Arbitration CAS 2017/A/5086 Mong Joon Chung v. Fédération Internationale de Football Association (FIFA), award of 9 February 2018

Panel: Prof. Massimo Coccia (Italy), President; Mr David W. Rivkin (USA); The Hon. Michael Beloff QC (United Kingdom)

Football
Sanctions against a FIFA official for violations of the FIFA Code of Ethics
Tempus regit actum
De novo review and denial of justice
Standard of proof
Distribution of powers with regard to football ethics-related cases
Legality and predictability of sanctions
"Duties" of an official
Duty of cooperation
Reservation of the CAS in the re-assessment of a sanction

1. **Intertemporal issues are governed by the general principle *tempus regit actum* or principle of non-retroactivity, which holds that (i) any determination of what constitutes a sanctionable rule violation and what sanctions can be imposed in consequence must be determined in accordance with the law in effect at the time of the allegedly sanctionable conduct, (ii) new rules and regulations do not apply retrospectively to facts occurred before their entry into force, (iii) any procedural rule applies immediately upon its entry into force and governs any subsequent procedural act, even in proceedings related to facts occurred beforehand, and (iv) any new substantive rule in force at the time of the proceedings does not apply to conduct occurring prior to the issuance of that rule unless the principle of *lex mitior* makes it necessary.**

2. **CAS's *de novo* review does not open the door for international federations to abuse the system and intentionally commit procedural violations, such as unreasonably delaying in the issuance of a decision while "blocking" a party from appealing to CAS through its requirement of exhausting all internal channels before filing an appeal. Parties are protected from such alleged abuse under the "denial of justice" principle, according to which if a body refuses without reasons to issue a decision or delays the issuance of a decision beyond a reasonable period of time, there can be a denial of justice, opening the way for an appeal against the absence of a decision.**

3. **"Personal conviction of the judging body" is the applicable standard of proof for all conduct under review under the Code of Ethics. The CAS has consistently equated this standard of proof to that of "comfortable satisfaction", which falls between "beyond reasonable doubt" and "balance of probabilities" on the standard of proof spectrum. The standard of "comfortable satisfaction of the judging body bearing in mind the**

seriousness of the allegation" has also been constantly applied by CAS panels in disciplinary matters, including in cases specifically related to the behaviour of FIFA officials.

4. Under the FIFA rules, the Ethics Committee is a formally independent body. No language in the FIFA rules suggests that the Ethics Committee would be bound by statements or directions of the other FIFA bodies or officials, or, more specifically, the FIFA General Secretary. Only the Ethics Committee has the right to judge ethics-related cases. Therefore, a General Secretary's letter stating that *"we […] deem the matter as closed"* cannot be deemed a binding decision and must be viewed instead as the administrative act of not forwarding a complaint to the Ethics Committee. As such, it cannot preclude the Ethics Committee from independently reopening an investigation and initiating disciplinary proceedings. As regards the Investigatory Chamber of the Ethics Committee, it only determines whether there is a *prima facie* case, conducts an investigation, forwards the investigation files and recommends a sanction, whereas it is the Adjudicatory Chamber that decides the case.

5. For a sanction to be imposed, sports regulations must proscribe the misconduct with which the subject is charged, i.e. *nulla poena sine lege* (principle of legality), and the rule must be clear and precise, i.e. *nulla poena sine lege clara* (principle of predictability). A provision prescribing that all officials show commitment to an ethical attitude and behave and act with complete credibility and integrity, is sufficiently clear and precise and unambiguous, and provides a sufficient legal basis for sanction. The fact that it is broadly drawn does not necessarily lack sufficient legal basis because of that characteristic, as generality and ambiguity are different concepts. According to the principle of predictability, the offenses and sanctions of a sports organizations must be predictable, to the extent that those subject to them must be able to understand their meaning and the circumstances in which they apply. The inherent vagueness of concepts such as ethics and integrity does not preclude them to be used by sports legislators as a basis to impose disciplinary sanctions on officials that do not conform their behaviour to those standards. Disciplinary sanctions imposed by sport associations must conform to civil law standards and not to criminal law ones, and civil law standards are often inherently vague and reveal their full meaning on the basis of judicial application.

6. Pursuant to Article 3, para. 2 of the FIFA Code of Ethics, *"Officials shall show commitment to an ethical attitude while performing their duties"*. The phrase *"while performing their duties"* should not be interpreted narrowly and extends to whenever the official is involved in something (a conversation, an activity, etc.) that is related to or connected with his/her position(s) in football.

7. It is important that sports governing bodies establish rules in their respective ethical and disciplinary codes requiring witnesses and parties to cooperate in investigations and proceedings and subjecting them to sanctions for failing to do so. Sports governing bodies, in contrast to public authorities, have extremely limited investigative powers

and must rely on such cooperation rules for fact-finding and to expose parties that are violating the ethical standards of said bodies. Such rules are essential to maintain the image, integrity and stability of sport.

8. **Whenever an association uses its discretion to impose a sanction, CAS shows reservation or restraint when "re-assessing" the measure of the sanction. CAS shall only interfere in the exercise of this discretion of the sanctioning sporting body where the sanction imposed is *"evidently and grossly disproportionate to the offence"* or where CAS comes to a different conclusion on the substantive merits of the case than did the first instance tribunal.**

I. INTRODUCTION

1. This appeal is brought by Dr. Mong Joon Chung against a decision of the FIFA Appeal Committee (hereinafter the "Appeal Committee") taken on 23 June 2016 (hereinafter the "Appealed Decision") which (i) partially confirmed the decision of the Adjudicatory Chamber of the FIFA Ethics Committee (hereinafter the "Adjudicatory Chamber") taken on 7 October 2015, referenced as 150030 KOR ZH & 150642 KOR ZH, (ii) held that Dr. Chung violated Articles 13 (*"General rules of conduct"*), 18 (*"Duty of disclosure, cooperation and reporting"*), 41 (*"Obligation of the parties to cooperate"*) and 42 (*"General obligation to cooperate"*) of the FIFA Code of Ethics (hereinafter the "FCE"), 2012 edition, and, based on those infractions, (iii) sanctioned Dr. Chung with a ban from taking part in any football-related activity (administrative, sport or any other) at national and international level for a period of five years and with a fine of CHF 50,000.

II. PARTIES

2. The Appellant, Dr. Mong Joon Chung, is a Korean national who, in the realm of football, served as:

   - president of the Korean Football Association (hereinafter the "KFA") from 1993 to 2009;
   - honorary president of the KFA after 2009;
   - vice-president and Executive Committee member of FIFA from 1994 until 2011; and
   - honorary vice-president of FIFA after 2011.

3. The Respondent, the *Fédération Internationale de Football Association* (hereinafter "FIFA" or the "Respondent"), is the international governing body of football at worldwide level, headquartered in Zurich, Switzerland.

III. FACTUAL BACKGROUND

A. Background Facts

4. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced at the hearing of 14 November 2017. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

a. Dr. Chung's letter about the "Global Football Fund" sent to select Executive Committee members

5. On 2 December 2010, the twenty-four members of the FIFA Executive Committee (the governing body of FIFA) were to select the host of both the 2018 and 2022 FIFA World Cups. The bidders for the 2018 FIFA World Cup were Russia, Portugal/Spain, Belgium/Netherlands, and England. For the 2022 FIFA World Cup, the bidders were Qatar, Japan, the United States, Australia and Korea.

6. In connection with its bid for the 2022 FIFA World Cup, the KFA set up a bid committee called KOBID. Dr. Chung did not hold any official position or function with KOBID; rather, as Dr. Chung acknowledged, he had an informal advisory role, meeting from time to time with KOBID leaders to give general advice on the bidding process based on his experience.

7. As part of its bid, KOBID, in accordance with the Bidding Agreement drafted by FIFA and signed by each bidding committee, submitted a "bid book" to FIFA. According to the Bidding Agreement (in particular, chapters 3 and 4 of section 4), each bid committee had to include in its bid book, *inter alia*, a detailed description of the manner in which it intended to ensure that the hosting and staging of the FIFA World Cup would contribute to the development of football in the bidding country and worldwide in a sustainable manner and in alignment with FIFA's permanent activities and initiatives, also in reference to the development of football outside the elite men's game.

8. On 7 October 2010, the "Leaders in Football" business symposium took place in London, at which bid committees put forward their pitches ahead of the 2 December 2010 vote. At the event, KOBID unveiled the project defined as "Global Football Fund" (hereinafter the "GFF"). Dr. Chung attended the symposium as a keynote speaker on the topic "World Football in Transition". At this time, KOBID had not included the GFF in its bid book (nor did it at any point thereafter). According to Dr. Chung, it had not done so because *"it was not deemed appropriate"*, as it could cause a *"misunderstanding"* and would be more *"impactful"* if announced publicly at the symposium.

9. According to a New York Times article dated 9 October 2010, which the Appellant submitted as an exhibit in the present appeal, at the symposium KOBID's *"bid leaders promised to set up a Global Football Development Fund tied to the 2022 World Cup. This fund, intended to run from 2011 to*

2022 would distribute $777 million around FIFA's continental federations – $170 million to Africa, $170 million to Concacaf (the north, central American and Caribbean region), $159 million to Asia, $120 million to Europe, $100 million to South America and $50 million to Oceania. The remaining $17 million would be in administration costs".

10. A press release dated 7 October 2010 (the publication and thus relevance of which the Respondent disputes) also summarized KOBID's presentation at the symposium. It reported:

> *"The Chairman of the Bidding Committee for the 2022 World Cup Korea, Han Sung-Joo, and the president of the Korea Football Association, Cho Chung Yun, announced that Korea will create a "Global Football Fund" to further football development throughout Asia and the world… Korea will raise 777 million dollars from 2011 to 2022 to aid football confederations and associations around the world to build new football infrastructure and renovate existing facilities… Korea has a provisional plan to allocate the funds by continent. Funds provided for development projects will be practical and helpful for countries in need. Korea plans to leave it to confederations to administer the funds"* (emphasis added).

11. On 18 October 2010, eleven days after the "Leaders in Football" symposium, Dr. Chung sent letters to certain fellow FIFA Executive Committee members concerning the Global Football Fund (the "GFF Letters").

12. The recipients of the GFF Letters were Messrs. Julio Grondona, Issa Hayatou, Jack Warner, Angel María Villar Llona, Michel Platini, Reynald Temarii, Geoffrey Thompson, Michel D'Hooghe, Ricardo Terra Teixera, Senes Ezrik, Nicolás Leoz, Amos Adamu, Marios Lefkaritis, Jacques Anouma, Franz Beckenbauer, Rafael Salguero, Hany Abo Rida, and Vitaly Mutko.

13. It is to be noted that Dr. Chung did not send the GFF Letters to five of his fellow FIFA Executive Committee members: Messrs. Joseph Blatter, Chuck Blazer, Mohamed Bin Hammam, Worawi Makudi and Junju Ogura.

14. For the most part, the letters contained the same content, although personalized in minor ways for each recipient. (In particular, each letter was written in the recipient's native tongue and the content had some slight variations.)

15. Every letter contained the following paragraph:

> *"Korea will raise 777 million dollars from 2011 to 2022 to aid confederations and member associations to build new infrastructure and renovate existing facilities. The Fund will also be used to support human resource development programs for the training of coaches, administrators and players etc. Most significantly, the Fund will be distributed to the respective continents and will be left to each confederation to administer for concrete development projects"* (emphasis added).

16. The letters to Messrs. Adamu and Lefkaritis added that *"We will also make sure that the FIFA Exco Members will have a say in the distribution of the Fund for their respective continents"* (emphasis added).

17. In eleven of the GFF Letters, Dr. Chung mentioned a previous in-person briefing where he or Mr. D.D. Kim on his behalf (referred to as his "assistant" in the letters) discussed the GFF with that Executive Committee member, including Messrs. Grondona, Villar, Teixera, Leoz, Lefkaritis, Salguero, Hayatou, Anouma, Warner and Adamu.

18. Dr. Chung signed the GFF Letters in his capacity as a vice-president of FIFA and on FIFA letterhead. Dr. Chung testified at the CAS hearing that (i) his staff members and independent translators drafted the letters following his instructions on what content to include, (ii) he read all of the GFF Letters in English before signing them and assumed that those written in other languages were drafted in accordance with his instructions, (iii) he knew about the GFF and had discussed it with KOBID before the "Leaders in Football" symposium, (iv) he had previously briefed about the GFF Mr. Warner in person and probably also other FIFA Executive Committee members (although he admitted that he bases his recollection solely on what the GFF Letters recount), (v) he did not consult with KOBID before sending the GFF Letters (in his view, since KOBID and the public knew he supported Korea's bid, there was no need to consult the bid committee prior to sending the letters), and (vi) the purpose of the GFF Letters was to convince his fellow Executive Committee members to vote for Korea's 2022 FIFA World Cup bid.

19. On 4 November 2010, the then FIFA Secretary General, Mr. Jerome Valcke sent a written communication to Dr. Chung, explaining that various members of the FIFA Executive Committee had informed him they had received the GFF Letters. Mr. Valcke expressed his concern that the GFF Letters may be *"perceived as an attempt to influence the voting of other members of the FIFA Executive Committee, respectively as a promise of a monetary benefit for the respective Member Associations or Confederations directly linked to the voting on 2 December 2010"*. Mr. Valcke requested Dr. Chung to provide copies of the letters and to explain in what capacity and with what intent he had sent them.

20. On the same day, Mr. Valcke sent a written communication to Mr. Sung-Joo Han, the Chairman of KOBID, requesting him to explain in what capacity Dr. Chung was presenting the GFF on behalf of KOBID and what was the bid committee's intention with the GFF Letters.

21. On 8 November 2010, Mr. Han replied that *"Dr. Chung does not hold any official position in the Bidding Committee for the 2022 World Cup Korea (KOBID). Hence, he has not written any letters in any capacity for our bid committee. I understand that Dr. Chung's decision to write letters to his colleague in the FIFA Executive Committee was entirely his own. Thus, there was no intent on the part of KOBID to be involved with said letters"*.

22. On 9 November 2010, Dr. Chung replied by email defending the legitimacy of the GFF Letters and enclosing only a copy of the one sent to Mr. Warner:

> *"Your letter dated November 4, 2010 was rather unexpected for me to be requested copies of my letters to my fellow colleagues regarding Korea's 'Global Football Fund (GFF)' […]*
>
> *As to your request for an explanation of in what capacity I sent out the letters and the intention of said letters, I presume that all the answers are already there in your questions. In other words, I have been a*

> *FIFA Vice President over sixteen years, formerly President of Korea Football Association (KFA) for another sixteen years, and currently Honorary President of the KFA. With this career background in mind, I believed that it was my duty to better inform the purpose of this extensive plan to my colleagues.*
>
> *To be honest, I am not very happy with your request to divulge my private correspondence to my FIFA colleagues on a perfectly legitimate subject. If you still insist, however, and with a view to avoiding any misunderstanding, I am enclosing herein a copy of the letter sent to Mr. Jack Warner for your reference. […]".*

23. On 10 November 2010, Mr. Valcke informed Dr. Chung and Mr. Han that based on the explanations they gave *"we consider the integrity of the Bidding Process not to be affected and consequently deem the matter [of the GFF Letters] as closed"*.

24. On 1 December 2010, Dr. Chung participated in KOBID's final presentation for the 2022 FIFA World Cup. KOBID also appointed him as the person who would accept the FIFA World Cup trophy from the FIFA President on 2 December 2010 if Korea's bid was successful. According to Dr. Chung, he participated in this presentation only to support Korea's bid in the same way that other FIFA Executive Committee members supported their respective home countries.

25. On 2 December 2010, the FIFA Executive Committee members (with the exception of Mr. Adamu and Mr. Temarii who had been suspended) voted for the hosts of the 2018 and 2022 FIFA World Cups, awarding the tournaments to Russia for 2018 and Qatar for 2022.

b. The Investigatory Chamber's attempts to schedule a meeting with Dr. Chung

26. In late 2013, the Investigatory Chamber of the FIFA Ethics Committee (the "Investigatory Chamber") started a review of the bidding and awarding process of the 2018 and 2022 FIFA World Cups to identify any possible misconduct in connection with either process. As part of the investigation, the Chairman of the Investigatory Chamber, Mr. Michael J. Garcia began contacting football officials who had taken part in the bidding process

27. On 20 December 2013, Mr. Garcia requested to interview Dr. Chung as a witness, since he had participated in the 2010 vote as an Executive Committee member. Mr. Garcia informed Dr. Chung that he would be in Seoul, Korea from January 30-31 and asked whether he would be available to meet then.

28. On 8 January 2014, in the absence of a response from Dr. Chung and after realizing that such date fell on a National Holiday in Korea (Seollal from January 29 to 3 February), Mr. Marc Cavaliero, on behalf of Mr. Garcia, offered to reschedule the interview to 28 January 2014. Dr. Chung did not respond to this letter.

29. On 19 January 2014, Mr. Garcia sent a letter to the KFA in which he (i) explained that he had been unable to reach Dr. Chung, (ii) requested a meeting with Dr. Chung during his next visit to Seoul set for 27-28 February 2014, and (iii) asked the KFA, if these dates were inconvenient for Dr. Chung, to suggest alternative dates and times within the next 60 days when he would be available to meet.

30. On 28 January 2014, Mr. Gi Heon An, the General Secretary of the KFA, informed Mr. Garcia that he had contacted Dr. Chung, who had given his assurance that he would make every effort to meet in late February. However, Mr. An warned Mr. Garcia that due to Dr. Chung's hectic and unpredictable schedule, Dr. Chung could not guarantee his attendance. Mr. An also asked whether it would be possible to answer Mr. Garcia's questions in writing instead.

31. On 30 January 2014, Mr. Garcia requested Mr. An, in consideration of Dr. Chung's busy schedule in February, to provide alternative dates and times within the next 60 days when he would be available to meet.

32. On 3 and 12 February 2014, Mr. An informed Mr. Garcia that he would do his best to contact him ASAP to determine his availability for a meeting.

33. On 17 February 2014, Mr. Garcia again requested Mr. An to provide dates and times when Dr. Chung would be available to meet.

34. On 19 February 2014, Mr. An informed Mr. Garcia that he was still doing his best to contact Dr. Chung to set up the meeting.

35. On 20 February 2014, Mr. An informed Mr. Garcia that *"even though [Dr. Chung] retains the title of the Honorary President of the Korea Football Association, he is no longer involved in the association's activities on a regular basis which compounds the difficulty in getting on his calendar"*. Mr. An went on to tentatively offer a meeting for 27 or 28 March 2014.

36. On 25 February 2014, Mr. An then asked Mr. Garcia to confirm his availability on the proposed dates.

37. On 26 February 2014, Mr. Garcia confirmed that he could meet Dr. Chung on 28 March 2014 and, after a further exchange of correspondence, a meeting was scheduled for 6pm on that date.

38. On 20 March 2014, however, Mr. An informed the Investigatory Chamber that Dr. Chung would be unavailable to meet on 28 March 2014, because of his busy schedule and, in particular, because he had announced his candidacy for the office of mayor of Seoul earlier that month.

39. On 21 March 2014, Mr. Garcia expressed his disappointment to Mr. An at Dr. Chung's cancellation of the meeting and reminded him of the importance of Mr Garcia's speaking with Dr. Chung in connection with the FIFA Ethics Committee's investigation into the World Cup bidding process. Mr. Garcia went on to request new dates when Dr. Chung would be available to meet with him in the United States and to suggest, if preferable to Dr. Chung, to arrange a video conference instead of in-person meeting. Mr. Garcia closed this letter by reminding Mr. An that Dr. Chung had an obligation under the FCE to cooperate with the FIFA Ethics Committee's inquiry.

c. The Investigatory Chamber's first questionnaire for Dr. Chung

40. On 14 April 2014, given the difficulties in organizing an in-person interview, Mr. Garcia provided Dr. Chung with a questionnaire to fill out as a witness pursuant to Articles 42, para. 1 and 66, para. 1 FCE, granting him until 5 May 2014 to answer (hereinafter the "First Questionnaire"). As part of one question, Mr. Garcia requested Dr. Chung to provide copies of all the GFF Letters. He reminded Dr. Chung of his duty under the FCE to contribute to establishing the facts of the investigation of the bidding and awarding process. Mr. Garcia also requested that Dr. Chung acknowledge receipt of the First Questionnaire and his intention to respond to it by 17 April 2014.

41. On 22 April 2014, Mr. Cavaliero on behalf of Mr. Garcia sent Dr. Chung a reminder to acknowledge receipt of the First Questionnaire.

42. On 23 April 2014, Mr. Seung Hwan Lee of the KFA acknowledged receipt of the First Questionnaire on behalf of Dr. Chung and informed Mr. Cavaliero that Dr. Chung would do his best to answer it within the set deadline. However, on 3 May 2014, Mr. D.D. Kim, the vice-president of the KFA, informed Mr. Cavaliero that due to unforeseen circumstances – specifically, the so-called "Sewol Ferry Disaster" of 16 April 2014 where a ferry carrying 476 passengers, mostly school students, sank on its voyage from Incheon to Jeju Island, Korea – Dr. Chung would not be able to complete the First Questionnaire before the set deadline.

43. On 8 May 2014, Mr. Garcia expressed his disappointment over Dr. Chung's indication that he would not comply with the First Questionnaire's deadline. Mr. Garcia added that if Dr. Chung failed to comply with that deadline then the Investigatory Chamber would have no choice but to conclude he failed to cooperate establishing the facts in violation of the FCE.

44. On 22 May 2014, Dr. Chung submitted the completed First Questionnaire and annexed one of the GFF Letters.

d. Opening of the investigation proceeding referenced as 150030 mfw against Dr. Chung

45. On 5 September 2014, the Investigatory Chamber issued the *"Report on the Inquiry into the 2018/2022 FIFA World Cup Bidding Process"* (the so-called "Garcia Report"). The Investigatory Chamber transmitted the Garcia Report to the Chairman of the Adjudicatory Chamber of the FIFA Ethics Committee.

46. On 20 January 2015, based on the preliminary investigation into the bidding process, Dr. Cornel Borbély, the new Chairman of the Investigatory Chamber who had replaced Mr. Garcia after the latter's resignation, determined that there was a *prima facie* case against Dr. Chung for violations of Articles 13, 18, 20, and 42 FCE and notified Dr. Chung that it had, on that basis, opened investigation proceedings referenced as "150030 mfw" pursuant to Article 63, para. 1 and 64, para. 1 FCE against him. Dr. Borbély also informed Dr. Chung that Ms. Vanessa Allard, a member of the Investigatory Chamber, would lead the investigation proceedings as the chief of the investigation.

e. Dr. Chung's letters to Mr. Joseph Blatter

47. On 4 February 2015, Dr. Chung sent a letter to the then FIFA President, Mr. Joseph Blatter, in the following terms:

> *"Dear President Blatter,*
>
> *I hope this letter finds you well. I am guessing that your campaign for FIFA presidency is going well.*
>
> *Today, I wish to bring your attention to a letter that I received from Dr. Cornel Borbély of FIFA Ethics Committee, dated January 20, 2015. The letter bluntly alleged I had possibly committed 'code of ethics violations' while threatening 'disciplinary measures' without detailing what 'violation' it is that I allegedly committed.*
>
> *I have never met Dr. Borbély before. However, according to the transcript of the recording of the interview that Dr. Borbély conducted with Dr. Han Sung-joo, Chairman of Korean Bidding Committee on March 22, 2014 in Amsterdam, Dr. Borbély stated 'there are no allegations against you or your team.' He repeatedly apologized to Dr. Han during the interview for the rude tone of the letter Mr. Garcia sent to Dr. Han. Dr. Borbély's letter and the allegations are all the more incongruous since the 'Report on the Inquiry into the 2018/2022 FIFA World Cup Bidding Process prepared by the Investigatory Chamber of the FIFA Ethics Committee' concluded that findings of the report were 'not suited to compromise the integrity of the FIFA World Cup 2018/2022 bidding process as a whole.'*
>
> *As Dr. Han Sung-joo, former Chairman of the Korean World Cup 2022 Bidding Committee wrote in a letter to you, dated February 14, 2014, such a letter need to be 'more specific about the 'investigation' and what the charges are rather than simply 'threaten' and try to be 'coercive'. I hope the Investigatory Chamber of the FIFA Ethics Committee has the decency to notify me of the violations that I allegedly committed and proceed with the 'investigations' so that I can answer the questions as quickly as possible.*
>
> *It is like someone in a crowded place shouting to another person, 'Do you still beat your wife?' What is that person to do? He cannot say 'yes,' nor can he say 'no,' because either way, he will be seen as a wife-beater. This is tantamount to character assassination. That is why I find this proceeding difficult to understand.*
>
> *Then it occurred to me why this investigation is being dragged-out. It must be the very difficult situation that FIFA and you find yourselves in.*
>
> *As for Qatar winning the bid to host the 2022 World Cup, it is widely reported in the press that you said 'Of course it was a mistake.' You also reportedly said that 'The World Cup will not take place in Qatar,' and that 'Qatar provides financing to the Islamic State terrorist militia.'*
>
> *Mohammad Bin Hammam, our mutual friend once recounted to me that it was you who strongly urged the Emir of Qatar to make a bid for the 2022 Games and tried to assure the skeptical Emir that the games do not necessarily have to take place during the months of June and July. It is also reported that you were believed to have voted for the US, not Qatar.*
>
> *It seems you had actively encouraged Qatar to bid for the 2022 World Cup while thinking that it had little chance of actually winning the bid. Qatar's surprise win has led to another controversy for FIFA over whether the games can be hosted in the sweltering summer heat of Qatar and, if not, when.*
>
> *Of course, all this controversy was started because of your decision to have FIFA decide on the venue of 2018 and 2022 Games at the same time in 2010. It was this decision and the unprecedented process that put FIFA in a difficult situation.*

I understand the quandary you are in. I am saddened to see FIFA reputation so tarnished and your leadership in such disrepute.

You may wonder why I am addressing this letter to you since the Ethics Committee is an independent organ. However, the Committee is an organ of FIFA and you represent FIFA as its president. That is why I thought it best to write to you instead of Dr. Borbély.

I will await your reply and will retain the option of releasing this letter to the public as I think that we owe it to world football to air such important issues in public.

Dear Sepp,

It has been some time since the last time you visited Korea. I still recall fondly the dinner that President Lee-Myung-bak hosted in your honor and the drinks we had afterwards. I hope you have an occasion to visit my country again in the near future".

48. On 10 February 2015, it appears, Mr. Blatter transmitted this letter by hand to the Investigatory Chamber.

49. On 12 February 2015, Dr. Borbély sent a letter to Dr. Chung, requesting him to (i) respect the independence of the Investigatory Chamber, (ii) send all future correspondence concerning the investigation proceedings against him to Ms. Allard, and (iii) keep confidential communications related to the investigation proceedings. Additionally, Dr. Borbély asked how Dr. Chung obtained access to the transcript of Mr. Han's interview with the Investigatory Chamber.

50. On 16 February 2015, Dr. Chung, through legal counsel, responded that he had obtained the transcript from Mr. Han, who had recorded the interview with Dr. Borbély's full consent.

51. On 8 May 2015, Dr. Chung sent another letter to Mr. Blatter in the following terms:

"Dear President Blatter,

I am writing you again as the investigation that FIFA's Investigatory Chamber has been conducting has deteriorated to such a level that it requires immediate addressing. If you are not aware what the Investigatory Chamber is doing, you should know about it.

I have received yet another set of questions from FIFA's Investigatory Chamber on March 17, 2015. Almost all of the questions simply repeat those already asked and addressed in the two previous sets of questions.

There is even one question which asks where I obtained a certain transcript that I referred to in my answer to a previous query. In fact, it was the Investigatory Chamber itself that sent me the transcript as an attachment to the previous set of questions. The Chamber does not even know what documents it is sending me! Despite all my previous answers providing evidence to the contrary, the Investigative Chamber asks why I engaged in a behaviour 'that arguably gave rise to an impression of favouritism'.

It seems to have already made up its mind and insists that it 'arguably' thinks otherwise. How do you deal with an accuser who has already made up its mind about someone's guilt and refuses to listen or to look at the evidence?

One may see it as 'harassing' or 'badgering' a witness. […]

I would also like to remind you that both Japanese and Russian Executive Committee members also made the final presentations for their respective countries. How were they able to proceed if this was also a case of conflict of interest? Furthermore, Russia even won the bid to host the 2018 World Cup. Is FIFA now saying that this constituted a conflict of interest? Are you trying to say that Russia's bid had a problem?

If so, it is your responsibility as the President of FIFA to oversee such procedural matters and that everything is in proper order. It is you who should be taking the responsibility. If this was such a serious breach of FIFA rules and regulations, you should be answering all these questions instead of accusing your current and past colleagues while you make another bid as FIFA President. […]

I urge you to make every effort to address these issues clearly and forthrightly yourself.

Given the incongruity and inconsistency of FIFA and your stance and position as its past and present president, one may question the fairness and impartiality of these procedures.

There have been far more serious and clearer breaches of conflict of interest, allegations of collusion that have been perpetrated by FIFA under your watch with far graver financial and reputational consequences for the organization. However, FIFA never expended so much time and energy to look into those matters.[…]

Finally, I would like to know why you have not answered my previous letters and what it would take you to pay attention and respond to my questions regarding FIFA's investigatory chamber investigation. […]".

52. On 18 May 2015, Mr. Blatter forwarded this letter by email to the Investigatory Chamber.

53. On 5 June 2015, on the basis of Dr. Chung's letters to Mr. Blatter of 4 February and 8 May 2015 (hereinafter the "Letters to Mr. Blatter"), the Investigatory Chamber decided to extend the investigation against him to include possible breaches of Articles 13 and 16 FCE.

f. The Investigatory Chamber's second and third questionnaires for Dr. Chung

54. On 13 February 2015, Ms. Allard, sent Dr. Chung another questionnaire for him to fill out as a party to proceeding no. 150030 mfw (hereinafter the "Second Questionnaire"), which he timeously answered on the deadline of 27 February 2015. Ms. Allard also requested Dr. Chung to provide a copy of GFF Letters. In the answer to the Second Questionnaire, Dr. Chung explained that he did not keep a copy of the letters but that as far as he could remember, the contents were substantially the same. Dr. Chung stated that he would try to find copies of the letters and forward them to the Investigatory Chamber. Dr. Chung did not, however, provide the GFF Letters until 21 August 2015 as an exhibit to his statement of defence to the Adjudicatory Chamber.

55. On 17 March 2015, Ms. Allard, to obtain clarification of certain answers to the Second Questionnaire, sent another list of questions to Dr. Chung (hereinafter the "Third Questionnaire"), which he also timeously answered on the deadline of 30 April 2015.

g. The alleged missing investigation files

56. On 22 July 2015, the Investigatory Chamber completed the investigation in the case no. 150030 mfw and forwarded a final report, together with the investigation files, to the Adjudicatory Chamber (hereinafter the "First Final Report").

57. On 3 August 2015, Dr. Chung requested disclosure of *"all of the investigation files"*.

58. On 5 August 2015, the Chairman of the Adjudicatory Chamber of the FIFA Ethics Committee, Mr. Hans-Joachim Eckert, replied that the attachments to the Final Report constituted the full investigation files.

59. On 7 August 2015, Dr. Chung formally petitioned for the disclosure of the investigation files pursuant to Articles 29, 39 and 70 FCE, alleging that the Investigatory Chamber did not annex certain documents referenced in the Final Report. Dr. Chung complained in particular that the Investigatory Chamber (i) did not annex the Garcia Report, and (ii) heavily redacted transcripts of interviews Mr. Garcia had conducted on Messrs. Blatter and Valcke in connection with the bidding and awarding process.

60. On 17 August 2015, Mr. Eckert reiterated that the Investigatory Chamber had prepared the First Final Report and its annexes in accordance with Art. 28 para. 5 FCE. Mr. Eckert confirmed that the investigation file transmitted to Dr. Chung was complete and represented the investigation files as received from the Investigatory Chamber of the FIFA Ethics Committee, upon which the Adjudicatory Chamber of the FIFA Ethics Committee would adjudicate the matter. Mr. Eckert explained that the Adjudicatory Chamber considered the Investigatory Chamber had released only the relevant parts of the Blatter and Valcke interviews. Mr. Eckert further explained that, notwithstanding, *"for the sake of transparency and clarity"*, the Adjudicatory Chamber requested the Investigatory Chamber to provide it with a full copy of the previous and subsequent pages of the interview excerpts, and that, after receipt thereof, the Adjudicatory Chamber decided to provide Dr. Chung with additional passages from that transcript.

61. On 10 September 2015, Dr. Chung again requested the *"missing investigation files"*.

62. On 15 September 2015, Mr. Eckert referred to his previous correspondence of 4 and 17 August 2015 in response.

h. Opening of the investigation proceeding referenced as 150642 jra against Dr. Chung

63. On 30 July 2015, Dr. Chung announced that he would be running for the FIFA Presidency.

64. On 1 August 2015, Inside World Football published an article in which it reported: *"Usually reliable sources have alerted [us] to the fact that Chung may be facing some ethics issues in a forthcoming Ethics Committee ruling which would potentially prevent him from running for the presidency"*.

65. On 22 August 2015, Dr. Chung issued a press release in which, according to the Adjudicatory Chamber's decision, he stated that Joseph Blatter was interfering with the upcoming FIFA presidential election and that FIFA was attempting to sabotage his candidacy for the FIFA presidency.

66. On 25 August 2015, three days later, Dr. Chung's campaign spokesman issued a second press release in which he (i) criticized the ongoing FIFA election process and claimed that FIFA had leaked confidential information regarding the ethics proceedings against him, and (ii) stated that he was not facing any proceedings before the FIFA Ethics Committee.

67. On 8 September 2015, Dr. Chung then circulated a brochure in which he *inter alia* criticized FIFA for lacking a checks and balances system. He declared that *"FIFA needs a system of checks and balances between the presidency, the Executive Committee and the judicial bodies. The heads of independent judicial committees should not be nominated by the president as they currently are, but by an 'independent search committee'…"*.

68. Later that same day, Dr. Borbély, in his capacity as Chairman of the Investigatory Chamber, informed Dr. Chung that, based on his recent press releases of 22 and 25 August 2015 and the *"manifes*t*"* document (i.e. the brochure), the Investigatory Chamber had determined that there was a *prima facie* case that Dr. Chung had violated Article 13, paras. 1 to 3 and Article 41, para. 1 FCE and had opened an investigation proceeding against him, referenced as "150642 jra". Mr. Bobély noted *inter alia* that Dr. Chung's comments contained defamations of the FIFA Ethics Committee, made allegations against the independence of the Ethics Committee, misinformed that the FIFA President was behind the opening of the proceedings against him to sabotage his candidacy for the 2016 FIFA presidential election, and misled the public into believing that he was not facing any proceedings.

69. On 11 September 2015, the Investigatory Chamber of the FIFA Ethics Committee submitted its final report ("Second Final Report") together with the investigation files to the Adjudicatory Chamber of the FIFA Ethics Committee and, on 17 September 2015, Mr. Eckert, in his capacity as Chairman of the Adjudicatory Chamber, decided to proceed with the adjudicatory proceeding in 150642 jra.

i. The Adjudicatory Chamber's merger of proceedings 150030 mfw and 150642 jra

70. On 17 September 2015, Mr. Eckert also informed Dr. Chung that, given the relationship between the scope of the adjudicatory proceedings 150642 jra and 150030 mfw and for procedural economy purposes, the proceedings would be merged. Dr. Chung objected to the merger and asked for a deferral of proceeding 150642 jra until the completion of 150030 mfw.

71. On 25 September 2015, however, the Adjudicatory Chamber denied his request, finding no reason to justify such deferral.

72. On 30 September 2015, Dr. Chung challenged Mr. Eckert's impartiality and petitioned for him to withdraw from the merged adjudicatory proceedings. However, Mr. Eckert did not recuse himself and the Adjudicatory Chamber then held, pursuant to Article 35, para. 4 FCE,

that Dr. Chung's objection was belated, pointing out that, in any case, the objection did not satisfy any of the requirements of Article 35, para. 2 FCE.

B. The FIFA decisions

73. In order to understand FIFA's decisions, it is important first to summarize briefly the provisions of the FCE that are relevant to those decisions (the full text of those provisions is included in the Panel's analysis of the alleged infractions below at paras. 138 *et seq.*):

- Article 3, para. 2 of the FCE (2009 edition) and Article 13, para. 3 FCE (2012 edition) require that Officials show commitment to an ethical attitude, pledge to behave in a dignified manner, and behave and act with complete credibility and integrity, with the 2009 edition adding that such standard be complied with *"while performing their duties"*;

- Article 16 (FCE 2012) obliges individuals bound by the FCE to not divulge confidential information;

- Article 18 (FCE 2012) demands individuals bound by the FCE to report any potential breaches of the FCE and, at the request of the Ethics Committee, contribute to clarifying the facts of a case or possible breaches;

- Article 41 (FCE 2012) requires parties in proceedings to collaborate establishing the facts of a case, in particular by complying with requests for information from the Ethics Committee and an order to appear in person;

- Article 42 (FCE 2012) obliges individuals bound by the FCE to contribute to establishing the facts of a case, and to provide written and oral information as witnesses, to the full and absolute truth.

a. Proceeding before the Adjudicatory Chamber of the FIFA Ethics Committee

74. On 7 October 2015, the Adjudicatory Chamber of the FIFA Ethics Committee found that Dr. Chung violated Articles 13, 16, 18, 41, and 42 FCE and sanctioned him with a six-year ban from taking part in any kind of football-related activity at national and international level (administrative, sports or any other) and a fine of CHF 100,000. However, the Adjudicatory Chamber did not issue the grounds for its decision for more than six months, and did it on 21 April 2016.

75. In its ruling, the FIFA Ethics Committee decided:

- as a preliminary point, to reject Dr. Chung's objection to Mr. Eckert acting as Chairman of the Adjudicatory Chamber because (i) he filed the objection late, and (ii) in any case, the objection did not satisfy the criteria of Article 35, para. 2 FCE.

With regard to case 150030 mfw:

- to drop the charges relating to Article 20, par. 4 FCE (which reads: *"Persons bound by this Code must refrain from any activity or behaviour that might give rise to the appearance or suspicion of improper conduct as described in the foregoing sections, or any attempt thereof"*) on the basis that the FCE (2009 edition), in force when Dr. Chung sent the GFF Letters, did not contain an equivalent provision and thus it could not be applied by way of Article 3 FCE (2012 edition).

- to apply the FCE (2012 edition) to the remaining alleged violations.

- to drop the charges relating to Article 20, para. 1 (*"Offering and accepting gifts and other benefits"*) of the FCE (2012 edition) because Dr. Chung's GFF Letters did not constitute an offer and/or an attempt to offer undue benefits within the strict meaning of said article.

- to hold that Dr. Chung violated Article 13, para. 3 FCE (*"General Rules of Conduct"*) of the FCE (2012 edition) by sending the GFF Letters on the basis that, although Dr. Chung was entitled to support his home country's FIFA World Cup bid and also to try to convince his fellow Executive Committee members to vote for that bid, he was not entitled to lobby without transparency and by taking advantage of his position within FIFA. According to the Adjudicatory Chamber, by deliberately not sending the GFF Letters to five Executive Committee members, and sending the GFF Letters as FIFA vice-president and on FIFA letterhead, thereby creating the impression that he acted in an official function, Dr. Chung acted without transparency and in breach of his duty to act with an ethical attitude and with complete credibility and integrity.

- to hold that Dr. Chung also violated Article 13, para. 3 FCE (2012 edition) by sending the Letters to Mr. Blatter on the basis that, although a FIFA official may write to the FIFA President if he feels that there is a problem that needs to be addressed, he cannot demand the FIFA President to terminate ethics proceedings against him or disregard or question the independence of the Ethics Committee. In the Adjudicatory Chamber's opinion, a FIFA official must address any concerns or criticisms about ethics proceedings against him to the Ethics Committee only. The Adjudicatory Chamber concluded that by sending the Letters to Mr. Blatter, Dr. Chung interfered with the proceedings against him and violated his duty to show commitment to an ethical attitude, to behave in a dignified manner and to act with complete credibility and integrity.

- to hold that Dr. Chung violated Articles 18, para. 1 (*"Duty of disclosure, cooperation and reporting"*), 41 (*"Obligation of the parties to collaborate"*) and 42 (*"General obligation to collaborate"*) of the FCE (2012 edition) for (i) failing during the preliminary investigation into the FIFA World Cup bidding process to make himself available for an interview and to submit his answers to the First Questionnaire on time, (ii) submitting, during the preliminary investigation (First Questionnaire) as well as during the ethics proceeding against him (Second and Third Questionnaire), *"vague and incomplete"* answers that cannot be considered

as the complete or whole truth, and (iii) deliberately delaying to provide copies of the GFF Letters.

- to hold that Dr. Chung violated Article 16 FCE (*"Confidentiality"*) of the FCE (2012 edition) by sending the Letters to Mr. Blatter.

With regard to case 150642 jra:

- to hold that Dr. Chung violated Article 13, para. 3 (*"General rules of conduct"*) of the FCE (2012 edition) by his press releases of 22 and 25 August 2015 and the brochure circulated on 8 September 2015.

- to hold that Dr. Chung violated Article 41 FCE (*"Obligation of the parties to collaborate"*) of the FCE (2012 edition) by making several public statements that were deliberately false or incomplete during the course of the proceedings.

With regard to the sanction:

- to impose a ban of four years for the most serious breach Dr. Chung committed, i.e. Article 13 FCE (2012 edition), on the basis that: (i) the nature of his misconduct was serious; (ii) he endangered the legal interest that Article 13 FCE seeks to protect, which is the integrity and objectivity of FIFA, as well as the trust of the individuals and institutions subject to FIFA's powers as an association; (iii) FIFA had a legitimate interest in taking a strong stance against his violation based on his endangering of that legal interest; (iv) he held an influential position in the world of football and within FIFA; (v) he was in a very sensitive situation as simultaneously a member of the committee voting for the host of the 2022 FIFA World Cup and honorary president of an association bidding to host that competition; (vi) while his motive was estimable, the way he sought to achieve it contravened ethical standards and principles of the FCE; (vii) as a vice-president of FIFA at the time of the vote for the winning bid and honorary KFA president at the time of the ethics proceeding, he had to comply with the highest standards of integrity and cooperation; even taking into account the mitigating circumstances of (a) his unblemished record, (b) the fact that he had provided meritorious services to FIFA and football over the years, and (c) his belief that the issue of the GFF Letters had already been resolved due to Mr. Valcke's letter of 10 November 2010, which was relevant to his behaviour before the opening of the ethics proceedings.

- The Adjudicatory Chamber increased that sanction by two years (bringing the total suspension period to six years) for Dr. Chung's violations of Articles 16, 18, 41 and 42 FCE (2012 edition). It also imposed a fine of CHF 100,000, given the several violations of the FCE.

b. Proceeding before the FIFA Appeal Committee

76. On 24 April 2016, Dr. Chung appealed to the Appeal Committee.

77. On 23 June 2016, the Appeal Committee (i) decided that Dr. Chung had only violated Articles 13, 18, 41 and 42 FCE (2012 edition), (ii) exonerated him from the alleged violations of Article 16 in relation to case 150030 mfw and Articles 13 and 41 FCE in relation to case 150642 jra, and (iii) reduced his ban to five years and his fine to CHF 50,000.

78. Once again, FIFA took a very long time to issue the grounds for the Appeal Committee's decision, which were published on 23 March 2017, nine months after its decision.

79. The Appeal Committee decided:

With regard to case 150030 mfw:

- to hold that no violation of Dr. Chung's due process rights occurred at the Adjudicatory Chamber, on the basis *inter alia* that (i) Dr. Chung received all excerpts of the *"Report on the Inquiry into the 2018/2022 FIFA World Cup Bidding Process"* and of the transcripts of Mr. Blatter's and Mr. Valcke's interviews that were relevant to his case, and (ii) Dr. Chung objected too late to Mr. Eckert participation in the proceeding before the Adjudicatory Chamber, thereby waiving his right to object.

- to confirm that Dr. Chung violated Article 13 FCE (2012 edition) by sending the GFF Letters and the Letters to Mr. Blatter, on the basis *inter alia* that the obligations set forth in Article 13 FCE are sufficiently detailed and specific and, as such, may serve as a basis for sanctioning officials subject to the Code.

- to confirm that Dr. Chung violated Articles 18, 41 and 42 FCE (2012 edition).

- to hold that Dr. Chung did not violate Article 16 FCE (2012 edition), on the basis that the Letters to Mr. Blatter (i) did not contain information of a confidential nature, (ii) did not refer to any of the specific charges the Ethics Committee brought against him, and (iii) addressed only the then FIFA President, not the public.

With regard to case 150642 jra:

- to hold that Dr. Chung did not violate Article 13 and 41 FCE (2012 edition).on the basis that even though his statements were inappropriate they did not constitute breaches of said articles because (i) they were political statements (i.e. acceptable criticism of the FIFA institutions/officials) made during the electoral campaign for the FIFA Presidency, and (ii) every individual has a general freedom to express views and opinions.

With regard to the sanction:

- to hold that, since it had exonerated Dr. Chung of violating Article 16 FCE in relation to 150030 mfw and Articles 13 and 41 FCE in relation to case 150642, it had to reassess the sanction. The Appeal Committee confirmed the base sanction of four years for the most serious violation of Article 13 FCE in relation to the GFF Letters and Letters to Mr. Blatter as well-founded, but reduced the additional sanction of two years for the other

violations by one year, thus imposing a total suspension period of 5 years. The Appeal Committee also reduced the pecuniary sanction by half.

C. Proceedings before the Court of Arbitration for Sport

80. On 13 April 2017, in accordance with Article R47 of the Code of Sport-related Arbitration (hereinafter the "CAS Code"), the Appellant filed a statement of appeal.

81. In his statement of appeal, the Appellant made the following procedural requests: (i) to compel FIFA to make Messrs. Blatter, Valcke and Eckert available to testify, and (ii) to order FIFA to produce the so-called Garcia Report, the full interview transcripts of Messrs. Blatter and Valcke conducted on 28 and 29 April 2014 by Mr. Garcia as part of the review of the bidding and awarding process for the 2018 and 2022 FIFA World Cups, and any correspondence received by the FIFA Ethics Committee in connection with the Letters to Mr. Blatter of 4 February and 8 May 2015.

82. On 28 April 2017, in accordance with Article R51 of the CAS Code, the Appellant filed his appeal brief, reiterating his procedural requests.

83. On 6 June 2017, in accordance with Article R55 of the CAS Code, the Respondent filed its answer, objecting to the Appellant's procedural requests but indicated that it was prepared nonetheless to produce only to the Panel (i) the interview transcripts of Messrs. Blatter and Valcke and the passages of the Garcia Report concerning Dr. Chung or Korea in order to show that they did not contain any information relevant to Dr. Chung's case, and (ii) the email forwarding to the FIFA Ethics Committee Dr. Chung's letter of 8 May 2015 (indicating it could not do the same for the letter of 4 February 2015 as it appeared to have been transmitted by hand).

84. On 28 July 2017, the CAS Court Office notified the Parties that, on behalf of the President of the CAS Appeals Arbitration Division and pursuant to Article R54 of the CAS Code, the Panel appointed to decide the matter would be constituted by Prof. Massimo Coccia as chairman, Mr. David W. Rivkin designated by the Appellant, and the Hon. Michael Beloff M.A. Q.C. designated by the Respondent.

85. On 7 August 2017, the CAS Court Office notified the Parties that Mr. Francisco A. Larios had been appointed *ad hoc* clerk.

86. On 20 September 2017, the CAS Court Office sent the Parties the Order of Procedure to be signed and returned by 27 September 2017, later extended until 2 October 2017 for the Appellant.

87. On 27 and 29 September 2017, respectively, the Respondent and the Appellant returned the signed Order of Procedure.

88. On 2 October 2017, the Panel ruled on the Appellant's procedural requests. It ordered the Respondent to produce only to the Panel (i) unredacted copies of the interview transcripts of

Messrs. Blatter and Valcke, and (ii) the email forwarding to the FIFA Ethics Committee Dr. Chung's letter of 8 May 2015. The Panel rejected the Appellant's production request for any other communications in connection with the Letters to Mr. Blatter, as the Appellant failed to prove that they were likely to exist in accordance with Article R44.2 and R57 of the CAS Code. The Panel explained that it would review the produced documents and determine whether they, or any parts thereof, were relevant to the Appellant's case and had to be disclosed to him. With regard to the production of the Garcia Report, the Panel noted that FIFA's objections had become moot the moment it publicly disclosed the report on 27 June 2017. The Panel considered that an exceptional circumstance pursuant to Article R56 of the CAS Code existed and invited the Appellant, if he so wished, to introduce the Garcia Report into the record and to comment on it, offering, if he did so, Respondent the equivalent right to comment. The Panel also rejected the Appellant's request to compel FIFA to make Messrs. Blatter, Valcke and Eckert available to testify at the hearing on the basis that (i) according to Article R44.2, para. 3 and Article R57, para. 3 of the CAS Code, each party is responsible for the availability of the witnesses it calls, (ii) the mentioned individuals were no longer FIFA officials, (iii) the expected testimonies were not directly relevant to the legal issues truly in dispute, and (iv) the relevance of their testimonies would go only to procedural issues, which would be cured by CAS's *de novo* review of the case.

89. On 9 October 2017, the Respondent produced to the Panel the requested documents.

90. On 16 October 2017, the Appellant submitted to the record the Garcia Report, as well as his comments thereon. On 3 November 2017, the Respondent submitted its own comments.

91. On 19 October 2017, after reviewing the documents produced by the Respondent, the Panel ordered the production of certain excerpts from the interview transcripts of Messrs. Blatter and Valcke. As for the remaining parts of the transcripts, as well as the email forwarding to the FIFA Ethics Committee Dr. Chung's letter of 8 May 2015, the Panel considered them irrelevant and thus did not order their disclosure.

92. On 23 October 2017, the Respondent produced for the attention of the Appellant the requested documents.

93. On 27 and 31 October 2017, respectively, the Appellant and Respondent filed their comments on the produced documents.

94. On 27 October 2017, the Appellant requested to submit an additional exhibit – a press release dated 7 October 2010 (see *supra* at para. 10) – pursuant to Article R44.1 and R56 of the CAS Code, to which Respondent objected on 31 October 2017.

95. On 1 November 2017, the CAS Court Office informed the Parties that the Panel would decide on the admissibility of said press release at the outset of the hearing.

96. On 14 November 2017, the hearing took place at the CAS headquarters in Lausanne, Switzerland.

97. The following persons were in attendance at the hearing:

- The Panel, assisted by Mr. Francisco A. Larios (*ad hoc* clerk) and Mr. Brent Nowicki (CAS Counsel).

- For the Appellant: Dr. Mong Joon Chung (Appellant), Mr. Jorge Ibarrola (Counsel), Mr. Joel E. Richardson (Counsel), Ms. Una Co (Counsel), Mr. Juhyun Park (Counsel), Mr. Eugene D. Gulland (Counsel), Mr. Byung-Chol Yoon (Counsel), Mr. Kap-You Kim (Counsel), Mr. Ben Fomey (Dr. Chung's assistant), Dr. Chaibong Hahm (Observer), and Ms. Wansoo Suh (Interpreter).

- For the Respondent: Prof. Antonio Rigozzi and Mr. William McAuliffe as counsel.

98. At the outset of the hearing, the Parties confirmed they had no objections to the constitution and composition of the Panel. The Panel next considered the admissibility of the press release dated 7 October 2010 (see *supra* at para. 10). The Respondent withdrew its objection to introduce the press release into the record, accepting it as a contemporary and authentic document but challenged its relevance, on the basis that the Appellant had not proved it had been published. Accordingly, the Panel accepted the press release into the record on the basis of Article R56 of the CAS Code, while noting the Respondent's position on its relevance.

99. During the hearing, the Panel also initially accepted the Appellant's request to introduce a demonstrative exhibit (a timeline and a printed PowerPoint presentation referring to excerpts of exhibits which were already on the record), subject to (i) the exhibit not containing any new evidence, and (ii) the Respondent being permitted throughout the course of the hearing to object to any specific items therein. Toward the end of the hearing, the Panel eventually withdrew this demonstrative exhibit from the record since neither of the Parties had made any reference to it throughout the hearing.

100. At the end of the hearing, the Parties acknowledged the Panel had fully respected their rights to be heard and to be treated equally.

IV. SUBMISSIONS OF THE PARTIES

A. The Appellant: Dr. Mong Joon Chung

101. The Appellant requests the following relief:

> *"(1) The appeal against the decision issued on 23 June 2016 by the FIFA Appeal Committee is upheld;*
>
> *(2) The decision issued on 23 June 2016 by the FIFA Appeal Committee is annulled;*
>
> *(3) FIFA is ordered to refund to the Appellant the amount of CHF 50,000 paid by the Appellant in respect of the fine imposed upon him by the FIFA Adjudicatory Chamber;*
>
> *(4) No sanction is imposed on the Appellant; and*

(5) FIFA is ordered to compensate the Appellant for all of the costs in this appeal, including the Appellant's attorney's fees and disbursement and the CAS Court Office Fee of CHF 1,000".

102. The Appellant's submissions, in essence, may be summarized as follows:

- On due process violations: FIFA violated Dr. Chung's due process rights. First, FIFA violated Dr. Chung's right to the full investigation files in the FIFA Adjudicatory Chamber proceeding. Second, despite Mr. Eckert's conflict of interest, the Adjudicatory Chamber accepted his refusal to recuse himself from the adjudicatory proceedings. Mr. Eckert's duty to recuse himself under the circumstances was mandatory and non-waivable pursuant to Article 35 FCE. CAS's *de novo* review and curing of procedural defects is a moral hazard that has opened the door for abuse by the federations, such as in the present case where FIFA has taken an unreasonable amount of time to decide the matter and issue its reasoning, all the while blocking Dr. Chung from appealing to the CAS because of the exhaustion of internal channels requirement of Article R58 of the FIFA Statutes. The Panel must take action to prevent such type of abuse from reoccurring in the future.

- On the GFF Letters: The GFF Letters only contained a general description of the GFF based on comments Dr. Han made at the "Leaders in Football" conference of 7 October 2010. The GFF Letters did not contain any information that was not already publicly available. Dr. Chung made no effort to keep the GFF Letters or their contents secret and his support for Korea's bid was publicly known and at all times transparent. The GFF Letters were acceptable as they merely contained Dr. Chung's views on the merits of Korea's bid. Dr. Chung was simply supporting his home country's 2022 FIFA World Cup bid and trying to convince his fellow Executive Committee members to vote for that bid, just as other Committee members did for their own countries. Even FIFA concluded that the GFF Letters were acceptable when, on 10 November 2010, the former General Secretary, Mr. Valcke, closed the matter and determined the letters did not affect the integrity of the 2022 FIFA World Cup bidding process.

- On Dr. Chung's Letters to Mr. Blatter: Dr. Chung reasonably thought in good faith that Mr. Blatter puppeteered the FIFA Ethics Committee, using it to conduct an investigation against him to wage a personal vendetta for his long-standing opposition to Mr. Blatter and repeated callings for reform to fight corruption within FIFA. Dr. Chung, as he put it, only *"demand[ed] that the head of a political organization such as FIFA stop a politically-motivated investigation"*. The Letters to Mr. Blatter were merely a tactfully phrased characterization of the investigation complaining about the wrongful objective behind it. Dr. Chung had the right to send such a letter since, as, in the words of the Adjudicatory Chamber, *"every official of FIFA has the right to write to the President when he feels that there is a problem that needs to be addressed"*.

- On the alleged Article 13 FCE (2012 edition) violation: First, Article 13 FCE (2012 edition) and, by extension, Article 3 FCE (2009 edition), do not satisfy the principle of legality and predictability. The rules are not precise enough for an official to be able to predict whether or not his behaviour is contrary thereto. Articles 13 FCE (2012 edition)

and 3 FCE (2009 edition) only set forth general principles of conduct and are so ambiguous and with offending behaviour so unpredictable, that they cannot serve as a legal basis for a sanction, especially considering that there exists another provision on giving gifts and other benefits – Article 20 FCE (2012 edition) or Article 10 FCE (2009 edition) – that deals more specifically with the behaviour that the federation sought to punish. In any case, the *contra proferentem* interpretive principle mandates that any ambiguity in the provisions be construed in Dr. Chung's favour. Even if the Panel determines the provisions are sufficiently precise, Dr. Chung's conduct did not reach the standard of lacking *"commitment to an ethical attitude"* or *"complete credibility and integrity"*. The same considerations apply to Dr. Chung's Letters to Mr. Blatter. Second, Article 13 FCE (2012 edition) does not even apply to the present case; the applicable provision is Article 3 FCE (2009 edition). The application of Article 13 FCE (2012 edition) violates the principle of non-retroactivity or *tempus regit actum*. If the Panel rules that Article 3 FCE (2009 edition) applies, as it should, and that it is not *ultra petita* for it to determine whether Dr. Chung breached that provision, the Panel would then have to determine whether he sent the GFF Letters *"while performing [his] duties"*, a requirement not contained in Article 13 FCE (2012 edition). Since it is clear that Dr. Chung sent the GFF Letters as a mere supporter of the Korean bid not while performing his duties, and only repeated publicly available information about the GFF, no violation of Article 3 FCE (2009 edition) occurred.

- On Dr. Chung's alleged failure to cooperate in the FIFA investigation: The impossibility to schedule an in-person meeting with the Investigatory Chamber was due to (i) the Investigatory Chamber initially scheduling it during the Lunar New Year holiday in Korea, and (ii) Dr. Chung's extraordinarily busy schedule. Additionally, the 17-day delay after the deadline of 5 May 2014 in answering the Investigatory Chamber's questions of 14 April 2014 was due to a legitimate reason, the well-known national tragedy of 16 April 2014 (the so-called Sewol Ferry Disaster). In any case, FIFA is in no position to complain about this trivial delay considering its own significant, and much longer, delay in issuing the reasoned decisions of the FIFA Appeal Committee and FIFA Ethics Committee. Moreover, Dr. Chung's written responses to the questionnaires were not "vague and incomplete" or untruthful, as was concluded without reason by the Adjudicatory Chamber and Appeal Committee. Dr. Chung never mischaracterized his role or interactions with KOBID or lied about why he did not send the GFF Letters to certain fellow FIFA Executive Committee members. Nor was Dr. Chung unforthcoming about his knowledge regarding the details of the GFF. With regard to the GFF Letters, Dr. Chung had no intention or motive to deliberately conceal them; he simply had difficulty locating them (and had to rely on his staff for assistance) because four years had passed since their sending. Once obtained, he submitted them to the Adjudicatory Chamber. In any case, any delays by Dr. Chung are negligible when compared to the FIFA bodies' unreasonably lengthy delays in taking their decision and issuing their reasoning.

- On the proportionality of the sanction: The sanctions imposed on Dr. Chung are evidently and grossly disproportionate to the offenses allegedly committed when contrasted with those imposed on Messrs. Blatter and Platini for much more serious offenses, and considering the mitigating factors: (i) his stalwart support of FIFA and football activities,

and (ii) his commitment to improving overall transparency in the FIFA decision-making process.

B. The Respondent: FIFA

103. The Respondent requests for the issuance of a CAS award:

> *"1. Dismissing Dr. Chung's prayer for relief.*
>
> *2. Confirming the Decision under appeal.*
>
> *3. Ordering Dr. Chung to pay a significant contribution towards the legal fees and other expenses incurred by FIFA in connection with these proceedings".*

104. The Respondent's submissions, in essence, may be summarized as follows:

- On the alleged due process violations: No procedural violations occurred and, in any case, CAS's *de novo* review in appeals cures all such violations.

- On the GFF Letters: The GFF Letters, which were aimed at convincing his fellow Executive Committee members to vote for Korea's 2022 FIFA World Cup bid, (i) went beyond what was presented at the "Leaders in Football" symposium by announcing that each confederation would decide how to administer the funds received, and, for Messrs. Amadu and Lefkaritis, that each Executive Committee member would also have a say in the administration of funds, (ii) were not made under KOBID's instructions or with their approval, and (iii) proposed a plan not consistent with the proposals of other countries, such as that of England which foresaw a central role for FIFA in deciding how to distribute the funds without seeking to exclude FIFA oversight. Dr. Chung should have known the sensitive nature of the GFF Letters, given FIFA's then ongoing investigations of other FIFA Executive Committee members such as Mr. Adamu. One cannot draw any comparisons between Dr. Chung's work for KOBID's bid and other Executive Committee members' work for their respective countries' bid, since the former acted in an informal and thus inherently opaque way, whereas the others all acted as formal Chairmen of their bid teams. Neither Mr. Valcke's letter of 10 November 2010 nor the Garcia Report legally binds the Ethics Committee or is a conclusive evaluation of Dr. Chung's conduct.

- On the violation of Article 13 FCE (2012 edition): First, Article 13 FCE (2012 edition) and, by extension, Article 3 FCE (2009 edition), is a sufficient legal basis to sanction an individual and conforms to the principle of legality and predictability. Second, Article 13 FCE (2012 edition) is applicable, since Article 3 FCE (2012 edition) stipulates that the 2012 edition applies to conduct whenever it occurred, even if before the issuance of that code, with the exception that an individual cannot be punished for an act not considered as an infringement in the previous version of rules, or be sanctioned by a greater sanction that was previously permissible. While Article 13 FCE (2012 edition) and Articles 3 and 9, para. 1 FCE (2009 edition) are not verbatim, they are equivalent in substance. Even

assuming that the 2009 edition of the FCE applies and not the 2012 edition, Dr. Chung violated Article 3 FCE (2009 edition), as his misconduct occurred *"while performing his duties"*, which is the only additional requirement of the previous version of the rule. The Letters to Blatter also constituted a violation of Article 13 FCE 2012, as in effect he was soliciting Mr. Blatter to intervene in the ethics proceedings against him, which goes beyond the normal right that Executive Committee members have to write to the President to draw attention to matters that need addressing.

- On Dr. Chung's failure to cooperate in the FIFA investigation: Dr. Chung breached Articles 18, 41 and 42 FCE (2012 edition) for (i) submitting answers that were in substance vague and incomplete and not containing the whole truth, (ii) repeatedly failing to provide the GFF Letters until filing his statement of defence to the Adjudicatory Chamber, and (iii) persistently refusing to meet investigators in person or to hold a video-conference for an interview and to respect deadlines.

- On proportionality: The sanction is proportionate to the offenses committed. The Appellant's actions are directly related to a deliberate attempt to influence the Executive Committee's decision to award the 2022 FIFA World Cup to Korea and, as such, are more similar to the so-called *Sunday Times* cases concerning Messrs. Adamu, Diakite and Fushimalohi than those of Messrs. Blatter and Platini. Moreover, the ancillary breaches were serious. More generally, it is dangerous to compare different cases without first-hand information about them and better carefully to analyse the present case, in particular the personal circumstances and conduct of the accused at the time of the offences and during the proceedings, than to resort to mechanical comparisons with other cases. In this regard, several circumstances must be considered as aggravating circumstances, in particular that the Appellant: (i) held the position of a vice president of FIFA at the time of his misconduct, (ii) continues to provide untruthful answers about the circumstances in which he sent the GFF Letters, and (iii) damages the reputation of FIFA and football (an appropriate sanction on an unethical official is necessary during the present sensitive times for FIFA).

V. JURISDICTION

105. Article R47 of the CAS Code provides as follows:

> *"An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body".*

106. According to Article 81, para. 1 FCE: *"Decisions taken by the Appeal Committee are final, subject to appeals lodged with the Court of Arbitration for Sport (CAS) in accordance with the relevant provisions of the FIFA Statutes".*

107. Pursuant to Articles 55, para. 3 and 58, para. 1 of the FIFA Statutes, *"Decisions pronounced by the Appeal Committee shall be irrevocable and binding on all the parties concerned. This provision is subject to appeals lodged with the Court of Arbitration for Sport (CAS)"*, and *"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS […]"*.

108. The Parties do not dispute the jurisdiction of the CAS and confirmed it by signing the Order of Procedure.

109. It follows that the CAS has jurisdiction to decide the present dispute.

VI. ADMISSIBILITY

110. Article R49 of the CAS Code provides as follows:

> *"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document"*.

111. According to Article 58, para. 1 of the FIFA Statues, appeals *"shall be lodged with CAS within 21 days of notification of the decision in question"*.

112. FIFA notified the grounds of the Appealed Decision on 23 March 2017. The Appellant then lodged an appeal at CAS on 13 April 2017, i.e. within the 21 days allotted under Article 58, para. 1 of the FIFA Statutes

113. It follows that the Appellant's appeal is admissible.

VII. APPLICABLE LAW

114. Article R58 of the CAS Code provides as follows:

> *"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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision"*.

115. Pursuant to Article 58, para. 2 of the FIFA Statutes, *"[t]he provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law"*.

116. By reason of those provisions, the Panel must decide the present dispute in accordance with the FIFA Regulations (in particular, the FIFA Code of Ethics or FCE) and, subsidiarily, Swiss law.

117. The Parties agree that the FCE is applicable. Where the Parties disagree is on what version of the FCE applies to the issue of the GFF Letters. According to the Appellant, since the letters were sent in 2010, i.e. before the 2012 edition of the FCE entered into force, Article 3 FCE (2009 edition), in force at the time of the fact, and not Article 13 FCE (2012 edition) must apply.

118. Central to the Parties' dispute is Article 3 ("Applicability in time") of the FCE (2012 edition), which stipulates that: *"This Code shall apply to conduct whenever it occurred including before the passing of the rules contained in this Code except that no individual shall be sanctioned for breach of this Code on account of an act or omission which would not have contravened the Code applicable at the time it was committed nor subjected to a sanction greater than the maximum sanction applicable at the time the conduct occurred. This shall, however, not prevent the Ethics Committee from considering the conduct in question and drawing any conclusions from it that are appropriate"*. According to the Respondent, pursuant to this provision, Article 13 FCE (2012 edition) would apply to the GFF Letters issue, even though the Appellant sent them back in 2010, since the FCE in force at that time contained an equivalent provision, Article 3 FCE (2009 edition).

119. The Panel notes that, according to well-established CAS jurisprudence, intertemporal issues are governed by the general principle *tempus regit actum* or principle of non-retroactivity, which holds that (i) any determination of what constitutes a sanctionable rule violation and what sanctions can be imposed in consequence must be determined in accordance with the law in effect at the time of the allegedly sanctionable conduct, (ii) new rules and regulations do not apply retrospectively to facts occurred before their entry into force (CAS 2008/A/1545, para. 10; CAS 2000/A/274, para. 208; CAS 2004/A/635, para. 44; CAS 2005/C/841, para. 51), (iii) any procedural rule applies immediately upon its entry into force and governs any subsequent procedural act, even in proceedings related to facts occurred beforehand, and (iv) any new substantive rule in force at the time of the proceedings does not apply to conduct occurring prior to the issuance of that rule unless the principle of *lex mitior* makes it necessary.

120. Article 3 FCE (2012 edition) departs from the traditional *lex mitior* principle by reversing it so that the new substantive rule applies automatically unless the old rule is more favourable to the accused. Under either approach, Article 3, para. 2 FCE (2009 edition) should apply to the Appellant's 2010 GFF Letters. The Panel observes that Article 13, para. 3 FCE (2012 edition) provides that *"Persons bound by this Code shall show commitment to an ethical attitude. They shall behave in a dignified manner and act with complete credibility and integrity"*, whereas Article 3, para. 2 FCE 2009 states: *"Officials shall show commitment to an ethical attitude <u>while performing their duties</u>. They shall pledge to behave in a dignified manner. They shall behave and act with complete credibility and integrity"* (emphasis added). The Panel considers that Article 3, para. 2 FCE (2009 edition) adds an extra layer, holding officials responsible to show commitment to an ethical attitude *"while performing their duties"*. As such, that article is more specific and less encompassing than its successor, Article 13, para. 3 FCE (2012 edition), rather than the reverse. Therefore, it must be applied to the Appellants conduct of 2010. In any case, as will be discussed *infra* at para. 177 *et seq.*,

the application of Article 3 FCE 2009 and Article 13 FCE 2012 would produce the same result in the present case, as the Panel is of the view that GFF Letters were in fact sent while the Appellant was *"performing [his] duties"* (see *infra* at paras. 177-180).

121. The Panel must add that, contrary to the Appellant's position, the application of Article 3 FCE (2009 edition) does not contravene the prohibition of *ultra petita* simply because FIFA incorrectly applied Article 13 FCE (2012 edition) in the Appealed Decision. According to the principle of *non ultra petita*, a panel may not grant a party more than what is asked. As constantly stated in CAS jurisprudence, this principle must be applied looking at the parties' requests for relief (see e.g. CAS 2010/A/2283, at para. 14.30, making reference to CAS 2005/A/1838 and CAS 2005/A/866). Indeed, a party wishing to challenge before the Federal Tribunal a CAS award for being *ultra petita* must demonstrate that the CAS panel adjudicated beyond what the parties sought in their motions for relief. The present Panel has been entrusted – at the request of the Appellant – with deciding whether to annul the Appealed Decision's ruling that the Appellant, by sending the GFF Letters, failed to *"show commitment to an ethical attitude"* and to *"behave and act with complete credibility and integrity"*, duties which both Articles 3 FCE (2009 edition) and 13 FCE (2012 edition) cover. Therefore, in applying Article 3 FCE (2012 edition) to assess whether the Appellant violated those duties, the Panel does not go beyond the matter submitted and does not act *ultra petita*.

VIII. MERITS

122. The Appellant requests the Panel to set aside the Appealed Decision, which sanctioned the Appellant with a five-year ban from taking part in any football-related activity (administrative, sports or any other) at national and international level and a fine of CHF 50,000 for various violations of the FCE (2012 edition). The Respondent, on the other hand, seeks full confirmation of the Appealed Decision. In view of the Parties' requests, the Panel must determine whether the Appellant violated Article 3 FCE (2009 edition) and Articles 13, 18, 41 and 42 FCE (2012 edition), and, if so, what is the appropriate sanction. Before doing so, the Panel must address some preliminary issues, including the alleged procedural violations in the FIFA proceedings, which party bears the burden of proof, and what is the standard of proof.

A. The alleged procedural violations in the FIFA proceedings

123. Article R57 of the CAS Code stipulates that a panel has *"full power to review the facts and the law"* and *"may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance"*.

124. Accordingly, this Panel has heard the case *de novo* and must make an independent determination of the correctness of the parties' submissions on their merits, without limiting itself to assessing the correctness of the procedure and decision of the first instance (cf. TAS 98/211 at para. 8; TAS 2004/A/549 at para. 9; CAS 2009/A/1880-1881 at para. 146; CAS 2011/A/2426 at para. 46; TAS 2016/A/4474 at para. 223).

125. Pursuant to well-established CAS jurisprudence, it is this *de novo* character of CAS's appeals proceedings that cures any procedural violations that may have been committed at the previous instance (CAS 94/129 at para. 59; CAS 2000/A/281 at para. 9; CAS 2008/A/1594 at para. 44; CAS 2009/A/1920 at para. 87; TAS 2016/A/4474 at para. 221 *et seq.*). The effect of the CAS appeal system is that issues concerning the manner in which the first instance conducted its proceeding become marginal or *"fade to the periphery"* (TAS 2016/A/4474 at footnote 22; CAS 98/211).

126. The Panel takes note of the Appellant's contention that FIFA violated the Appellant's due process rights at the Adjudicatory Chamber and Appeal Committee by failing to provide him with the full investigation files and upholding Mr. Eckert's refusal to recuse himself from the adjudicatory proceedings.

127. Due to the curative effect of CAS appellate proceedings, the Panel finds it unnecessary to rule on whether FIFA committed such violations against the Appellant because, even assuming the existence of the alleged procedural violations at FIFA level, the present CAS appeals arbitration proceeding has rectified them in hearing the case *de novo* and making an independent determination without affording any deference to the Appealed Decision.

128. In full accordance with the CAS Code, the Panel has permitted the Appellant to present his case fully by filing written submissions, exhibiting documents, testifying, and orally pleading his case in person and through his counsel. The Panel also granted the Appellant the opportunity to submit and comment on the Garcia Report pursuant to Article R56 of the CAS Code (see *supra* at para. 88 *et seq.*). Moreover, it ordered the Respondent to produce to the Appellant additional passages from the interview transcripts of Messrs. Blatter and Valcke in accordance with Article R44.2 and R57 of the CAS Code and granted the Appellant the opportunity to comment on them too (*Idem*). The Garcia Report and the transcripts are the very documents that the Appellant claimed were missing from the investigation files during the FIFA proceedings and which allegedly gave rise to a violation of due process. Thus, in allowing the Appellant to acquire and submit the Garcia Report into the record, to receive all passages of the interview transcripts of Messrs. Blatter and Valcke relevant to his case, and to comment on all the additionally produced documents, the Panel cured the procedural violations that might have occurred at FIFA, including the alleged conflict of interest that may have existed in the FIFA proceedings.

129. The Panel also takes note of the Appellant's argument that CAS's *de novo* review opens the door for international federations to abuse the system and intentionally commit procedural violations, such as unreasonably delaying in the issuance of a decision while "blocking" a party from appealing to CAS through its requirement of exhausting all internal channels before filing an appeal. However, according to long-standing CAS jurisprudence, parties are protected from such alleged abuse under the "denial of justice" principle. According to the CAS, *"[i]f a body refuses without reasons to issue a decision or delays the issuance of a decision beyond a reasonable period of time, there can be a denial of justice, opening the way for an appeal against the absence of a decision"* (CAS 2015/A/4195, citing CAS 2005/A/899; see also CAS award of 15 May 1997, published in REEB M., *Digest of CAS Awards* 1986-1998, p. 539). The Appellant, however, did

not set in motion such an appeal based on a claim of denial of justice and preferred to wait for the delayed reasoning.

B. Burden of proof

130. According to CAS jurisprudence, the burden of proof is allocated in accordance with the rules of law governing the merits of the dispute (CAS 2016/A/4501, para. 110). As the Panel determined *supra* at para. 114 *et seq.*, the rules of law applicable to the present case are the various FIFA regulations, and subsidiarily, Swiss law.

131. Pursuant to Article 52 (*"Burden of Proof"*) of the FCE (2012 edition), *"[t]he burden of proof regarding breaches of provisions of the Code rests on the Ethics Committee"*. Accordingly, FIFA bears the burden of proving that the Appellant violated Article 3 FCE (2009 edition) and Articles 13, 18, 41 and 42 FCE (2012 edition). That said, in accordance with Swiss law, each party shall bear the burden of proving the specific facts and allegations on which it relies.

132. The Panel notes that, although it is common ground between the Parties that the burden of proving the alleged violations of the FCE rests on FIFA, the Appellant argues that such burden with respect to conduct occurring before the issuance of the 2012 FCE derives solely from Swiss law and not Article 52 FCE (2012 edition). Essentially, the Appellant contends that Swiss law on burden of proof must apply since (i) Article 3 FCE (2012 edition) establishes the non-retroactivity of provisions unless an equivalent one exists in the 2009 edition of the FCE, and (ii) that previous edition does not contain a provision equivalent to Article 52 (*"Burden of proof"*) of the FCE (2012 edition). The Panel does not accept this argument.

133. First of all, the Panel notes that, prior to the 2012 edition of the FCE coming into effect, CAS panels have held that FIFA carried the burden of proof in Ethics Committee cases by referring to Article 99, para. 1 of the FIFA Disciplinary Code (CAS 2016/A/4501, para. 113, CAS 2011/A/2625, para. 156). Next, the Appellant overlooks CAS jurisprudence to the consistent effect that, pursuant to the legal principle of *tempus regit actum*, procedural matters are governed by the rules in force at the time of the procedural act in question (CAS 2004/A/635, para. 47; CAS 2006/A/1008; CAS 2016/A/4501, para. 92). Therefore, given that burden of proof is a procedural principle, the Panel must apply in the present proceeding the rule on burden of proof set out in Article 52 FCE (2012 edition). In any event, Article 52 FCE appears perfectly in harmony with the Swiss law notion of burden of proof as codified in Article 8 of the Swiss Civil Code ("CC"): *"Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact"*.

C. Standard of proof

134. According to the Appellant, the applicable standard of proof should be *"to a degree of certainty"* – something akin to the "beyond any reasonable doubt" standard – for conduct occurring before the 2012 edition of the FCE came into effect, i.e. for the disciplinary consequences of the GFF Letters. The Appellant asserts, as he did with burden of proof, that, in view of the non-retroactivity provision of Article 3 FCE (2012 edition), the absence of a provision

equivalent to Article 51 (*"Standard of proof"*) of the 2012 FCE means that Swiss law on standard of proof must apply.

135. The Panel rejects this Appellant's argument both for the reasons set forth above at para. 132-133, *mutatis mutandis*, and because the 2009 edition of the FCE did govern the issue of standard of proof by way of a reference to the FIFA Disciplinary Code (Article 17, para. 2 of the 2009 FCE: *"All organisational and procedural rules of the FIFA Disciplinary Code apply directly in the context of all proceedings conducted by the Ethics Committee"*); the 2009 FIFA Disciplinary Code, in turn, did have at the time a specific provision on standard of proof (Article 97, para. 3). Therefore, the Panel finds that the standard of proof set forth in Article 51 FCE (2012 edition) applies to the disciplinary matters under review in the present appeal. In any event, as will be seen in the following paragraph, the standard of proof would have been the same even applying the FIFA rules of 2009.

136. Pursuant to Article 51 FCE (2012 edition), *"[t]he members of the Ethics Committee shall judge and decide on the basis of their personal conviction"*. Identically, Article 97, para. 3 of the 2009 version of the FIFA Disciplinary Code (applicable, as seen, through Article 17, para. 2 of the 2009 FCE) provide that the judging bodies *"decide on the basis of their personal convictions"*. Therefore, "personal conviction of the judging body" is the applicable standard of proof for all conduct under review in the present appeal, both under the 2012 and the 2009 rules. The CAS has consistently equated this standard of proof to that of "comfortable satisfaction" (see e.g. CAS 2011/A/2426, para. 88; CAS 2011/A/2625, para. 153; CAS 2016/A/4501, para. 122), which falls between "beyond reasonable doubt" and "balance of probabilities" on the standard of proof spectrum (*Idem*; CAS 2015/A/4163, para. 72). The standard of "comfortable satisfaction of the judging body bearing in mind the seriousness of the allegation" has also been constantly applied by CAS panels in disciplinary matters (chiefly in doping cases but not only; see e.g. CAS 2010/A/2172), including in cases specifically related to the behaviour of FIFA officials (e.g. CAS 2011/A/2425; CAS 2011/A/2426; CAS 2011/A/2433; CAS 2011/A/2625; CAS 2016/A/4501).

137. In view of Article 51 FCE (2012 edition) and the abovementioned CAS jurisprudence, the Respondent must thus prove to the "personal conviction" of the Panel, i.e. to its "comfortable satisfaction", that the Appellant has violated Article 3 FCE (2009 edition) and Articles 13, 18, 41 and 42 FCE (2012 edition).

D. Violation of Article 3 FCE (2009 edition) for sending the GFF Letters

138. Pursuant to Article 3, para. 2 of the FCE (2009 edition): *"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"*.

139. Therefore, the Panel must determine whether in sending the GFF Letters (i) the Appellant acted as an "official", and (ii) failed to show commitment to an ethical attitude and to act with complete credibility and integrity, while (iii) performing his duties. However, the Panel must, based on Appellant's position, first address whether (a) Mr. Valcke's letter of 10 November 2010 precluded the FIFA Ethics Committee from investigating or initiating an ethics

proceeding against the Appellant in relation to the GFF Letters or whether it anyways constitutes conclusive evidence that he behaved correctly, and (b) Article 3 FCE is a sufficient legal basis to sanction the Appellant and conforms to the principle of legality and predictability.

a. Mr. Valcke's letter of 10 November 2010 does not preclude investigation or ethics proceeding against Dr. Chung

140. In his letter of 10 November 2010, Mr. Jerome Valcke – the General Secretary of FIFA at the time – told the Appellant that *"we consider the integrity of the Bidding Process not to be affected and consequently deem the matter [of the GFF Letters] as closed"*. The question for the Panel is whether this letter has any legal relevance.

141. The Panel observes that at the time of the letter, under Article 14, para. 1 (*"Duty of disclosure and reporting"*) of the 2009 FCE, officials had to report any evidence of violations of conduct to the FIFA General Secretary, who in turn had to report it to the FIFA Ethics Committee. That article reads: *"Officials shall report any evidence of violations of conduct to the FIFA General Secretary, who shall report it to the competent body"*. Furthermore, according to Article 16, para. 1 (*"Disclosure"*) of the FCE (2009 edition), only a limited group of bodies or officials, including the FIFA General Secretary, could lodge complaints before the FIFA Ethic Committee. That provision stipulates: *"FIFA accepts complaints only from the Executive Committee of a confederation, members of the FIFA Executive Committee and from the FIFA Secretary General"* (emphasis added).

142. However, the Panel notes that no language in the FIFA regulations (of 2009 or 2012) suggests that the Ethics Committee would be bound by statements or directions of the other FIFA bodies or officials, or, more specifically, the FIFA General Secretary. On the contrary, under the FIFA rules, the Ethics Committee was (and continues to be) a formally independent body. Article 85 (*"Independence"*) of the 2009 FIFA Disciplinary Code provided that the *"judicial bodies of FIFA pass their decisions entirely independently; in particular, they shall not receive instructions from any other body"* and even that a *"member of another FIFA body may not stay in the meeting room during the judicial bodies' deliberations unless they have explicitly summoned him to attend"*. Articles 28, para. 1 and 34, para. 1 of the FCE (2012 Edition) provide that the *"investigatory chamber shall investigate potential breaches of provisions of this Code on its own initiative and ex officio at its full and independent discretion"* and that the *"members of the Ethics Committee shall manage their investigations and proceedings and render their decisions entirely independently and must avoid any third-party influence"*.

143. In fact, the FCE (2009 edition) granted only to the Ethics Committee the right to judge ethics-related cases by way of Article 15 FCE (2009 edition), which reads: *"The Ethics Committee shall judge cases that come under the jurisdiction of FIFA"*. The FIFA General Secretary did not have such decision-making right and was only tasked with forwarding evidence and filing complaints.

144. Thus, the General Secretary's letter of 10 November 2010 cannot be deemed a binding decision and must be viewed instead as the administrative act of not forwarding a complaint against the Appellant to the Ethics Committee. As such, it could not have closed the matter and precluded the Ethics Committee from independently reopening an investigation and

initiating a disciplinary proceeding against the Appellant. Nor could it constitute conclusive evidence for the Ethics Committee.

145. Therefore, the Panel, as was the Ethics Committee, is free to assess for itself whether the GFF Letters affected the integrity of the bidding process and is not constrained by the FIFA General Secretary's determination not to submit a disciplinary complaint against the Appellant.

146. The same is true of the Investigatory Chamber's interview with Dr. Han Sun-joo, the former Chairman of KOBID, in March 2014. In that interview, Dr. Borbély apparently told Dr. Han that *"there are no allegations against you or your team"*. The Panel finds that this and any other statements by Dr. Borbély – who served as the Chairman of the Investigatory Chamber in the Appellant's case after Mr. Garcia stepped down – or other members of the Investigatory Chamber made during the investigatory interviews or even in the Garcia Report, cannot bind the Adjudicatory Chamber of the Ethics Committee (and, by extension, the Appeal Committee and now the CAS) or constitute conclusive evidence. This is because the Investigatory Chamber only determines whether there is a *prima facie* case, conducts an investigation, forwards the investigation files and recommends a sanction (Article 28 FCE, 2012 edition), whereas it is the Adjudicatory Chamber that decides the case (Article 29 FCE, 2012 edition). In any event, since Dr. Chung did not hold an official position or function with KOBID, Dr. Borbély's reference to "your team" could not possibly include him.

b. Article 3 FCE (2009 edition) is a sufficient legal basis to sanction Dr. Chung and conforms to the principles of legality and predictability

147. Article 3 FCE (2009 edition), entitled *"General rules"*, so provides:

> *"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".*

148. The Appellant challenges the applicability of Article 3 FCE (2009 edition) to his conduct on the basis that such provision is not a sufficient legal basis to sanction the Appellant and does not conform to the principles of legality and predictability.

149. The Panel agrees with the Appellant that CAS jurisprudence requires, for a sanction to be imposed, that sports regulations proscribe the misconduct with which the subject is charged,

i.e. *nulla poena sine lege* (principle of legality), and that the rule be clear and precise, i.e. *nulla poena sine lege clara* (principle of predictability). As a matter of course, CAS panels have held that sports organizations cannot impose sanctions without a proper legal or regulatory basis and that such sanctions must satisfy a predictability test. See CAS 2001/A/330 at para. 17, CAS 2007/A/1363 at para. 16, CAS 2008/A/1545 at paras. 93-97, CAS 2014/A/3516 at para. 104, CAS 2014/A/3832 & 3833 at paras. 84-86.

150. The Panel finds that, in accordance with that jurisprudence, Article 3 FCE (2009 edition), in proscribing that all officials show commitment to an ethical attitude and behave and act with complete credibility and integrity, is sufficiently clear and precise and unambiguous and provides a sufficient legal basis to sanction the Appellant.

151. The Panel considers that a rule that is broadly drawn, such as Article 3 FCE (2009 edition), does not necessarily lack sufficient legal basis because of that characteristic. Indeed, the CAS has previously held that *"disciplinary provisions are not vulnerable to the application of [nulla poena sine lege clara] merely because they are broadly drawn"* as *"[g]enerality and ambiguity are different concepts"* (CAS 2014/A/3516, at para. 105). Thus, the fact that Article 3 FCE (2009 edition) is capable of catching a multitude of acts as unethical or lacking credibility and integrity does not mean that it lacks sufficient legal basis.

152. According to the principle of predictability, the offenses and sanctions of a sports organizations must be predictable, to the extent that those subject to them must be able to understand their meaning and the circumstances in which they apply (CAS 2008/A/1545, para. 30 *et seq.*; CAS 2004/A/725, para. 20 *et seq.*). In the Panel's opinion, however, it is unnecessary and impractical for the FCE to list all acts that would fall under the offense described in Article 3, para. 2 FCE (2009 edition), as an official, in reading the rule, could clearly make the distinction between what is an ethical attitude and what is not, what is acting with complete credibility and integrity and what is not.

153. The Panel is of the view that the inherent vagueness of concepts such as ethics and integrity does not preclude them to be used by sports legislators as a basis to impose disciplinary sanctions on officials that do not conform their behaviour to those standards. Indeed, in sports there are other notions, such as "unsportsmanlike conduct" or "sporting fairness", that are inherently vague and nonetheless may serve as basis to impose disciplinary sanctions. In this connection, it must be recalled that, according to the established case law of the Swiss Federal Tribunal, disciplinary sanctions imposed by sport associations must conform to civil law standards and not to criminal law ones (see e.g. SFT Judgement of 31 March 1999, 5P.83/1999, at para. 8b), and civil law standards are often inherently vague and reveal their full meaning on the basis of judicial application (a typical example would be the notion of good faith set out in Article 2 CC).

154. The Panel is of the view that the standards of conduct required of officials of an international federation (especially one of the magnitude of FIFA) must be of the highest level because the public must perceive sports organizations as being upright and trustworthy, in order for those organizations to legitimately keep governing over their sports worldwide. As was stated in a previous CAS award concerning a member of the FIFA Executive Committee, it *"is not merely*

of some importance but is of crucial importance that top football officials should not only be honest, but should evidently and undoubtedly be seen to be honest. The required standard of behaviour for top football officials is very high, as nothing is to be done which creates even a suspicion that the exercise of their duties (and voting to award the World Cup is possibly one of their most important duties) could be influenced by an improper interference" (CAS 2011/A/2426 at para. 130). Therefore, the Panel finds that it is legitimate and even desirable that sports federation include in their ethical codes a general rule residually forbidding any unethical conduct of officials in order to cover all unacceptable situations that would not be caught by more specific provisions.

155. In fact, the Panel rejects the Appellant's position that the existence of a more specific Article 10 (*"Accepting and giving gifts and other benefits"*) of the FCE (2009 edition) affects whether the more general Article 3 FCE (2009 edition) has sufficient legal basis. The Appellant argues that the Adjudicatory Chamber ruling out his conduct as a possible breach of Article 10 FCE (2009 edition) precludes a finding that the Appellant breached the more general Article 3 FCE (2009 edition). The Panel, however, considers that conduct which does not reach the threshold of one ethical offense (in this case, Article 10 FCE, 2009 edition) may still be considered unethical and trigger a violation of a more general rule (here Article 3 FCE, 2009 edition).

156. In the Panel's view, whether the contested act is ethical must be evaluated under Article 3 FCE (2009 edition) independently of what assessment it received (or would receive) under a more specific (but unapplied) provision of the FCE. The Panel does not agree with the Appellant that the FIFA bodies simply *"remedied the lack of applicability"* of the more specific provision by applying the more general one or that it *"cherry-picked"* provisions of the FCE. Rather, the Panel finds that the FIFA bodies considered the Appellant's conduct as only crossing the threshold of Article 3 FCE (2009 edition), and not meeting the requisites of an infringement of Article 10 FCE (2012 edition).

c. Dr. Chung is an "official" as defined by the 2009 edition of the FCE

157. Pursuant to Article 1 FCE (2009 edition), the *"Code applies to all officials. Officials are all board members, committee members, referees, and assistant referees, coaches, trainers and any other persons responsible for technical, medical and administrative matters in FIFA, a confederation, association, league or club"*.

158. It is common ground between the Parties, and the Panel confirms, that the Appellant, by virtue of his position as a FIFA Executive Committee member, a vice-president of FIFA and an honorary KFA president at the time he sent the GFF Letters, was an official as defined by the FCE.

d. Dr. Chung failed to show commitment to an ethical attitude and to act with complete credibility and integrity

159. In order to determine whether the Appellant failed to show commitment to an ethical attitude and to act with complete credibility and integrity, the Panel must analyse the content of the GFF Letters and the surrounding circumstances.

160. The Panel first rejects the Appellant's position that the GFF Letters only contained his views on the "merits" of Korea's bid and simply repeated the information announced about the GFF at the "Leaders in Football" symposium held 3 days earlier.

161. The GFF Letters did not in fact contain his views on the "merits" of Korea's bid at all. The Appellant makes no mention of the bidding country and host cities, stadiums and training sites, transportation, accommodation, etc. Indeed, when questioned at the hearing, the Appellant was unable to point to any part of the letter that dealt with the aforementioned topics. Instead, counsel for the Appellant argued in oral pleadings that the GFF, in being the "legacy" portion of Korea's bid (i.e. the football development requirement of Chapter 3 of the Bidding Agreement, see *supra* para. 7), qualified as the merits of that bid. The Panel finds that, since the GFF was not contained in Korea's bid book, it did not constitute part of the "merits" of Korea's bid. In any case, the importance of the letter's characterization is marginal considering that, as will be discussed in the following paragraphs, the Appellant went beyond what KOBID unveiled as the GFF in the "Leaders in Football" symposium.

162. The Panel observes that the GFF Letters contain two lines that, according to evidence submitted by the Parties, had not been made public or considered an official component of the GFF. That is, the Appellant included new information in the GFF Letters and did not simply repeat to certain of his fellow Executive Committee members the publicly disclosed features of the fund.

163. The first sentence to which the Panel refers states that each confederation would administer its own funds. It reads: *"Most significantly, the Fund will be distributed to the respective continents and will be left to each confederation to administer for concrete development projects"*. The Appellant included this sentence in all 18 GFF Letters.

164. The second sentence to which the Panel refers added *"We will also make sure that the FIFA Exco Members will have a say in the distribution of the Fund for their respective continents"*. Notably, the Appellant only included this sentence in the letters to Messrs. Adamu and Lefkaritis, who were not presidents of a confederation and, as such, not captured under the first sentence.

165. The Panel finds that the Appellant failed to explain in a clear and direct manner the meaning of the first sentence. At the hearing, when questioned about what *"most significantly"* meant in that sentence, the Appellant answered rather ambiguously, merely indicating that he was echoing the words Dr. Han made at the "Leaders in Football" symposium, without any further explanation as to what it meant. As to the first sentence as a whole, the Appellant declared that this sentence in no way implied that the confederations could do whatever they wanted with the funds and that he did not even have the power to grant the confederations that capability. Moreover, the Appellant explained that the mere increase in the role of a confederation in the administration of funds did not eliminate FIFA's oversight of that activity. However, the Panel finds that this testimony appears to be inconsistent with the statement that administration of funds would be *"left for each confederation"*.

166. The same is true about the second sentence; the Appellant failed to provide a clear and direct explanation of its meaning. On cross-examination at the hearing, the Appellant declared, also

ambiguously, that the *"we"* therein referred to KOBID, with the engagement of the Korean government, Korean people and international community, and that the sentence as a whole did not have much significance, without again further explanation as to what it meant.

167. The Panel observes that the information contained in these two sentences was not included in the bid book or publically announced. It is true that the New York Times article reported that KOBID announced the GFF at the "Leaders in Football" symposium. However, that article only mentions how much of the $777 million raised each confederation would receive (see *supra* at para. 9). The article does not mention *how* the funds each confederation received would be administered. There is in fact no evidence on the record to support that the confederations would be left to administer the funds received. To be sure, the Appellant only submitted a press release which states that *"Korea plans to leave it to confederations to administer the funds"*. However, leaving aside the fact that the press release does not indicate what role the individual Executive Committee members would have in that administration (as did the GFF Letters to Messrs. Adamu and Lefkaritis), the Appellant has failed to submit any proof that the press release was ever published and about the type of distribution it had. Therefore, even though the Parties do not dispute its authenticity, the press release is irrelevant for determining whether the information contained in the two contested sentences of the GFF Letters was publicly available. The Panel observes that even in the final presentation KOBID made on 1 December 2010, the material did not include a description of how the funds would be administered. The material only contains a map of the world and, in a text bubble above the geographical area corresponding to each confederation, the amount that each confederation would receive. Nor is there any proof that the manner of administration of funds, as proposed by the Appellant in the GFF Letters, was discussed at that final presentation.

168. The Panel does not have an issue with the majority of the content of the GFF Letters in which the Appellant shares the features of the GFF as presented at the "Leaders in Football" symposium with fellow Executive Committee members. Nor does it have an issue with the different pleasantries and other subtle personalisations of the GFF Letters, such as any references to previous or future encounters.

169. However, the Panel is satisfied to comfortable satisfaction that, by including in the GFF Letters the two sentences about the role of the confederation and individual Executive Committee members in the administration of funds, when viewed under the totality of circumstances (including the personal meetings with several Executive Committee members where the GFF was discussed; see *supra* at para. 17), the Appellant engaged in conduct that reached the standard of unethical conduct, lacking complete credibility and integrity in violation of Article 3, para. 2 FCE (2009 edition). The Panel is troubled by the fact that in the GFF Letters the Appellant went beyond what KOBID presented as the GFF at the "Leaders in Football. The Appellant included new features of the GFF, implicitly but clearly suggesting that the various confederation leaders and, in the case of Messrs. Adamu and Lefkaritis only, the individual Executive Committee members, would have a decisive role in the administration of funds, which would translate in a tempting boost of their personal power which could be exercised for better or for worse.

170. The Appellant's conduct is particularly disconcerting taking into account the surrounding circumstances, specifically that, as the Appellant has admitted, (i) the Appellant sent the GFF Letters without KOBID's approval or knowledge, (ii) the Appellant did not hold an official position or function with KOBID, (iii) the purpose of the letters was to convince his fellow Executive Committee members to vote for Korea's 2022 FIFA World Cup bid, (iv) the Appellant communicated different information to the different members of the Executive Committee, i.e. that not all Executive Committee members who would decide the host of the 2022 FIFA World Cup received equivalent information about the working of the GFF plan, and (v) the concerns that had already been raised at the time about unethical conduct by some Executive Committee members, including the potential misuse of football funds.

171. As a vice-president of FIFA and Executive Committee member, the Appellant was in an exposed, prominent and sensitive position and thus he knew, or should have known, that sending communications related to KOBID's bid in a selective fashion, with previously undivulged features of the GFF contained therein, tailored to each recipient to earn a vote, and without the approval or knowledge of KOBID, would face high scrutiny and could fall foul of Article 3, para. 2 FCE (2009 edition).

172. The Panel recognizes that it was general practice at the time for FIFA officials to campaign for their home countries' FIFA World Cup bids. However, it rejects the Appellant's argument that due to that practice neither he nor any reasonable person could have reasonably predicted that sending the GFF Letters would be a violation of Article 3, para. 2 FCE (2009 edition), failing to reach the standard of *"commitment to an ethical attitude"* or *"complete credibility and integrity"*. The Panel agrees that the Appellant had the right to support his country's bid for the 2022 FIFA World Cup. If the GFF Letters had been equally sent to all Executive Committee members, had been approved by KOBID, had only repeated the information that was publicly available and had not impliedly suggested that the addressees could gain some personal advantage in the administration of the funds (at the very least in terms of political influence within their respective Confederation), there would not have been a violation of Article 3. However, in sending the GFF Letters with the content and under the circumstances described *supra* at para.160 *et seq.*, the Appellant's support went beyond what is acceptable behaviour. The conduct in question is not his attempt to convince his fellow Executive Committee members to vote for KOBID's bid, but rather the way in which he attempted to convince them, which he knew or, as any reasonable person, should have known was inappropriate under Article 3, para. 2 FCE (2009 edition).

173. The Panel understands that the Appellant may not have focused on the potential impact of the two inappropriate sentences and that he subjectively did not believe that he was engaging in unethical conduct. Nevertheless, given his high position within FIFA and his dual role as a member of its decision-making body and a supporter of his country's bid, as well as his understanding of the ethical scrutiny that FIFA was then under, the Appellant had an obligation to exercise a duty of care to act in an ethical manner and to protect the integrity of FIFA, as set out in its rules.

174. The Panel deems that the Appellant's evident reluctance in exhibiting all the GFF Letters, notwithstanding the repeated requests from FIFA bodies (see supra at para. 26 *et seq.* and *infra*

at para. 193 *et seq.*), is by itself revelatory of the Appellant's feeling that those letters included passages that may have gone beyond an ordinary and legitimate support for its country's bid to host the World Cup.

175. The Panel also rejects the Appellant's argument that under the standard applied at the time to other allegedly analogous situations, FIFA cannot hold that Dr. Chung violated Article 3, para. 2 FCE (2009 edition) with the GFF Letters. At the hearing, the Appellant pointed to the *"Report on Issues Related to the Russian Bid Team"* (the "Russian Bid Team Report"), in which Mr. Borbély concluded that Mr. Vitaly Mutko, the Chairman of the Russia Bid Committee and FIFA Executive Committee member, in contacting fellow FIFA Executive Committee members to invite them to visit Russia (in some cases, accompanied by their families) with all expenses paid, and/or thanking them for the opportunity for the Russian Bid Committee to present its bid, did not violate FIFA conduct rules. The Panel finds that, on the one hand, as mentioned *supra* at para.146, the Garcia Report does not bind the Ethics Committee, or, by extension, the CAS, nor does it provide conclusive evidence. Moreover, Mr. Mutko's conduct and the Appellant's are not comparable; unlike with Mr. Mutko, the issue with the Appellant's conduct is that he introduced features of the GFF not previously (or even subsequently) presented by KOBID, in a selective manner and with different information deliberately targeting only certain members of the Executive Committee.

176. In light of the foregoing, the Panel is satisfied to its comfortable satisfaction that in sending the GFF Letters the Appellant failed to show commitment to an ethical attitude and to act with complete credibility and integrity, as required by Article 3, para. 2 FCE (2009 edition).

e. Dr. Chung sent the GFF Letters "while performing [his] duties"

177. The Panel must next determine whether the Appellant sent the GFF Letters *"while performing [his] duties"*.

178. The Panel rejects the Appellant's argument that it is not entirely clear to what "duties" Article 3 FCE (2009 edition) refers and that it is obscure and ambiguous when read in the context of the entire sentence. To the Panel it is obvious that the phrase refers to his duties as an *"official"*, with which the provision begins. In view of this, the question for the Panel is whether the Appellant was performing his duties as a FIFA Executive Committee member, a vice-president of FIFA and/or KFA honorary president, all of which fall under the definition of *"official"* in Article 1, para. 1 FCE (2009 edition).

179. The Panel deems that the Appellant was in fact acting as a FIFA Executive Committee member and a vice-president of FIFA when he sent the GFF Letters. The CAS has previously held that the phrase *"while performing their duties"* in Article 3, para. 2 FCE (2009 edition) should not be interpreted narrowly and extends to *"whenever he/she is involved in something (a conversation, an activity, etc.) that is related to or connected with his position(s) in football"* (CAS 2011/A/2425, at para. 156). The Panel considers that the Appellant engaged in activity related to or connected with his positions in football because he sent the GFF Letters to fellow Executive Committee members involved in the bidding process for the 2022 FIFA World Cup bid, wrote about that very same bidding process on FIFA letterhead, and signed as a vice-president of FIFA. The

facts that the Appellant does not mention FIFA's official position on the GFF or involvement with the GFF in the letters, or that he included his personal address and email in the footer of the letters, or that he did not send them externally to other stakeholders in football, do not make the letters unrelated and unconnected to his positions in football. Even if the Appellant had presented himself in the letter as a mere private supporter of the Korean bid, the content of the letter alone would qualify it as related to or connected to his positions in football. In this respect, the letter cannot, contrary to the Appellant's allegation, be compared to a simple birthday congratulation written on FIFA letterhead.

180. The Panel thus concludes that Appellant acted *"while performing [his] duties"* went he sent the GFF Letters.

f. Conclusion

181. In light of the foregoing, the Panel holds to its comfortable satisfaction that the Appellant violated Article 3, para. 2 FCE (2009 edition) by sending the GFF Letters.

E. No violation of Article 13 FCE (2012 edition) for sending the Letters to Mr. Blatter

182. On 4 February and 8 May 2015, the Appellant sent two Letters to Mr. Blatter, in which he complained about the unfairness of the disciplinary proceeding against him (see *supra* at paras. 47 and 51).

183. The Appellant sent the Letters to Mr. Blatter in 2015 after the 2012 edition of the FCE came into effect. Therefore, the applicable provision to assess the Appellant's conduct here is Article 13, para. 3 FCE (2012 edition). That provisions reads: *"Persons bound by this Code shall show commitment to an ethical attitude. They shall behave in a dignified manner and act with complete credibility and integrity"*. Accordingly, the Panel must assess whether in sending the Letters to Blatter (i) the Appellant acted as an "official", and (ii) failed to show commitment to an ethical attitude and to act with complete credibility and integrity.

184. Preliminarily, the Panel confirms that Article 13, para. 3 FCE (2012 edition) does provide a sufficient legal basis to sanction Dr. Chung and conforms to the principle of legality and predictability for the reasons already set out *supra* (at para. 148 *et seq.*) in reference to Article 3 FCE (2009 edition), *mutatis mutandis*.

185. Turning to the first requirement of Article 13, para. 3 FCE (2012 edition), the Panel holds that the Appellant did act as an "official" for the reasons explained *supra* at paras. 158 and 177 *et seq*.

186. As to the second requirement of the provision, the Panel has in mind the following considerations. The Panel recognizes that it is impermissible for a party under investigation or in a legal proceeding to interfere therewith by, for instance, attempting to influence a member of the investigatory or adjudicatory body through external means, and that such an act would indeed violate Article 13, para. 3 FCE (2012 edition). However, the Panel is not satisfied to its comfortable satisfaction that in the Letters to Mr. Blatter, the Appellant

attempted to use "political means" to influence the ethics proceedings against him, as the Appeals Committee put it. The Panel considers that the Appellant sought only to complain about what he believed in good faith to be an unfair and politically-motivated proceeding.

187. The Panel draws this conclusion from examining the content of the letters and the Appellant's testimony. First, the Panel observes that (i) in the first letter, the Appellant complains that Mr. Borbély's letter to him of 20 January 2015 was imprecise, threatening, coercive and "dragged-out" due to controversy that FIFA and Mr. Blatter then faced with regard to the 2022 FIFA World Cup bid, and (ii) in the second letter, the Appellant complained that the proceeding against him had *"deteriorated to such a level that it requires immediate addressing"* from Mr. Blatter and was unfair and impartial, and accused the FIFA Ethics Committee of predetermining the investigation's outcome. Second, the Panel finds credible the Appellant's testimony that *"I had every reason to suspect that Mr. Blatter was using the Ethics Committee for his personal grievances, and it was well within my rights to send him a letter"*. In regard to his suspicion, the Panel finds it highly relevant that over the years, as proven through the evidence on record, the Appellant had opposed Mr. Blatter on many issues and pushed to fight against FIFA corruption. Further, with respect to the Appellant's belief that he was within his rights in sending the letters, the Panel finds it relevant that, as FIFA itself confirmed in the Adjudicatory Chamber's decision and in its written submission in the present appeal, the Appellant had the right as a FIFA official to write to the FIFA President about problems he felt needed to be addressed.

188. Based on the foregoing, the Panel does not consider that the Appellant's Letters to Mr. Blatter were unethical or lacking complete credibility and integrity. As a result, the Panel holds that the Appellant did not violate Article 13, para. 3 FCE (2012 edition) with respect to said letters.

F. Violations of Articles 18, 41 and 42 FCE (2012 edition)

189. Preliminarily, the Panel recognizes the importance that sports governing bodies establish rules in their respective ethical and disciplinary codes requiring witnesses and parties to cooperate in investigations and proceedings and subjecting them to sanctions for failing to do so. Sports governing bodies, in contrast to public authorities, have extremely limited investigative powers and must rely on such cooperation rules for fact-finding and to expose parties that are violating the ethical standards of said bodies. Such rules are essential to maintain the image, integrity and stability of sport.

190. In the present case, the Respondent alleges that the Appellant violated his duty of cooperation codified in Articles 18, 41 and 42 FCE (2012 edition), which read as follows:

Article 18 (*"Duty of disclosure, cooperation and reporting"*):

> *"1. Persons bound by this Code shall immediately report any potential breach of this Code to the secretariat of the investigatory chamber of the Ethics Committee.*
>
> *2. At the request of the Ethics Committee, persons bound by this Code are obliged to contribute to clarifying the facts of the case or clarifying possible breaches and, in particular, to declare details of their income and provide the evidence requested for inspection".*

Article 41 (*"Obligation of the parties to collaborate"*):

> *"1. The parties shall be obligated to act in good faith during the whole proceedings.*
>
> *2. The parties shall be obligated to collaborate to establish the facts of the case. In particular, they shall comply with requests for information from the investigatory chamber and the adjudicatory chamber of the Ethics Committee and with an order to appear in person.*
>
> *3. Whenever necessary, the parties' statements may be verified using the appropriate means.*
>
> *4. If the parties are dilatory in responding, the chairman of the appropriate chamber may, after warning them, impose further disciplinary measures on them.*
>
> *5. If the parties fail to collaborate, the investigatory chamber may prepare a final report using the file in its possession or the adjudicatory chamber may reach a decision on the case using the file in its possession, taking into account the conduct of the parties to the proceedings".*

Article 42 (*"General obligation to cooperate"*):

> *"1. At the request of the Ethics Committee, the persons bound by this Code are obliged to contribute to establishing the facts of the case and, especially, to provide written or oral information as witnesses. A failure to cooperate may lead to a sanction in accordance with this Code.*
>
> *2. Witnesses are obliged to tell the absolute and whole truth and to answer the questions put to them to the best of their knowledge and judgement.*
>
> *3. If the witnesses are dilatory in responding, the chairman of the appropriate chamber may, after warning them, impose further disciplinary measures on them".*

191. The Panel first confirms that the Appellant was subject to Articles 18, 41 and 42 FCE (2012 edition). As a person bound by the FCE pursuant to Article 2 (*"This Code shall apply to all officials… who are bound by this Code on the day the infringement is committed"*) and considering that during the preliminary investigation into the 2018 and 2022 World Cup bidding process, the Investigatory Chamber questioned the Appellant as a "witness", he was subject to Articles 18 and 42 FCE. Later, on 20 January 2015, when the Ethics Committee opened the investigation proceedings, he became subject to Article 41 FCE due to his status as a *"party"* to a proceeding.

192. The Respondent submits, as held in the Appealed Decision, that the Appellant violated his duty to cooperate under the 2012 FCE for allegedly (a) delaying the production of the GFF Letters, (b) failing to meet with the then Chairman of the Investigatory Chamber, Mr. Garcia, in person or by video-conference and to respect deadlines (specifically, of the First Questionnaire sent by the Investigatory Chamber), and (c) submitting answers to the Questionnaires that were *"vague and incomplete"* and did not contain the *"absolute and whole truth"*. In light of Appellant's contention, the Panel must assess whether the Appellant violated his duty of cooperation under the FCE. The Panel will address each of Respondent's allegations separately.

a. The delay in producing the GFF Letters

193. The Panel finds that the Appellant did significantly delay in producing the GFF Letters to FIFA. The Panel observes that the first time FIFA requested the GFF Letters was on 10 November 2014 in a letter from Mr. Valcke, in response to which the Appellant (i) expressed his unhappiness with the request to divulge his private correspondence with his FIFA colleagues, and (ii) provided only one of the GFF Letters. Then, in his answers to the First Questionnaire, which he submitted to the Investigatory Chamber on 22 May 2014, he also annexed only one GFF letter. Later on, in his answers to the Second Questionnaire submitted on 27 February 2015, the Appellant indicated that he did not keep copies of the GFF Letters, adding that he would search for them and, if he found any, forward them to the Investigatory Chamber. Despite the Investigatory Chamber's repeated requests, it was not until 21 August 2015, i.e. 10 months after the first request, that the Appellant submitted all 18 of the GFF Letters to the Adjudicatory Chamber as exhibits to his statement of defence.

194. When the Panel asked the Appellant at the hearing what he did differently to obtain the GFF Letters in August 2015, he failed to provide a convincing answer. He explained in a rather vague and ambiguous manner that he simply told his staff to find the letters and is unsure how they obtained them. While the Panel finds insufficient evidence to hold that he intended deliberately to conceal the GFF Letters, it does conclude that he unreasonably and with insufficient diligence delayed in providing them to FIFA. This constitutes a breach of his duty to cooperate under Articles 18, 41 and 42 FCE.

195. The Appellant notes that the Investigatory Chamber in the Garcia Report did not find as an actionable offense the Russian Bid Committee's failure to provide copies of the bidding phase communications, which that committee claimed were no longer in its possession at the time of investigation on the bidding and awarding of the 2018 and 2022 FIFA World Cups. The Appellant, therefore, argues that he cannot be sanctioned for simply delaying in providing the GFF Letters. The Panel rejects this argument and reiterates that the conclusions contained in the Garcia Report are not binding on the CAS (see *supra* at para. 146). Moreover, each situation much be judged on its own facts.

b. The alleged failure to meet with investigators and respect deadlines

196. First, the Panel is not convinced that the Appellant deliberately delayed in making himself available to meet Mr. Garcia to testify as a witness in-person or by video-conference. The Appellant – as a then member of the Korean National Assembly of Korea and candidate for Seoul mayor – had an extremely busy and demanding schedule in the early months of 2014, as proven by the record, which made it difficult to arrange such a meeting. In view of his tight schedule, the Appellant – through the KFA – offered from the very outset on 28 January 2014 to submit his responses in writing, which the Respondent did not accept until 14 April 2014. Second, the Panel takes note that the Appellant went on to answer three questionnaires (one submitted as a witness, and two submitted as a party) in lieu of the in-person/video-conference meeting. It is true that the Appellant technically delayed in delivering the First Questionnaire. However, the Panel observes that (i) said delay was only of 17 days, (ii) the Appellant had a justified reason for said delay, given the impact of the tragic Sewol Ferry

Disaster on Korean political and social life at the time, and, most importantly, (iii) Mr. D.D. Kim, on behalf of the Appellant, had informed the Investigatory Chamber in advance that the Appellant would be unable to meet the set deadline due to that disaster.

197. The Appellant's negligible delay in providing the answers to the First Questionnaire must also be juxtaposed with FIFA's own delay in conducting the proceeding, which far exceeded it and had far greater implications. From the moment the Adjudicatory Chamber issued the operative part of its decision on 7 October 2015, more than one year and five months passed until the case was completed on 23 March 2017. It took six months for the Adjudicatory Chamber to render the grounds of its decision and ten months for the Appeal Committee to do the same. This is a striking amount of time, especially when compared to the significantly quicker turnaround of the *Blatter* and *Platini* cases (in the *Blatter* case it took the Adjudicatory Chamber twenty-two days and the Appeal Committee eight days to render their reasoned decisions; in the *Platini* case it took the Adjudicatory Chamber sixteen days and the Appeal Committee nine days to render their reasoned decision).The pot cannot fairly call the kettle black, especially when it itself is blacker.

198. With regard to the Second and Third Questionnaires, the Panel observes that the Appellant submitted them in a timely manner.

199. In view of the above, the Panel finds that the Appellant did not fail to satisfy his duty to cooperate under Articles 18, 41 and 42 FCE in relation to this charge of failure to meet with investigators or to respect deadlines.

c. The alleged failure to tell the absolute and whole truth

200. According to the Respondent, the Appellant allegedly failed to tell the absolute and whole truth about (i) his role in the bidding process and with KOBID, (ii) the recipients of the GFF Letters, and (iii) his knowledge of the GFF. The Panel will address each allegation separately.

(i) Role in the bidding process and with KOBID

201. The Panel does not find that the Appellant understated or misrepresented his role in the bidding process and with KOBID. The Panel observes that from the very outset the Appellant's position was that he did not hold an official position or function with KOBID and only provided some advice to that committee. In a letter dated 8 November 2010, KOBID declared that the Appellant did *"not hold any official position in that [b]idding [c]ommittee…"*. To the same effect, the Appellant's answer in the First Questionnaire that he *"did not play a specific role in Korea's bidding process… nor held any position in [KOBID]… Rather, [he met] with the Chairman of [KOBID] on several occasions to give him general advice on the bidding process based on my experience"*. In his answers to the Third Questionnaire, the Appellant confirmed this in declaring that he *"provided general advice [to KOBID], for example, regarding FIFA rules and regulations"*. KOBID also explained in a letter to the Investigatory Chamber of 29 April 2014 that the committee *"met and communicated with Dr. Chung in person whenever there were issues to discuss"*. These statements are all consistent with each other and with the Appellant's acts. The fact that he gave advice to

KOBID does not, on its own, link him in a prominent way to KOBID, as the FIFA bodies wrongly held, or contradict that he did not hold an official position or function with KOBID. As for the capacity under which the Appellant sent the GFF Letters, the Panel observes that in the letter dated 8 November 2010, KOBID indicated that the Appellant *"ha[d] not written any letters in any capacity for [KOBID]"*. This is not contradicted by the Appellant's letter of 9 November 2010 in which he explained that he sent GFF Letters due to his *"career background"* in football, or with the answers to the First Questionnaire in which he explained that he sent the GFF Letters on behalf of the Korean people.

202. In light of the foregoing, the Panel does not consider that the Appellant violated his duty of cooperation with regard to his statements about his role in bidding process or with KOBID.

(ii) Recipients of the GFF Letters

203. The Appellant declared in his answers to the Second Questionnaire that he did not send a GFF letter to Mr. Blatter because he had already met him in person and to Mr. Hamman and the others *"probably because [he] had the opportunity to see them in person"*. The Appellant also explained in the answers to that questionnaire that he only sent the GFF Letters to those individuals that he had *"less chance to see in person"*. Later, on 30 April 2015 in his answers to the Third Questionnaire, when further questioned on this matter, the Appellant added that there was no *"set rule that he followed strictly"* and that *"there may have been a person or two with whom [he] had the chance to casually chat about the [GFF] and to whom [he] happened to subsequently send the letter as well"*. Finally, in his witness statement, the Appellant (i) declared that he did not send the GFF Letters to Messrs. Blatter, Hammam, Worawi Makudi and Oguram because he had briefed them personally and (ii) suggested that he did not send Mr. Warner a GFF letter because the two were not on speaking terms. The Panel finds that these Appellant's explanations are ambiguous, inconsistent and insufficient as they are contradicted by the fact that Appellant sent the GFF Letters to eleven members of the Executive Committee that he had also briefed personally (see *supra* at para. 17). As a consequence, the Panel considers that the Appellant violated his duty of cooperation with regard to his statements about the recipients of the GFF Letters.

(iii) Knowledge of the GFF

204. The Panel notes that the Appellant originally suggested that he had learned about the GFF at the "Leaders in Football" symposium on 7 October 2010 (in the Second Questionnaire, for instance, he wrote: *"I wanted to relay to my fellow Executive Committee members what I learned from Dr. Han Sung-joo's presentation on the [GFF] in London on October 7, 2010 as well as from various press reports"*), only to then admit in his testimony that he learned about it, and even had discussions with KOBID about it, prior to the symposium. As a consequence, the Panel finds that the Appellant knew more about the GFF than he led the Appeal Committee to believe. The Panel thus holds that the Appellant also violated his duty of cooperation with regard to his statements about his knowledge of the GFF.

205. The Panel concludes, on the basis of the foregoing, that the Appellant did violated Articles 18, 41 and 42 FCE (2012 edition) in a variety of ways, although fewer than did the Appeal Committee. None of these violations by itself is a major infraction. Taken together, however, they show that the Appellant did not devote sufficient attention or care to his important duty to cooperate with valid investigations, even if he disagreed with their fundamental premise. As the Panel noted above, this duty of officers of sports organizations and others affiliated with them is vital to their proper functioning and to their ability to require ethical conduct by all involved in their sport.

G. Applicable sanction

206. There is well-recognized CAS jurisprudence to the effect that whenever an association uses its discretion to impose a sanction, CAS shows reservation or restraint when "re-assessing" the measure of the sanction (CAS 2012/A/2824, at para. 127; CAS 2012/A/2702, at para. 160; CAS 2012/A/2762, at para. 122; CAS 2009/A/1817 & 1844, at para. 174; CAS 2007/A/1217, at para. 12.4). Based on the same CAS jurisprudence, CAS shall only interfere in the exercise of this discretion of the sanctioning sporting body where the sanction imposed is *"evidently and grossly disproportionate to the offence"* or where CAS comes to a different conclusion on the substantive merits of the case than did the first instance tribunal (CAS 2009/A/1817 & 1844, at para. 174, with references to further CAS case law; CAS 2012/A/2762, at para. 122; CAS 2013/A/3256 at paras. 572-572; CAS 2016/A/4643 at para. 100).

207. The Panel observes that the Appeal Committee sanctioned the Appellant with a fine of CHF 50,000 and a ban from taking part in any football-related activity (administrative, sport or any other) at the national and international level for a period of five years, four of them for violating Article 13 FCE (2012 edition) and a year for the remaining violations of Articles 18, 41 and 42 FCE (2012 edition).

208. The Appellant requests the Panel to annul the Appealed Decision and not to impose any of the aforementioned sanctions. Accordingly, the Panel may, as it considers appropriate, annul the Appealed Decision and issue a new decision imposing no sanction under the FCE or imposing a ban of anywhere up to five years and a fine of up to CHF 50,000. As described above, the Panel has concluded that the Appellant has committed some violations of the relevant ethical rules. Accordingly, the Panel cannot uphold the Appellant's requests for relief in their entirety but can certainly reduce the sanctions imposed by FIFA within the limits of the above-indicated CAS jurisprudence.

209. Prior to deciding the measure of the applicable sanction, the Panel must turn its attention to the legal framework for assessing the proportionality of a sanction based on the FCE.

210. Considering that one infraction was committed under the 2009 FCE (the GFF Letters) and the remaining infractions were committed under the 2012 FCE, the Panel must look to both as the applicable legal framework for the corresponding infractions. According to both the 2009 FCE (in Article 17, para. 1) and the 2012 FCE (in Article 5, para. 1), the Ethics Committee may pronounce the sanctions described in the FIFA Disciplinary Code (hereinafter the "FDC") and the FIFA Statutes to any person bound by the FCE, which

includes the Appellant. Under Article 6 FCE (2012 edition), Article 10 *et seq*. FDC (2010 and 2012 editions), Article 57 of the FIFA Statutes (2009 edition), and Article 65 of the FIFA Statutes (2012 edition), the Ethics Committee could impose various sanctions on an official, the most serious being a ban on taking part in football-related activity. Pursuant to both the 2009 FDC (in Article 39) and 2012 FCE (in Article 9, para. 1), when determining a sanction, the adjudicator must take into account all relevant factors in the case and the degree of the offender's guilt. As possible relevant factors to take into account, the 2012 FCE lists the offender's assistance and cooperation, the motive, and the circumstances.

211. With this legal framework in mind, the Panel reaches the conclusion that the imposed sanction of a five-year ban and CHF 50,000 is grossly and evidently disproportionate for the following reasons.

212. First of all, the Panel considers that, although it has found that the Appellant infringed his ethical duties under the FCE (2009 and 2012 editions), the number and nature of infractions found are substantially less than in the Appealed Decision. It is true that the Panel has ruled that the Appellant has violated Article 3 FCE (2009 edition) (i.e. the predecessor of Article 13 FCE, 2012 edition applied by the FIFA bodies) and Articles 18, 41 and 42 FCE (2012 edition). However, the Panel determined that the violation of Article 3 FCE (2009 edition) resulted only from two ill-conceived and improper sentences in the Appellant's GFF Letters, and not also from the Letters to Mr. Blatter, which the Panel deemed not to be a violation thereof (see *supra* at para. 182 *et seq*.). Moreover, the Panel concluded that the Appellant did not violate Articles 18, 41 and 42 FCE (2012 edition) to the same extent pronounced in the Appealed Decision (see *supra* at para. 190 *et seq*.).

213. Second, the Panel takes into account CAS and FIFA precedents to compare with the sanction imposed on Appellant.

214. In the *Blatter* case, FIFA's Adjudicatory Chamber sanctioned its former FIFA President with an eight-year ban (five of which were for the violation of Article 20 FCE, 2012 edition) and a fine of CHF 50,000 for infringing Articles 13 (*"General rules of conduct"*), 15 (*"Loyalty"*), 19 (*"Conflicts of interest"*) and 20 (*"Offering and accepting gifts and other benefits"*) of the 2012 FCE for authorizing and directing an undue gift, i.e. a CHF 2 million payment to Mr. Platini without any contractual basis or other valid justification (CAS 2016/A/4501). The Appeal Committee later reduced the ban to six years (four for the violation of Article 20 FCE) based on the mitigating circumstance that Mr. Blatter had *"performed a remarkable work towards the development and promotion of football, so as for FIFA as an organization"*. The CAS panel ultimately confirmed the six-year ban on appeal, although it applied previous versions of the FCE rules (*Idem*).

215. Similarly, in the *Platini* case, FIFA sanctioned the then President of UEFA with a violation of the same provisions as Mr. Blatter and sanctioned him with an eight-year ban (five for the violation of Article 20 FCE, 2012 edition) and CHF 80,000 fine for receiving an undue gift of CHF 2 million (TAS 2016/A/4474). The Appeal Committee upheld the fine but reduced the ban to six years (four for the violation of Article 20 FCE) based on the lack of any priors, his commendable services that he rendered to FIFA and football during several years (*Idem*). The

CAS panel further reduced the ban to four years (three for the violation of Article 20 FCE 2012) and fine to CHF 60,000 (*Idem*).

216. In the so-called *Sunday Times* cases, FIFA sanctioned Messrs. Adamu with a three-year ban and fine of CHF 10,000 and Messrs. Ahongalu Fusimalohi and Amadou Diakite with a two-year ban and fine of CHF 7,500 for failing to actively and unambiguously refuse an improper offer made by apparent lobbyists in contravention of Articles 3 (*"General Rules"*), 9 (*"Loyalty and confidentiality"*) and 11 (*"Bribery"*) of the 2009 FCE. The CAS panel confirmed this sanction while noting that it *"might even be deemed a relatively mild sanction given the seriousness of the offense"* (CAS 2011/A/2426; CAS 2011/A/2425; TAS 2011/A/2433).

217. In the *Temarii* case, FIFA sanctioned the then General Director of the Tahiti Football Association with an eight-year ban for accepting EUR 305,640 from Mr. Hammam to cover costs of his legal expenses in connection with an appeal against a previous ban FIFA had imposed on him. The basis of the sanction were Articles 13 (*"General rules of conduct"*), 15 (*"Loyalty"*), 16 (*"Confidentiality"*), 19 (*"Conflicts of interest"*) and 20 (*"Offering and accepting gifts and other benefits"*) of the 2012 FCE.

218. While respecting the principle that care must always be taken in seeking to read across from cases whose features inevitably differ from that under consideration, the Panel notes importantly that, unlike in the aforementioned examples, in the present case there is no finding that the Appellant was involved in matters related to bribery or corruption. In fact, the Adjudicatory Chamber entirely dismissed the charge relating to offering and accepting gifts and other benefits (i.e. Article 20 FCE, 2012 edition), and, subsequently, the Panel in the present appeal only found that the Appellant committed an unethical act in contravention of Article 3 FCE (2009 edition) with a couple of sentences in the GFF Letters and failed in some respects to fully cooperate with the FIFA ethics bodies.

219. The Panel is not to be taken as saying that the degree of the Appellant's misconduct related to the GFF Letters is trivial. In reaching the conclusion that it was of some gravity, the Panel takes into account the following factors: (i) the high and influential positions the Appellant held at FIFA and within football at the time of the infractions, (ii) the sensitive situation the Appellant was in as a member of both the body selecting the 2022 FIFA World Cup host and the honorary president of an association bidding for that same World Cup, (iii) the fact that the Appellant knew, or should have known, that sending the GFF Letters in the manner that he did would fall foul of the FCE, and (iv) the damage that the Appellant's misconduct caused to the image of the 2022 FIFA World Cup bidding process and the sport of football in general.

220. However, the Panel also finds several mitigating factors: (i) the fact that it was common for Executive Committee members to promote the bids presented by their national football associations, (ii) the Appellant's lack of any prior record of unethical behaviour, (iii) his public stance against corruption within FIFA, and (iv) the meritorious services he provided to FIFA and football over the years. The Panel also notes his high standing in his national community, which reflects his prominent achievements and character.

221. The Panel is of the view that the various Appellant's acts of misconduct, while requiring some sanction, certainly constitute as a whole a lesser offense in comparison to the infringements committed by Messrs. Blatter, Platini, Adamu, Fusimalohi, Diakite and Temarii and, accordingly, deserving of a lesser sanction than the ban ranging from two (considered by the relevant CAS panels as "mild") to six years imposed on them. In this regard, the Panel rejects the Respondent's argument that the Appellant's misconduct is more severe than Mr. Adamu's breach of Article 20 FCE (2012 edition) simply because it was "deliberately active" as opposed to "purely passive". Aside from the fact that "purely passive" is an inaccurate representation of Mr. Adamu's misconduct (as the panel held in that case that he *"was far from actively and unambiguously refusing the improper offer"* and *"deliberately violated several provisions of the FCE"*, CAS 2011/A/2426, at paras. 135 and 156), the Panel does not find the alleged distinction raised by the Respondent to be meaningful in any way to the present case. The fact that the GFF Letters included certain unethical passages to convince some fellow Executive Committee members to vote for Korea's 2022 FIFA World Cup bid does not automatically, without more, elevate that misconduct to the level of or beyond an (even passive) act of bribery or corruption.

222. In light of the foregoing, the Panel finds it appropriate to reduce what it assesses as the evidently and grossly disproportionate sanction originally imposed on the Appellant for violating the successor of Article 3 FCE (2009 edition) to twelve months, with an additional three months for his minor violations of Articles 18, 41 and 42 FCE (2012 edition). In total, then, the Panel imposes a ban on the Appellant of fifteen months from any football-related activity.

223. Since the Appellant has effectively been suspended without interruption since 7 October 2015 the ban of fifteen months ran until 7 January 2017. Therefore, the Appellant has fully served his sanction and is now free to take part in any football-related activity (administrative, sport or any other) at national and international level. The Panel regrets that, because of FIFA's excessive and unjustified delays in issuing the grounds for its two decisions, the Appellant has had to serve a longer suspension than the Panel finds to be warranted.

224. With regard to the pecuniary sanction of CHF 50,000, the Panel is compelled to observe that delays of the magnitude displayed by FIFA in dealing with this sensitive case are not acceptable. Justice delayed is justice denied. Sports governing bodies which grant the right to appeal to CAS against their decisions cannot impair that right by postponing through their own dilatoriness the ability of the putative appellant to exercise it. As FIFA's delays caused the Appellant to have to serve a longer suspension than was ultimately imposed, the Panel finds it unconscionable that FIFA itself should gain any amount of money as a result of this case. For this reason, by itself, the Panel finds it appropriate to cancel the pecuniary sanction that FIFA imposed on the Appellant.

225. All further or different requests of the Parties are rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Dr. Moon Jong Chung on 13 April 2017 is partially upheld.

2. The FIFA Appeal Committee decision of 23 June 2016 is set aside and replaced by the present arbitral award, holding as follows:

   i. Dr. Mong Joon Chung violated Article 3 FCE (2009 edition) and Articles 18, 41 and 42 FCE (2012 edition);

   ii. Dr. Mong Joon Chung is banned for a period of fifteen months, starting from 7 October 2015, from taking part in any football-related activity (administrative, sport or any other) at national and international level.

3. (…).

4. (…).

5. All further or different motions or prayers for relief are dismissed.