mr Platini’s hearings, Mr Villar Llona said that there were many rumours going around that Mr Platini was or was not going to run for FIFA President and that he always told Mr Platini not to run, especially after Mr Blatter announced that 2011 would be his last time running for President. He said that most of his UEFA colleagues wanted to lend their support to Mr Blatter because their following candidate was going to be Mr Platini. He also said that you do not start talking about who is going to run only two to three months in advance but rather over a year before.
256. On 6 May 2011, a month and a half after the UEFA Congress, Mr Platini sent Mr Blatter a letter of support for Mr Blatter’s re-election as FIFA President at the upcoming FIFA Congress on 31 May and 1 June, signed by himself and the rest of the UEFA Executive Committee.
257. During the investigation, Mr Platini did not recall if he had informed any of the UEFA members about the CHF 2 million February 2011 payment. He also said it was difficult to take a position on whether to support Mr Blatter for re-election and could not say exactly when he decided to throw his support behind Mr Blatter. He denied any connection between the CHF 2 million payment and his December 2010 vote for the World Cup or his support for Mr Blatter’s re-election in 2011.
258. Ms Erni said in her investigation interview, however, that she thought the payment was really strange and looked related to the election. She also said that the CHF 2 million could have been paid well before, maybe not in 1998 or 1999 but “*absolutely*” from 2002:

Ms Allard: **“Do you think that this payment of the 2 million CHF is in any way related to the FIFA presidential election back in 2011?”**

Ms Erni: **“I mean, I have no idea, but *it really looks like, if I’m honest*”.**

Ms Allard: “OK”.

Ms Erni: **“It’s really strange that before the election, Platini gets 2 million. For me, it looks very strange”.**

Ms Allard: “OK”.

Ms Erni: **“But I really, I know that Platini did work for FIFA, but what I think, I mean, why did we never pay to him, we had enough money until 2010 to pay him 2 millions, so why didn’t we pay it before? So, I think this is really strange”.**



Ms Allard: “Strange, OK. And between ...”.

Ms Erni: “But I really don’t know”.

Ms Allard: “You’re really not too sure. Fair enough, and I appreciate your honesty. Between 1998, well, let me ask you the question, **would you agree with me that between 1998 and 2002, FIFA would have been in a position to pay him this 2 million if it was in fact properly due?**”.

Ms Erni: “**Yes**”.

Ms Allard: “OK”.

Ms Erni: “**Maybe not in 1998 or ’9, but yes, of course, 2 million, yes, I’m sure**”.

Ms Allard: “**OK. Between 2002 and at least up to 2010, would you agree with me that FIFA would have been in a financial position to pay the 2 million CHF if it was in fact properly due?**”

Ms Erni: “**Absolutely**” (Emphasis added by the Panel).

259. Mr Villar Llona testified at the hearing that at the FIFA Congress in Zurich on 31 May and 1 June 2011 at which Mr Blatter was re-elected FIFA President he met for lunch with his old friend Mr Grondona to discuss various things. This included the 2011 election for FIFA President and the fact that only Mr Blatter was running (Mr Blatter had been elected three times previously in 1998, 2002, and 2007).
260. Mr Villar Llona said that Mr Grondona told him that he thought the CHF 2 million payment to Mr Platini would be used against Mr Platini if he decided to run for FIFA President. Mr Villar Llona also testified that Mr Grondona told him that the amount in the written contract could not be over CHF 300,000 because the FIFA Secretary General was getting this amount (he did not give FIFA financial difficulty as a reason) and that the rest of Mr Platini’s compensation was to “*be paid at a later date. However, no specific date of payment was determined*”.
261. At the hearing, Mr Villar Llona said that he had seen other examples of oral agreements for executive compensation but that these were communicated to committees and accounted for and that he had never seen such a claim for payment many years later. Mr Platini also confirmed at the hearing that these kind of oral agreements do not exist at UEFA.
262. Mr Kattner testified at the hearing that Mr Grondona had ratified the payment made to Mr Platini as he did the payments made to other FIFA Executive Committee members every year. The exhibit submitted in this regard is for payments made in 2010 and according to Mr Kattner included the CHF 2 million payment to Mr Platini because it was made while the books for 2010 were being closed and was signed by Mr Grondona in around March 2011.

263. Mr Platini said that his relationship with Mr Blatter, which was a love-hate relationship like a marriage, deteriorated in 2013 after Mr Blatter reneged on his promise not to stand for re-election and said he would run for FIFA President again in 2015, which he did.
264. Mr Platini's former colleague in the FIFA office in Paris, Mr Leibrang, stated during his investigation interview that there was *"a kind of gentleman agreement that Michel Platini would follow Blatter as the president and the president said that he would finish, you know, his mandate for the last time and suddenly he changes his mind. And then ..."*.
265. Mr Leibrang continued: *"No, no, no, I heard myself. I heard myself that, that never, never he would go against Sepp Blatter. At the time, you know, as long as Sepp Blatter, you know, decided to quit. Then of course, when things changed, when Sepp Blatter decided, you know, to go for another term, then it was, it was different"*.
- c. *The findings of the Panel*
266. On the basis of all the evidence set out above, the Panel is comfortably satisfied that there was no contractual basis for the payment of CHF 2 million, approved by Mr Blatter himself.
267. As concluded above, even if there had been an oral agreement in 1998, this agreement would have been superseded by the written agreement in 1999. With the conclusion of this written agreement in 1999, Mr Platini waived any alleged entitlement to a salary of CHF 1 million between 1998 and 2002, as no commitments were made in respect of the remaining amount, if any.
268. The Panel believes that the truth lies in Mr Blatter's statement that he thought it was a debt that needed to be paid. Although Mr Blatter may well have been truthful in this belief, that he thought there was a debt of some kind, the fact is that this was not a debt of FIFA and FIFA did not owe the CHF 2 million to Mr Platini. Since there was no obligation for FIFA to pay this amount to Mr Platini, the Panel finds that the payment cannot be denominated otherwise than a gift, regardless of why Mr Blatter considered he had a debt to Mr Platini.
269. The Panel considers Mr Blatter's conduct in the matter as FIFA President reckless, or at least profoundly careless, as he approved the payment without checking the written contract, without asking his employees for the written contract to be checked or doing any verification whatsoever. Indeed, for the sake of the argument, even if there had been an oral agreement for a remuneration of CHF 1 million a year, the claim of CHF 2 million was not correct as the claim should have been CHF 2.8 million (4 x CHF 700,000) since Mr Platini was paid his annual salary of CHF 300,000 based on the written contract.
270. Furthermore, Mr Platini's claim may well have been time-barred.
271. The final argument considered relevant by the Panel in this respect is the fact that the alleged remaining balance of CHF 2.8 million or CHF 2 million was not budgeted for in FIFA's accounts. The Panel considers this highly unlikely if there indeed had been a valid oral

agreement between Mr Blatter and Mr Platini that bound FIFA – such an agreement would and should have been provided for in FIFA’s accounts but never was.

272. Whereas several persons within FIFA’s administration were aware of Mr Platini’s request for CHF 2 million, everybody appears to have relied on Mr Blatter’s word that there was a contractual basis for this payment. This, however, does not prove the legitimacy of the payment.

273. Consequently, the Panel finds that FIFA’s payment of CHF 2 million to Mr Platini was made without contractual basis and amounts to an undue gift.

**vii. *Did Mr Blatter violate article 11 of the FCE (2006 edition) and article 10 of the FCE (2009 edition)?***

274. Having established the above factual circumstances, the Panel will now examine whether this leads to any violation by Mr Blatter of the FCE.

275. As set out *supra*, the Panel finds that the 2006 and 2009 editions of the FCE are applicable. The provisions in the 2006 and 2009 versions of the FCE resembling the content of article 20 of the FCE (2012 edition) are article 11 of the FCE (2006 edition) and article 10 of the FCE (2009 edition), respectively.

276. Whereas article 11 of the FCE (2006 edition) is applicable to the circumstances related to the payment of CHF 2 million to Mr Platini, article 10 of the FCE (2009 edition) is applicable to the circumstances related to the benefits granted to Mr Platini under the FIFA ExCo retirement scheme.

277. Article 11 of the FCE (2006 edition) provides as follows:

*“Officials are not permitted to accept gifts and other benefits that exceed the average relative value of local cultural customs from any third parties. If in doubt, gifts shall be declined. Accepting gifts of cash in any amount or form is prohibited.*

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

*Officials may not be accompanied to official events by family members at the expense of FIFA, the confederations, associations, leagues and clubs or other organisations, unless expressly permitted to do so”.*

278. Article 10 of the FCE (2009 edition) provides as follows:

*“1. Officials are not permitted to accept gifts and other benefits that exceed the average relative value of local cultural customs from any third parties. If in doubt, gifts shall be declined. Accepting gifts of cash in any amount or form is prohibited.*

2. *While performing their duties, officials may give gifts and other benefits in accordance with the average relative value of local cultural customs to third parties, provided no dishonest advantages are gained and there is no conflict of interest.*
  3. *Officials may not be accompanied to official events by family members or associates at the expense of FIFA, the confederations, associations, leagues and clubs or other organisations, unless expressly permitted to do so”.*
279. Mr Blatter maintains that the bribery charge was dismissed by the FIFA Ethics Committee and the FIFA Appeal Committee and that the “*pontification*” that Mr Blatter was “*more likely than not*” paid a bribe is also without support in the record.
280. Furthermore, Mr Blatter submits that even if the evidence of an oral agreement is somehow viewed as insufficient, he did not breach the FCE. Mr Blatter argues that “*what truly matters is that then-President Blatter believed that, on behalf of FIFA, he had promised Mr. Platini the compensation he demanded*”. His actions were not motivated by any bad purpose or his personal interests. Moreover, he had indisputably the authority to enter into the agreement and to approve the payment.
281. Mr Blatter also argues that, contrary to the FCE (2012 edition), the applicable FCE editions of 2006 and 2009 did not include a general prohibition on giving gifts to persons within FIFA. Whereas the 2012 edition refers to giving gifts to “persons within or outside FIFA”, the 2006 and 2009 editions refer to giving gifts to “third parties”. Mr Blatter argues that the choice to change the language from 2009 to 2012 should be presumed to effect a change in meaning. The FIFA Appeal Committee erred in relying on the CAS award in CAS 2014/A/3537 because the reasoning of the CAS panel in such case is flawed, because it made no attempt to closely parse the evolving language of the FCE’s bribery prohibition, instead adopting a broad reading of the bribery prohibition to further its purpose. Mr Blatter further contends, relying on CAS jurisprudence, that it is not appropriate to argue that the FCE should be interpreted beyond its language simply because all are agreed that corruption cannot be tolerated. The ordinary meaning of “third party”, in the context of a law imposing obligations on FIFA officials, means someone outside FIFA. The fact that the FCE (2012 edition) added explicit language to extend the gift prohibitions to persons “outside FIFA” corroborates this point. Accordingly, Mr Blatter concludes that the gift charges fail as a matter of law because the FCE’s gift provision did not prohibit payments to Mr Platini before 2012.
282. Contrary to the position of Mr Blatter, FIFA’s position is that the advantage (the payment of CHF 2 million to Mr Platini) is clearly undue.
283. FIFA submits with reference to the Appealed Decision, that the wording “third parties” found in the 2006 and 2009 editions of the FCE must be interpreted as encompassing gifts or benefits given by FIFA’s officials (Mr Blatter) to other FIFA officials (Mr Platini). In view of their language and evident purpose, FIFA submits that the only possible reading of article 11 FCE (2006 edition) and article 10 FCE (2009 edition) is that “third parties” simply means any other person or entity than the addressee of the relevant provision. The new wording of the FCE (2012 edition) simply confirms what should be obvious for any reasonable person.

284. FIFA concludes that, since the payment was indeed “undue”, the Appealed Decision correctly found that Mr Blatter violated article 20 of the FCE (and/or the corresponding provisions of its 2006 and/or 2009 versions) by ordering the payment of CHF 2 million to Mr Platini in 2011. FIFA emphasises that it is totally irrelevant that Mr Blatter’s actions were allegedly not motivated by any bad purpose as the wording of article 20 FCE does not provide that the existence of culpable intention is required in order to breach the provision.
285. The Panel commences its analysis by referring to the comprehensive assessment of the factual circumstances set out *supra* and the conclusion that there was no contractual basis for the payment of CHF 2 million to Mr Platini in 2011 and that this therefore constituted an undue gift and that also the undue contributions awarded to Mr Platini under the FIFA ExCo retirement scheme in 2007 constituted an undue gift. Indeed, both the 2006 and 2009 version of the FCE refer to “*gifts and other benefits*”, as a consequence of which the retirement benefits granted to Mr Platini certainly fall under the definition.
286. In respect of the interpretation of the wording of article 11 of the FCE (2006 edition) and article 10 of the FCE (2009 edition), in particular in respect of the reference to “third parties”, the Panel observes that the CAS panel in CAS 2014/A/3537 reasoned as follows in this respect:
- “The Panel notes that art. 13 of the FCE, which is a general rule on ethical conduct and provides that all officers of FIFA are expected to be aware of the importance of their duties and obligations and to behave in a dignified manner. [...] As mentioned above, the Appellant invokes art. 12 of the 2006 FCE, which he submits only forbids officials from bribing third parties, i.e., not other officials. However, the Panel cannot agree with the Appellant’s interpretation of art. 12. Such an unlikely reading is not required either by its language or perceptible purpose. The Panel interprets art. 12 to cover bribes given by one officer of FIFA to another officer of FIFA and not only to external third parties. This interpretation applies irrespective of which version of the FCE comes into play”* (CAS 2014/A/3537, para. 84).
287. The Panel fully adheres to the reasoning of the CAS panel in CAS 2014/A/3537 and finds in the same manner that under the 2006 and 2009 editions of the FCE no such gifts could be given by one FIFA official to another FIFA official. Contrary to the explanation given by Mr Blatter, this provision is not limited to persons “outside FIFA” and comprises persons “within FIFA”. Reading this provision as suggested by Mr Blatter would mean that FIFA officials were able to give each other unlimited gifts without any justification whatsoever being required, which the Panel does not accept as a reasonable interpretation of the provision.
288. The Panel finds that no culpable intent is required in order for a violation of article 11 of the FCE (2006 edition) and article 10 of the FCE (2009 edition) to be established.
289. The Panel finds further for the reasons stated above that FIFA has established to the Panel’s comfortable satisfaction that Mr Blatter authorised and directed as FIFA President that a payment of CHF 2 million be made to Mr Platini without any contractual basis or other valid justification.

290. Consequently, the Panel is indeed comfortably satisfied that Mr Blatter violated article 11 of the FCE (2006 edition) and article 10 of the FCE (2009 edition).

**viii. *Did Mr Blatter violate article 5 of the FCE (2009 edition)?***

291. The Panel observes that article 19 of the FCE (edition 2012) is only relevant in respect of the circumstances related to the payment of CHF 2 million to Mr Platini. As such, only the 2009 edition of the FCE is relevant. Article 5 of the FCE (2009 edition) is the equivalent of article 19 of the FCE (2012 edition).

292. Article 5 of the FCE (2009 edition) determines as follows:

- “1. Before being elected or appointed, officials shall disclose any personal interests that could be linked with their prospective function.*
- 2. While performing their duties, officials shall avoid any situation that could lead to conflicts of interest. Conflicts of interest arise if officials have, or appear to have, private or personal interests that detract from their ability to perform their duties as officials with integrity in an independent and purposeful manner. Private or personal interests include gaining any possible advantage for himself, his family, relatives, friends and acquaintances.*
- 3. Officials may not perform their duties in cases with an existing or potential conflict of interest. Any such conflict shall be immediately disclosed and notified to the organisation for which the official performs his duties.*
- 4. If an objection is made concerning an official’s existing or potential conflict of interest, it shall be reported immediately to the organisation for which the official performs his duties.*
- 5. The deciding authority of the relevant organisation shall decide on such conflict of interest”.*

293. Mr Blatter submits that this charge fails first and foremost because he acted at all times in FIFA’s interest. While the conflict of interest provision of the FCE has changed over the time period at issue here, it has always been directed at “*personal interests*”, such as “*gaining any possible advantage for himself, his family, relatives, friends and acquaintances*”. The allegation now is that Mr Blatter impermissibly sought to benefit Mr Platini, a “*professional acquaintance*”. However, Mr Blatter submits that every high-ranked football official from around the world was a professional acquaintance of Mr Blatter. According to Mr Blatter, FIFA’s theory appears to be that any improper payment is a conflict of interest.

294. FIFA reiterates the arguments relied upon by the FIFA Appeal Committee in the Appealed Decision and argues that it cannot be seriously challenged that, having ordered the CHF 2 million payment to Mr Platini, Mr Blatter put himself in a situation of conflict of interest by ordering such payment while campaigning for the 2011 elections and without making adequate disclosure of the CHF 2 million payment, let alone its alleged source. According to FIFA, the relevant issue is whether the payment – under the circumstances – gave rise to an appearance

of a link between the payment and Mr Platini's support to Mr Blatter's candidacy to the 2011 elections.

295. FIFA submits that the payment indeed led to a conflict of interest because the payment *"detract[ed] from the ability of the individual concerned (Mr. Blatter) to perform his duties with integrity in an independent and purposeful manner"*. FIFA argues that, as a candidate, Mr Blatter was obliged to refrain from ordering such a significant payment to Mr Platini, who was the vice-President of FIFA and the President of UEFA at that time and could give – and indeed gave – his support to Mr Blatter's candidacy after that payment.
296. Furthermore, FIFA maintains that Mr Blatter's inadequate disclosure of the CHF 2 million payment constituted a conflict of interest. Mr Blatter put himself in a situation of conflict of interest by not informing the members of the FIFA Finance Committee of the payment, before and after the financial statements were approved.
297. The Panel reiterates that it has already been established *supra* that the payment of CHF 2 million to Mr Platini constituted an undue gift.
298. Based on the evidence in the record, however, the Panel dismisses FIFA's argument that this payment constituted a conflict of interest for Mr Blatter because the payment was made during his election campaign for the presidency of FIFA in 2011. Indeed, this would constitute an offence of bribery, which charge was explicitly dismissed by the FIFA Ethics Committee and the FIFA Appeal Committee and was not challenged by FIFA.
299. At the same time, the Panel adheres to the position of FIFA insofar as it contends that Mr Blatter should have fully informed FIFA's Finance Committee about the circumstances of the payment. By failing to do so, Mr Blatter created a conflict of interest between himself and FIFA as an organisation because he approved a payment on behalf of FIFA without any contractual basis. The Panel finds that this indeed constitutes a violation by Mr Blatter of the FCE, independent from the gift of CHF 2 million to Mr Platini.
300. Consequently, the Panel is comfortably satisfied that Mr Blatter violated article 5 of the FCE (2009 edition) as well.

**ix. *Did Mr Blatter violate article 3 and/or 9(1) of the FCE (2009 edition)?***

301. The Panel observes that articles 13 and 15 of the FCE (2012 edition) are only relevant in respect of the circumstances related to the payment of CHF 2 million to Mr Platini. As such, only the 2009 edition of the FCE is relevant. Article 3 of the FCE (2009 edition) is the equivalent to article 13 of the FCE (2012 edition), and article 9(1) of the FCE (2009 edition) is the equivalent to article 15 of the FCE (2012 edition).
302. Article 3 of the FCE (2009 edition) provides as follows:

*"1. Officials are expected to be aware of the importance of their function and concomitant obligations and responsibilities. Their conduct shall reflect the fact that they support and further the principles and*

*objectives of FIFA, the confederations, associations, leagues and clubs in every way and refrain from anything that could be harmful to these aims and objectives. They shall respect the significance of their allegiance to FIFA, the confederations, associations, leagues and clubs and represent them honestly, worthily, respectably and with integrity.*

2. *Officials shall show commitment to an ethical attitude while performing their duties. They shall pledge to behave in a dignified manner. They shall behave and act with complete credibility and integrity.*
3. *Officials may not abuse their position as part of their function in any way, especially to take advantage of their function for private aims or gains”.*

303. Article 9(1) of the FCE (2009 edition) provides as follows:

*“While performing their duties, officials shall recognise their fiduciary duty, especially to FIFA, the confederations, associations, leagues and clubs”.*

304. Although the Panel has no doubt that Mr Blatter violated these two provisions, it finds that the factual circumstances related to these violations are culpable under more specific provisions of the FCE.

305. The Panel finds that the violations of article 11 FCE (2006 edition), article 10 FCE (2009 edition) and article 5 FCE (2009 edition) are more specific than article 3 and/or 9(1) of the FCE (2009 edition). The former violations are indeed more specific than the latter.

306. Consequently, since the Panel finds that Mr Blatter is guilty of the more specific violations of article 11 FCE (2006 edition), article 10 FCE (2009 edition) and article 5 FCE (2009 edition), the Panel finds that article 3 and/or 9(1) of the FCE (2009 edition) do not come into play.

**x. *If Mr Blatter is found guilty of violating one or more provisions of the FCE, what sanction shall be imposed?***

307. Having established that Mr Blatter violated article 11 FCE (2006 edition), article 10 FCE (2009 edition) and article 5 FCE (2009 edition), the Panel will now proceed to examine whether the sanctions imposed on Mr Blatter by means of the Appealed Decision are appropriate.

308. The Panel notes that the FIFA Ethics Committee originally imposed on Mr Blatter a ban from taking part in any football-related activity at national and international level for eight years and a fine of CHF 50,000. In imposing this sanction, the FIFA Ethics Committee took into account as mitigating circumstances Mr Blatter’s assistance and cooperation, his unblemished record and *“the fact that the accused has, doubtlessly, rendered meritorious services to FIFA and to football for several years”.*

309. The Panel observes that the FIFA Appeal Committee imposed on Mr Blatter a ban from taking part in any football-related activity at national and international level for six years and a fine of CHF 50,000. The FIFA Appeal Committee indicated in the Appealed Decision that Mr Blatter has been a very high ranked football official for more than forty years, serving as,



most notably, FIFA Secretary General for seventeen years (1981 – 1998) and then FIFA President for another seventeen years (1998 – 2015) and that, all in all, through his functions as a football official, Mr Blatter has performed a remarkable work towards the development and promotion of football, so as for FIFA as an organisation. The FIFA Appeal Committee considered that Mr Blatter’s activity, as well as its services rendered to FIFA and football in general over the years, should deserve a high recognition in the matter at stake, as a mitigating factor.

310. Importantly, Mr Blatter did not put forward any submissions based on which the sanctions imposed on him would have to be reduced if it were established that he committed one or more violations of the FCE.
311. FIFA, emphasising that Mr Blatter did not contest the proportionality of the sanction imposed by the Appealed Decision, submits that the sanction imposed by the Appealed Decision is not disproportionate. FIFA, with reference to CAS jurisprudence, considers it appropriate that it is afforded a margin of appreciation in the assessment of what is required and that CAS should demonstrate a degree of deference to the decision-making bodies of FIFA.
312. The Panel finds that, although formally the basis for sanctioning in the matter at hand differs from the basis for sanctioning of the FIFA Appeal Committee as no violations of article 3 and/or 9(1) of the FCE (2009 edition) have been established, materially the basis remains the same as the Panel agrees with the FIFA Appeal Committee that Mr Blatter violated these provisions as well. The only difference is that the Panel finds that Mr Blatter cannot be sanctioned separately for these violations and, as such, these violations cannot be used as aggravating circumstances.
313. The Panel notes the constant jurisprudence of CAS regarding a limited discretion for CAS panels to review sanctions imposed by disciplinary bodies of federations when such panels make similar findings as in the decision appealed against and that such discretion should only be exercised “*when the sanction is evidently and grossly disproportionate to the offence*” (CAS 2009/A/1817 & 1844, §174).
314. The Panel finds that the FIFA Appeal Committee took into account all relevant circumstances and that the Panel shall indeed demonstrate a certain degree of deference to the decision-making bodies of FIFA in imposing an appropriate sanction.
315. In the light of all the above, the Panel finds that the sanction imposed on Mr Blatter by means of the Appealed Decision is not disproportionate and, indeed, reasonable and fair.
316. It must be recalled that Mr Blatter as FIFA President was the top person in the world of football. There is no higher position in football, and the FIFA President must especially be aware of and conduct himself in accordance with his duties and responsibilities under the FCE. The standard of ethical conduct required under the FCE should be and should be seen to be applied to the FIFA President as rigorously as if not more rigorously than that applied to anyone else bound by the FCE. As stated in the very first sentence of the Preamble to the FCE (2006, 2009, and 2012 editions), “*FIFA bears a special responsibility to safeguard the integrity*

*and reputation of football worldwide*". This special responsibility is borne in particular by the FIFA President as the top person in the organisation and indeed in all of football and must be taken into account when the FIFA President himself violates the FCE.

317. Consequently, the Panel finds that a ban from taking part in any football-related activities (administrative, sports and other) at national and international level for six (6) years as from 8 October 2015 is to be imposed on Mr Blatter, as well as a fine in the amount of CHF 50,000.

## **B. Conclusion**

318. Based on the foregoing, and after taking due consideration of all the evidence produced and all arguments made, the Panel finds that:
- i. FIFA carries the burden of proof.
  - ii. The standard of proof to be applied is one of "personal conviction", which coincides with the standard of "comfortable satisfaction".
  - iii. It can be left open whether or not an oral agreement was concluded between Mr Blatter and Mr Platini regarding an annual remuneration for Mr Platini of CHF 1 million in 1998, although the Panel considers on the evidence before it that one was not entered into that bound FIFA.
  - iv. Even if there had been an oral agreement between Mr Blatter and Mr Platini in 1998, this agreement was superseded by means of the written agreement concluded in August 1999.
  - v. FIFA's payment pursuant to Mr Blatter's authorisation and direction of CHF 2 million to Mr Platini was made without contractual basis and this amounts to an undue gift.
  - vi. Mr Blatter unlawfully awarded contributions to Mr Platini under FIFA's ExCo retirement scheme and this amounts to an undue gift.
  - vii. Mr Blatter violated article 11 of the FCE (2006 edition) and article 10 of the FCE (2009 edition).
  - viii. Mr Blatter violated article 5 of the FCE (2009 edition).
  - ix. Since Mr Blatter is found guilty of the more specific violations of article 11 FCE (2006 edition), article 10 FCE (2009 edition) and article 5 FCE (2009 edition), article 3 and/or 9(1) of the FCE (2009 edition) do not come into play.
  - x. A ban from taking part in any football-related activities (administrative, sports and other) at national and international level for six (6) years as from 8 October 2015 is to be imposed on Mr Blatter, as well as a fine in the amount of CHF 50,000.
319. All other and further motions or prayers for relief are dismissed.

## ON THESE GROUNDS

### The Court of Arbitration for Sport rules that:

1. The appeal filed on 16 March 2016 by Mr Joseph S. Blatter against the decision rendered by the Appeal Committee of the *Fédération Internationale de Football Association* on 16 February 2016 is dismissed.
2. The decision rendered by the Appeal Committee of the *Fédération Internationale de Football Association* on 16 February 2016 is confirmed.
3. (...).
4. (...).
5. All other and further motions or prayers for relief are dismissed.