CAS 2016/A/4474 *Michel Platini v. Fédération Internationale de Football Association*, Award of 9 May 2016

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Abstract The dispute opposing FIFA to its former President, Mr. Joseph Blatter, and to UEFA's former President, Mr. Michel Platini, has certainly been one of the key sports law events of 2016. Both Mr. Blatter and Mr. Platini were banned by FIFA judicial bodies from any football-related activities for several years (eight in the first instance before the FIFA Ethics Committee, reduced to six by the FIFA Appeal Committee). And both men decided to challenge their suspension in front of CAS, arguing that the CHF 2 million payment made by FIFA to Mr. Platini in 2011, on the basis of which they had been sanctioned, was perfectly legitimate since it arose from an oral agreement they had reached in 1998. In both cases, however, the CAS Panels entirely (in Mr. Blatter's case) or largely (in Mr. Platini's case) upheld the decisions of FIFA judicial bodies. This commentary will focus on the award rendered in Mr. Platini's case. As stated, the CAS Panel largely upheld the decision of FIFA judicial bodies, holding that the CHF 2 million payment had no contractual basis, since the oral agreement invoked by Messrs. Platini and Blatter had never existed, and was therefore to be considered as an undue advantage. The Panel also held that Mr. Platini should have refrained not only from accepting such an advantage, but also from participating in the FIFA Finance Committee's meeting approving the 2010 accounts in which the CHF 2 million payment was included, and from signing a declaration of support to Mr. Blatter's reelection as FIFA President in 2011. The Panel thus confirmed that Mr. Platini had violated the FIFA Code of Ethics, and in particular its Articles 19 and 20, but nevertheless decided to reduce the sanction inflicted to Mr. Platini to a four-year ban (and to a fine of CHF 60,000 instead of the CHF 80,000 retained by FIFA judicial bodies).

Keywords FIFA · Platini · Blatter · Ethics · Undue advantage · Conflict of interest · Oral contract · Sanction

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1 Facts and Procedure of the Case

During a meeting held in the Spring of 1998, Mr. Michel Platini (at the time Co-President of the organization committee of the 1998 FIFA World Cup in France) and Mr. Joseph Blatter (at the time Secretary General of FIFA) agreed that the former would become the advisor of the latter, if he were to be elected as the President of FIFA following the election to be held later that year. According to the pair, they agreed that Mr. Platini would receive an annual salary of "one million" in an unspecified currency (to be specified, allegedly, by Mr. Blatter).

This purported agreement (hereinafter referred to as the "Oral Contract"), which Mr. Blatter would later describe as a "gentlemen's agreement", was entered into orally between the parties and unwitnessed. The then General Manager of the organization committee of the 1998 FIFA World Cup and friend of Mr. Platini, Mr. Jacques Lambert, would later testify in front of CAS that Mr. Platini had told him about the discussions held with Mr. Blatter, but that he had himself not assisted to them.

On June 8, 1998, Mr. Blatter was elected as the new President of FIFA. On the night of his election, he presented Mr. Platini to the media as his "*Ministre des affaires étrangères*" ("Minister for Foreign Affairs")—a position which had never existed before—without further defining either the position or its conditions.

The exact nature of Mr. Platini's role and remuneration was the subject of significant speculation and was apparently discussed in a meeting of the UEFA Executive Committee in November 1998. A note containing the agenda of the meeting, circulated by the then Secretary General of UEFA, Mr. Gerhard Aigner, to the members of the Executive Committee two months before the meeting (the "September 1998 Note"), mentioned *inter alia* that: "*(…) there are rumours that Platini wishes to have his working place in Paris. This seems impossible if the position is supposed to be the one as described above. There has been talk about Sfr. 1 million as salary. Who will decide on this?*" Another note dated November 1998 (the "November 1998 Note"), apparently provided to the European members

of the FIFA Executive Committee in view of the latter's meeting in December 1998, also stated that: "*(…) The role of Platini and his professional status is still open. Rumours are heard that he will be the head of a development programme, with 11 directors and an equal number of centres to be spread over the six continents with the objective to provide technical education and assistance. (…) The headquarters of this programme is intended to be in Paris. This is not information on the budget of this programme. (…) Other rumours say that J.S.B. has engaged a personal political advisor, a French citizen who was involved in the World Cup (…)*".

Mr. Platini started to work for FIFA as from the second half of 1998. In August 1999, Mr. Platini asked Mr. Blatter to sign a written contract. This "*Convention*", drafted by FIFA and signed by Mr. Blatter on behalf of FIFA, provided Mr. Platini with an annual salary of CHF 300,000 for his services as "*Conseiller du Président de la FIFA*" ("Advisor of the President of FIFA"). The agreement (hereinafter referred to as the "Written Contract") extended retroactively to 1 January 1999 and provided for Mr. Platini's daily expenses up to an amount of CHF 500, a Paris office and two employees, all paid for by FIFA.

Mr. Platini would later claim that Mr. Blatter had suggested to mention (in handwriting) a salary of CHF 300,000 in the Written Contract because he could allegedly not pay a higher salary to Mr. Platini than to the Secretary General of FIFA, i.e., precisely CHF 300,000. According to Mr. Platini, Mr. Blatter had nevertheless assured him that the balance would be settled later, without indicating how and when such balance would be paid. Mr. Blatter confirmed this in his depositions, noting however that the deferral of the CHF 700,000 balance was essentially due to the fact that FIFA was experiencing financial difficulties at the time—financial difficulties that, Mr. Platini confirmed, were known to him. Both men finally alleged that the fact that the Written Contract did not mention the balance was probably due to an oversight of Mr. Blatter, Mr. Platini adding that, in any event, he trusted Mr. Blatter and knew that, sooner or later, he would pay the balance allegedly agreed upon.

Between 1999 and 2002, Mr. Platini acted as Mr. Blatter's advisor, perceiving the CHF 300,000 salary and other advantages provided for in the Written Contract. In April 2002, Mr. Platini eventually became a member of UEFA's Executive Committee and represented UEFA on FIFA's own Executive Committee. As a result, his role as advisor to Mr. Blatter came to an end, as did the corresponding Written Contract.

In 2005, a new pension plan was enacted for members of the FIFA Executive Committee. The plan was formulated such that to benefit, individuals must have served on the Committee for a minimum of eight years. In 2007, Mr. Platini (who had been on the Committee for five years, since 2002) requested to benefit from the plan on the basis that the years in which he served as Mr. Blatter's advisor (1998–2002) be included for the purpose of this calculation. This request was accepted by Mr. Blatter, and Mr. Platini was informed accordingly by FIFA's governing bodies.

In 2010, nearly twelve years after the purported entry into the Oral Contract and nine years after the end of the Written Contract, Mr. Platini asked FIFA to pay the balance allegedly due according to the Oral Contract. Mr. Platini justified the belated timing of this request with references to FIFA's financial difficulties, to the fact that he had not needed the money any earlier and that he had at all times retained confidence that Mr. Blatter and FIFA would pay him. However, the improvement of FIFA's financial situation since then and the "golden parachutes" recently perceived *inter alia* by the then Secretary General and the former political advisor of the FIFA President, eventually convinced Mr. Platini to claim his dues.

In January 2011, upon request of FIFA's then Finance Director and Assistant Secretary General, Mr. Markus Kattner, Mr. Platini presented FIFA with an invoice for CHF 2 million as the balance he was purportedly owed for the years 1998–2002 (i.e., an extra CHF 500,000 per annum). Combined with the CHF 300,000 annual salary perceived pursuant to the Written Contract, he remained a further CHF 200,000 per year short of the CHF 1 million salary which had allegedly been agreed upon in the Oral Contract. Mr. Platini later blamed the discrepancy on misremembering his own original salary to be CHF 500,000 per year instead of CHF 300,000.

In February 2011, FIFA proceeded to pay Mr. Platini the CHF 2 million upon approval of Mr. Blatter, who countersigned the invoice. The payment was included and labeled as "Special projects" in FIFA's accounts for 2010. Mr. Julio Grondona, President of the FIFA Finance Committee, would inform later on the actual Vice-President of UEFA, Mr. Angel Maria Villar Llona, that the annual salary of CHF 1 million had not been recorded in a written contract "*pour des raisons politiques*" ("for political reasons").

Following this payment, in March 2011, Mr. Platini attended an ordinary meeting of FIFA Finance Committee in the stead of UEFA's regular representative, who was unable to attend for medical reasons. In the course of that meeting, the Committee approved the 2010 accounts without any enquiry as to the "Special projects" for which Mr. Platini had been paid.

In May 2011, UEFA Executive Committee declared its support to Mr. Blatter's reelection as FIFA President at the election to be held the following month. Mr. Platini was among the signatories of the declaration. In June 2011, Mr. Blatter was eventually reelected unopposed as FIFA President, after the withdrawal of Mr. Mohamed Bin Hammam's candidacy.

In September 2015, Mr. Platini and Mr. Blatter were both intending to run for FIFA Presidency when the Swiss Federal Attorney General first, and the FIFA Ethics Committee then, opened proceedings against both men. An investigation was carried out by the Investigatory Chamber of the FIFA Ethics Committee (the "Investigatory Chamber"). In October 2015, the Chief of Investigation appointed in Mr. Platini's case, Ms. Vanessa Allard, submitted a report to the Adjudicatory Chamber of the FIFA Ethics Committee (the "Adjudicatory Chamber").

In December 2015, the Adjudicatory Chamber found Mr. Platini to have breached several provisions of FIFA Code of Ethics ("FCE") in its 2012 version,[1] specifically Articles 13 (General rules of conduct),[2] 15 (Loyalty),[3] 19 (Conflicts of interests)[4] and 20 (Accepting and distributing gifts and other advantages).[5] As a

[1] See below in relation to the applicable version of the FCE.

[2] Article 13 FCE reads as follows:
"General rules of conduct

1. Persons bound by this Code are expected to be aware of the importance of their duties and concomitant obligations and responsibilities.
2. Persons bound by this Code are obliged to respect all applicable laws and regulations as well as FIFA's regulatory framework to the extent applicable to them.
3. 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.
4. Persons bound by this Code may not abuse their position in any way, especially to take advantage of their position for private aims or gains."

[3] Article 15 FCE reads as follows:
"Loyalty
Persons bound by this Code shall have a fiduciary duty to FIFA, the confederations, associations, leagues and clubs."

[4] Article 19 FCE reads as follows:
"Conflicts of interest

1. When performing an activity for FIFA or before being elected or appointed, persons bound by this Code shall disclose any personal interests that could be linked with their prospective activities.
2. Persons bound by this Code shall avoid any situation that could lead to conflicts of interest. Conflicts of interest arise if persons bound by this Code have, or appear to have, private or personal interests that detract from their ability to perform their duties with integrity in an independent and purposeful manner. Private or personal interests include gaining any possible advantage for the persons bound by this Code themselves, their family, relatives, friends and acquaintances.
3. Persons bound by this Code may not perform their duties in cases with an existing or potential conflict of interest. Any such conflict shall be immediately disclosed and notified to the organization for which the person bound by this Code performs his duties.
4. If an objection is made concerning an existing or potential conflict of interest of a person bound by this Code, it shall be reported immediately to the organization for which the person bound by this Code performs his duties for appropriate measures."

[5] Article 20 FCE reads as follows:
"Offering and accepting gifts and other benefits

1. Persons bound by this Code may only offer or accept gifts or other benefits to and from persons within or outside FIFA, or in conjunction with intermediaries or related parties as defined in this Code, which

   (a) have symbolic or trivial value;
   (b) exclude any influence for the execution or omission of an act that is related to their official activities or falls within their discretion;
   (c) are not contrary to their duties;
   (d) do not create any undue pecuniary or other advantage and
   (e) do not create a conflict of interest.

   Any gifts or other benefits not meeting all of these criteria are prohibited.

result of those breaches, Mr. Platini was banned from football-related activities for eight years and fined CHF 80,000.

In January 2016, Mr. Platini appealed against this decision to the FIFA Appeal Committee, seeking to have the sanction overturned or, alternatively, reduced. The Chief of Investigation also appealed, seeking to add a violation of Article 21 FCE (Bribery and corruption)[6] to Mr. Platini's list of offences and asking that the latter be sanctioned with a lifetime ban from football-related activities.

The FIFA Appeal Committee rendered its decision in February 2016, upholding the four provisions which Mr. Platini had been found to breach, rejecting the fifth breach pleaded by the Chief of Investigation, and reducing the duration of the ban from football-related activities from eight to six years (while confirming the CHF 80,000-fine) on the basis of Mr. Platini's clean track record, services to football and co-operation in the proceedings.

On 26 February 2016, Mr. Platini appealed against the above decision to the CAS, seeking again to have the sanction overturned or, alternatively, reduced.

On 9 May 2016, after one exchange of briefs and a one-day hearing in which the Panel, composed of Prof. Jan Paulsson (co-arbitrator nominated by Mr. Platini), Prof. Bernhard Hanotiau (co-arbitrator nominated by FIFA) and Prof. Luigi Fumagalli (chairman appointed by CAS), heard Mr. Platini, three witnesses (Mr. Jacques Lambert, Mr. Angel Maria Villar Llona, and Mr. Blatter), three legal experts (Prof. Vito Roberto, Prof. Sylvain Marchand, and Prof. Benoît Chappuis), and the Parties' oral arguments, the Panel rendered the Award, confirming the breach of Articles 19 and 20 FCE, but not of Articles 13 and 15, and reducing both Mr. Platini's ban (to four years) and his fine (to CHF 60,000).

(Footnote 5 continued)

2. If in doubt, gifts shall not be offered or accepted. In all cases, persons bound by this Code shall not offer to or accept from anyone within or outside FIFA cash in any amount or form.
3. Persons bound by this Code may not be reimbursed by FIFA for the costs associated with family members or associates accompanying them to official events, unless expressly permitted to do so by the appropriate organization. Any such permission will be documented.
4. Persons bound by this Code must refrain from any activity or behavior that might give rise to the appearance or suspicion of improper conduct as described in the foregoing sections, or any attempt thereof."

[6] Article 21 FCE reads as follows:

"Bribery and corruption

1. Persons bound by this Code must not offer, promise, give or accept any personal or undue pecuniary or other advantage in order to obtain or retain business or any other improper advantage to or from anyone within or outside FIFA. Such acts are prohibited, regardless of whether carried out directly or indirectly through, or in conjunction with, intermediaries or related parties as defined in this Code. In particular, persons bound by this Code must not offer, promise, give or accept any undue pecuniary or other advantage for the execution or omission of an act that is related to their official activities and is contrary to their duties or falls within their discretion. Any such offer must be reported to the Ethics Committee and any failure to do so shall be sanctionable in accordance with this Code."

2 Decision of the CAS Panel and Comment

The decision of the Panel is very articulated and deals with a number of interesting issues. The more notable of these will be examined below, in relation to the different breaches reproached to Mr. Platini, i.e., (1) the acceptance of an undue advantage in relation to the CHF 2 million payment; (2) the acceptance of an undue advantage in relation to the extension of the FIFA Executive Committee's pension plan; (3) the conflict of interest in relation to his declaration of support to Mr. Blatter's reelection in 2011 and to his participation in the FIFA Finance Committee meeting indirectly approving the CHF 2 million payment. This commentary will finally deal with (4) the reduction of the sanction pronounced against Mr. Platini for his breaches.

2.1 The Acceptance of an Undue Advantage in Relation to the CHF 2 Million Payment

In the Award, the Panel confirmed first of all that, by accepting the CHF 2 million payment from FIFA, Mr. Platini violated Article 20 FCE which precisely prevents all persons bound by the FCE from accepting *inter alia* an "undue advantage".[7] According to the Panel, the CHF 2 million payment was to be considered as an undue advantage because it did not arise from any contract, be it oral or written.[8] Indeed, the Panel found that (1) the existence of the Oral Contract was not established. The Panel also held, that (2) even if the Oral Contract had existed, it would not be binding upon FIFA. The Panel finally dealt with (3) the possible effects of the payment made by FIFA notwithstanding the nonexistence of the Oral Contract, although we consider that this issue could have been examined further.

2.1.1 Lack of Existence of the Purported Oral Contract

Burden of Proof and Standard of Proof

Since the beginning of this saga, both Mr. Platini and Mr. Blatter argued that the CHF 2 million payment arose from the Oral Contract allegedly entered into by them in spring 1998. This was the first and most important issue the Panel had to deal with in both cases.

In the Award under review, the Panel started by examining who between Mr. Platini and FIFA had the burden of proof in accordance with the FCE and

[7] See above, footnote 5.

[8] CAS 2016/A/4474, *Michel Platini v. Fédération Internationale de Football Association*, Award of 9 May 2016, paras 230–284.

Swiss law (both applicable pursuant to Article R58 of the CAS Code). Article 52 FCE provides that: "*The burden of proof regarding breaches of provisions of the Code rests on the Ethics Committee*". The Panel logically held on this basis that FIFA had the burden to prove the existence of a violation of the FCE, i.e., in this instance, the existence of an undue advantage pursuant to Article 20 FCE.[9]

The Panel however held that, contrary to what Mr. Platini argued, FIFA did not have the burden to prove the nonexistence of the Oral Contract in order to prove the existence of an undue advantage. Indeed, pursuant to Article 8 CC, the claimant (in this case FIFA, who claims a violation of the FCE) has the burden to prove the facts which give rise to its claim ("*faits générateurs*" or "generating facts"), whereas the respondent (i.e., Mr. Platini) has the burden to prove the facts which extinguish or render void such claim ("*faits destructeurs ou dirimants*" or "destructive facts").[10] According to the Panel, the "generating facts" were the existence of the Written Contract and the absence of reasons, *a priori*, for a higher salary than the one provided therein. FIFA had the burden of proof in this respect, and it discharged it. It was therefore for Mr. Platini to prove the "destructive facts", i.e., the existence of the Oral Contract justifying a higher salary than the one provided in the Written Contract.[11]

This reasoning is convincing. Less convincing appears, by contrast, the Panel's argument pursuant to which, since FIFA denied having entered into the Oral Contract, it was for Mr. Platini to prove its existence.

Mr. Platini had argued in the proceedings that both Mr. Blatter and himself, i.e., the two "parties" to the Oral Contract, acknowledged the existence of such Contract (which is not disputed); therefore, according to Swiss law, it would be for the "third party" denying the existence of such Contract (i.e., FIFA) to prove its nonexistence.[12] The Panel rejected this argument holding that FIFA would be the actual party to the Oral Contract, if existing, not Mr. Blatter; since FIFA is a legal entity independent from its President, it has the right to challenge the effects of an act accomplished by the latter on its behalf, either because he exceeded his powers or

[9] It is worth noting that the Panel applied the 2012 version of the FCE, although the violations reproached to Mr. Platini took place before 2012. The Panel noted in this respect that Article 3 FCE provides for the application of the new version of the Code, unless it is less favorable to the author of the violation than the previous ones. According to the Panel, this was not the case in the presence instance, therefore the decision would have been the same if the Panel had applied the previous versions of the Code (as did the CAS Panel that decided Mr. Blatter's case—see CAS 2016/A/4501, *Joseph S. Blatter v. FIFA*, Award of 5 December 2016, paras 95–96).

[10] Hohl 2016, para 1234 and paras 2111–2116, referred to (although to the earlier version of the book) in CAS 2016/A/4474, *Michel Platini v. Fédération Internationale de Football Association*, Award of 9 May 2016, para 209.

[11] CAS 2016/A/4474, *Michel Platini v. Fédération Internationale de Football Association*, Award of 9 May 2016, paras 213–216.

[12] SFT 4A_390/2015, decision of 18 November 2015, para 3.3. In this case, the legal expert appointed by Mr. Platini, Prof. Vito Roberto, apparently based this conclusion according to CAS 2016/A/4474, *Michel Platini v. Fédération Internationale de Football Association*, Award of 9 May 2016, para 199.

because he could not validly bind FIFA at the time (since Mr. Blatter was "only" Secretary General).[13]

The reasoning of the Panel is correct in our opinion. However, it does not seem to concern the existence of the Oral Contract, but its effects towards FIFA. Indeed, the fact that a party, such as FIFA, denies being bound by a contract should not necessarily impact on the question as to whether the contract exists in the first place or not. In any event, whether this argument is legally correct or not is irrelevant, since the conclusion to which the Panel came, i.e., that it was for Mr. Platini to prove the existence of the Oral Contract, is supported by the other more convincing argument discussed above.

Convincing are also the Panel's findings regarding the standard of proof. The Panel rightfully applied Article 51 FCE, which provides that: "*The members of the Ethics Committee shall judge and decide on the basis of their personal convictions*". Referring to previous CAS jurisprudence,[14] the Panel found that the "personal conviction" standard coincides with the "comfortable satisfaction" standard widely applied by CAS Panels in disciplinary proceedings, which is higher than the civil standard of "balance of probability" but lower than the criminal standard of "proof beyond a reasonable doubt".[15] This means that, in the present case, the Panel must have "comfortable satisfaction" that the Oral Contract existed in order to hold that Mr. Platini did not violate the FCE. This was not the case, as discussed below.

Merits

The Award explains in detail why the Panel did not have "comfortable satisfaction" that the Oral Contract had ever existed. In a nutshell, the Panel considered that[16]

- there was no direct and contemporary evidence confirming that the Oral Contract was actually entered into; to the contrary, the Written Contract does not provide for a salary of CHF 1 million, but of CHF 300,000, and does not provide any reference to a possible balance to be paid later on;
- the declarations of Mr. Platini and Mr. Blatter, although similar, cannot be considered as fully reliable since both men were incriminated and had thus interest in presenting a common position; furthermore, their declarations concerning the reason why the Written Contract mentioned a salary of CHF

[13] CAS 2016/A/4474, *Michel Platini v. Fédération Internationale de Football Association*, Award of 9 May 2016, paras 210–212.

[14] See in particular CAS 2011/A/2426, *Amos Adam v. FIFA*, Award of 24 February 2012, and CAS 2011/A/2625, *Mohamed Bin Hammam v. FIFA*, Award of 19 July 2012, both referred to in CAS 2016/A/4474, *Michel Platini v. Fédération Internationale de Football Association*, Award of 9 May 2016, para 219.

[15] CAS 2016/A/4474, *Michel Platini v. Fédération Internationale de Football Association*, Award of 9 May 2016, para 219.

[16] Ibid., paras 233–284.

300,000 and did not refer to any possible balance were too vague; in any event, Mr. Blatter's declarations that the Oral Contract was a "gentlemen's agreement" and that he thought he did not have the power to enter into such a Contract alone as Secretary General of FIFA, tend to show that Mr. Blatter did not have the intent to take a binding commitment;

- the September 1998 and November 1998 Notes are not conclusive either, since they simply show the existence of "rumors" concerning a CHF 1 million salary per year, but do not prove that such "rumors" materialized into a binding agreement;
- the fact that FIFA paid the amount of CHF 2 million in 2011 does not prove the existence of the Oral Contract either, since the subsequent behavior of one of the Parties does not allow to compensate the absence of direct and contemporary evidence;
- also, the fact that Mr. Platini waited until 2010 before claiming the payment allegedly due (although FIFA's financial situation to which he referred improved as from 2003 to re-become sound and stable in 2007 already) and claimed less than what he claims being owed (CHF 2 million instead of CHF 2.8 million) contradict his own position.

It is for those reasons that the Panel rightfully held, in our opinion, that Mr. Platini had not proven the existence of the Oral Contract, and thus, the "due" character of the CHF 2 million payment.[17] Indeed, although oral contracts are perfectly valid under Swiss law, pursuant to Article 11 CO,[18] they nevertheless have to meet the other legal requirements to which the existence of a contract is subject in order to be considered as effectively entered into.[19] In particular, pursuant to Article 2 CO, a contract can only exist under Swiss law if the parties reach an "agreement" on its *essentialia negotii*,[20] i.e., in the case at hand, the role of Mr. Platini and his remuneration.

In this respect, we tend to agree with the conclusion drawn in the award rendered in the parallel case concerning Mr. Blatter: while there is objective evidence proving that "discussions" took place between Mr. Blatter and Mr. Platini about the latter receiving an annual salary of CHF 1 million, there is no objective evidence proving that an "agreement" was actually reached between the two men in this respect.[21]

[17] Ibid., para 284.

[18] Article 11(1) CO reads as follows: "The validity of a contract is not subject to compliance with any particular form unless a particular form is prescribed by law".

[19] Xoudis 2012, para 9.

[20] Morin 2012, para 1.

[21] CAS 2016/A/4501, *Joseph S. Blatter v. FIFA*, Award of 5 December 2016, para 157.

2.1.2 Lack of Binding Character of the Purported Oral Contract

In any event, the Panel did not limit itself to find that the purported Oral Contract had never existed. It also held that, even if the Oral Contract had existed, it would not have had a binding character both because it would have been replaced by the Written Contract, and because Mr. Blatter could not validly bind FIFA.[22]

The former argument does not deserve any particular comment. We agree with the Panel that the facts at hand show that, if the Oral Contract had existed, it would in all likelihood have been superseded by the Written Contract. The fact that the Written Contract does not make any reference to the Oral Contract, nor to the discussions held between Mr. Platini and Mr. Blatter in Spring 1998 or to the CHF 1 million salary the two men had allegedly agreed upon during such discussions, tends to confirm the above.

More interesting is the argument concerning Mr. Blatter's power to represent FIFA. Pursuant to Article 55 CC, "*the governing bodies express the will of the legal entity*" (para 1) and "*bind the legal entity by concluding transactions and by their other actions*" (para 2). According to the Panel, this provision would not apply in the present case since, on the one hand, Mr. Blatter would have exceeded his powers by entering into a contract (the Oral Contract) which was prejudicial to FIFA insofar as it provided for a remuneration manifestly exaggerated; on the other hand, Mr. Platini could not be protected in his good faith because he knew that the Written Contract did not cover the total amount of the salary allegedly due and was therefore not in good faith when he signed it.[23]

The Panel's reasoning is sound, both from a factual and from a legal point of view. Factually speaking, the interpretation of the Panel concerning the remuneration being manifestly exaggerated and Mr. Platini not being in good faith when signing a contract (the Written Contract) aiming at dissimulating the actual salary allegedly agreed upon in the Oral Contract is convincing in view of the circumstances of the case retained in the Award.

From a legal point of view, it is admitted under Swiss law that a legal entity cannot be bound by the acts of a governing body which are prejudicial to the entity's interest. This is the case, for instance, when the governing body representative's own interests (i.e. Mr. Blatter in the case at hand) are in a conflict with the ones of the entity.[24] In such cases, the contracting third party (i.e., Mr. Platini) is only protected if he is in good faith.[25] Since the Panel considered that this was not the case in the present instance, its conclusion is correct.

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[22] CAS 2016/A/4474, *Michel Platini v. Fédération Internationale de Football Association*, Award of 9 May 2016, paras 256–257 and 271.

[23] Ibid., para 257.

[24] See for instance Xoudis 2010, paras 47–48, referred to (although with a wrong quotation) in CAS 2016/A/4474, *Michel Platini v. Fédération Internationale de Football Association*, Award of 9 May 2016, para 257.

[25] Ibid., para 53.

2.1.3 The Possible Effects of the Payment Made by FIFA

The above shows that the Panel carefully examined all the circumstances surrounding the Oral Contract and its possible consequences. By contrast, the Award gives the impression that the Panel was less thorough in its analysis of the payment made by FIFA in 2011 and, in particular, of its possible effects.

The Panel did deal with this issue in the Award, holding what follows[26]:

- the fact that FIFA paid the amount of CHF 2 million in 2011 does not prove the existence of the Oral Contract, since the subsequent behavior of one of the Parties does not allow to compensate the absence of direct and contemporary evidence;
- this fact does not allow to apply Article 55 CC either since FIFA could not be bound by Mr. Blatter's actions, not only when the latter entered into the Oral Contract, but also when he accepted the CHF 2 million payment; furthermore, FIFA proceeded to the payment on the basis of Mr. Blatter's acknowledgment that the amount invoiced by Mr. Platini was due;
- the Panel added in this respect that there was no sufficient evidence on record showing that the payment was specifically approved by FIFA's controlling bodies, or that it was brought to the attention of the Finance Committee during its 2011 meeting;
- finally, the Panel considered that FIFA could not be blamed (in accordance with the principle "*non concedit venire contra factum proprium*") for challenging the Oral Contract after having executed it, also because FIFA eventually challenged the validity of the payment.

The above considerations are convincing. However, it seems to us that the Panel failed to address an important issue, i.e., the question as to whether the payment of FIFA could be considered as a ratification *a posteriori* of the Oral Contract.[27] Indeed, it is admitted under Swiss law that a legal entity that is not bound by an act of its governing bodies, can accept to be bound by such an act by ratifying it after its conclusion.[28] It is equally admitted that the ratification can be explicit or implied, and that the execution of a contract by the entity can be understood as a ratification thereof, depending on the circumstances.[29]

In the present case, it is undisputed that FIFA paid the CHF 2 million claimed by Mr. Platini. It is equally undisputed that it did so after asking, and obtaining, the approval from its President, Mr. Blatter. As stated above, the Panel did examine the question as to whether Mr. Blatter's approval could bind FIFA, denying it for

[26] CAS 2016/A/4474, *Michel Platini v. Fédération Internationale de Football Association*, Award of 9 May 2016, paras 252–257 and 279–283.

[27] We do not know whether Mr. Platini raised this argument in the CAS proceedings. The Award does not provide any indication in this respect.

[28] Xoudis 2010, para 55. See also Article 38(1) CO.

[29] Chappuis 2012, para 8.

the same reasons already discussed in section 'Merits' above. The Panel did also examine the circumstances in which the payment was made, holding on the one hand that, in view of the "management style" of Mr. Blatter, FIFA's governing bodies and employees had no choice but to follow his instructions, and, on the other hand, that there was no sufficient evidence showing that the payment had been "specifically approved" and, thus, ratified by FIFA's financial bodies, nor that it had been brought to the attention of the Finance Committee at its 2011 meeting.[30]

However, the Panel examined the above questions in the context of the examination of the existence of the Oral Contract, and not in relation to its possible ratification by FIFA. Indeed, the Panel did only consider whether the behavior of Mr. Blatter and FIFA at the time of the payment could somehow prove that the Oral Contract was actually entered into, but not whether the payment itself could be considered as a ratification of said Contract.

This being said, we are of the opinion that the Panel would most probably have denied that FIFA's payment could be considered as a ratification of the Oral Contract. Indeed, the considerations of the Panel summarized above tend to show that the Panel would most probably have held that FIFA's payment could not be considered as a ratification of the Oral Contract since FIFA had been tricked into paying by its President, who wrongfully assured FIFA that the invoice issued by Mr. Platini was due. Therefore, the final decision of the Panel would in all likelihood have been the same: by accepting the CHF 2 million payment, Mr. Platini accepted an undue advantage, thereby violating Article 20 FCE.

2.2 The Acceptance of an Undue Advantage in Relation to the Extension of the FIFA Executive Committee's Pension Plan

Pursuant to the Award, Mr. Platini violated Article 20 FCE also in accepting that the FIFA Executive Committee's pension plan be extended to the years in which he acted as Mr. Blatter's advisor. The Panel rightfully held in this respect that Mr. Platini was not entitled to benefit from the pension plan in the relevant years (2008–2012) since he was not yet a member of the Committee.[31]

The Panel further rejected the counterarguments raised by Mr. Platini for reasons similar to the ones retained in relation to the CHF 2 million payment, i.e.: Mr. Blatter's approval could not validly bind FIFA; the fact that other FIFA's governing bodies or employees did not object is irrelevant, since in view of Mr. Blatter's "management style" they were obliged to follow his instructions; in any event, FIFA challenged the validity of the relevant decision in front of its own

[30] CAS 2016/A/4474, *Michel Platini v. Fédération Internationale de Football Association*, Award of 9 May 2016, paras 253 and 279.

[31] Ibid., paras 292–293.

judicial bodies and of the CAS, therefore the principle "*non concedit venire contra factum proprium*" cannot apply.[32]

The Panel finally held that the simple fact that Mr. Platini had not yet benefitted from the pension plan (since its rights arise only when a member retires from the FIFA Executive Committee) could not have any impact on the decision. Indeed, if the present proceedings had not taken place, Mr. Platini would have received a higher compensation when retiring from the Committee than he would have been entitled to according to the plan. According to the Panel, such undue expectation must be considered as an undue advantage pursuant to Article 20 FCE.[33]

The reasoning of the Panel is convincing. Indeed, the advantage granted to Mr. Platini is hard to justify, both from a legal and from an ethical point of view. This is even more so if one considers not only that Mr. Platini was granted another undue advantage in relation to the CHF 2 million payment as shown above, but also that he seems to have rewarded Mr. Blatter for these advantages by supporting his reelection in 2011, as discussed below.

2.3 *The Conflict of Interest in Relation to Mr. Platini's Declaration of Support to Mr. Blatter's Reelection in 2011 and Participation in the FIFA Finance Committee's Meeting Approving the CHF 2 Million Payment*

After having examined the violations of Article 20 FCE, the Panel moved to consider the alleged violations of Article 19 FCE in relation to Mr. Platini's declaration of support to Mr. Blatter's reelection in 2011 and his participation in the FIFA Finance Committee of 2011 approving the 2010 accounts containing the CHF 2 million payment.

The Panel rightfully held that Mr. Platini was in a situation of conflict of interest in both instances: in the first instance, because he had received an undue advantage shortly before signing the declaration of support and had therefore a manifest interest in that Mr. Blatter be reelected, not necessarily because he was the best candidate, but in order to minimize the risks that the CHF 2 million payment be called into question[34]; in the second instance because he could not act with integrity, independence and diligence as (deputy) member of the Finance Committee, since he had a manifest interest in hiding the existence of the CHF 2

[32] Ibid., para 296.

[33] Ibid., para 295.

[34] It is interesting that the Panel chose this explanation rather than the arguably more obvious one (apparently pleaded by FIFA—see CAS 2016/A/4474, *Michel Platini v. Fédération Internationale de Football Association*, Award of 9 May 2016, para 302) that Mr. Platini's support was actually aimed at rewarding Mr. Blatter for the undue advantage.

million payment and did not disclose the existence of such payment at the time when the 2010 accounts were approved.[35]

The Panel's conclusion was however different in the two instances. In the first one, the Panel considered that, notwithstanding the existence of a conflict of interest, Mr. Platini did not violate Article 19 FCE since he was not acting as FIFA representative when signing the declaration, but as UEFA representative; in other words, his conflict of interest was vis-à-vis UEFA rather than FIFA. In the second instance, by contrast, the Panel held that Mr. Platini violated both Article 19(2) FCE, insofar as he participated in the FIFA Finance Committee approving the 2010 accounts and, thus, the CHF 2 million payment, and Article 19(3) FCE, insofar as he did not disclose his conflict of interest and did not renounce to his participation in the meeting.[36]

The decision of the Panel is logic and sound. We agree with the Panel that, even if the Finance Committee did not have the responsibility to approve each individual payment, the importance of its role as "*garant de la bonne gestion financière de la FIFA*" ("guarantor of the sound finance management of FIFA")[37] requires that its members be totally independent and impartial when approving the accounts. Mr. Platini's personal interest in relation to the approval of the 2010 accounts should by all standards have prevented him from participating in the relevant meeting. The significance of the relevant payment (CHF 2 million), the rather vague title given to it ("special projects") as well as the fact that the recipient of the payment was a member of the Executive Committee, render even more problematic Mr. Platini's involvement. Indeed, the sum of these factors would not only have led any ordinary representative of FIFA to bring such payment to the attention of the Finance Committee, but also any diligent member of such Committee to question it and to eventually refuse its approval.

2.4 The Reduction of the Sanction Pronounced Against Mr. Platini

While the decision of the Panel concerning the different breaches is convincing, we are skeptical with respect to the Panel's decision to reduce the sanction arising from those breaches.

As already stated, the FIFA Ethics Committee first banned Mr. Platini from football-related activities for eight years and fined him CHF 80,000. On appeal, the FIFA Appeal Committee reduced the suspension to six years. The CAS Panel further reduced the ban to four years, and the fine to CHF 60,000.[38] Such a

[35] Ibid., paras 303 and 307–314.

[36] Ibid., paras 304 and 316.

[37] Ibid., para 309.

[38] Ibid., para 369.

de-escalation is not uncommon in disciplinary matters. In the case at hand, however, it is hardly justifiable in our opinion, and the reasons provided by the Panel are not fully convincing.

The Panel first considered that Mr. Platini did not have any antecedent, that he had rendered significant service to FIFA, UEFA and football in general during several years, and that he had co-operated "to a certain extent" ("*jusqu'à un certain degré*") in the proceedings. However, as admitted by the Panel, these factors, although legitimate, had already been taken into consideration by the FIFA Appeal Committee in its decision to reduce the ban from eight to six years.[39] Therefore, they could hardly justify a further reduction.

The only new reasons brought forward by the Panel to justify the further reduction of Mr. Platini's sanction concern Mr. Platini's age and its consequences (Mr. Platini is 61 years old, he is allegedly heading towards the end of his career and has allotted all of its professional life to football), the fact that FIFA waited until 2015 before starting its investigations, although it was aware of the relevant payment since 2011, and the fact that the Panel confirmed only two of the four violations retained by the FIFA Appeal Committee (i.e., Articles 19 and 20, but not 13 and 15 FCE).[40]

With all due respect, we are not persuaded by these reasons. First, the fact that Mr. Platini is 61 years old does not automatically mean that he is heading towards the end of his career. The example of Mr. Blatter, who was elected as President of FIFA when he was 62 years old and remained President until his 80th birthday, tends to show the opposite. Second, one cannot blame FIFA for having waited until 2015 before starting its investigations if, as the Panel itself admits in its Award, FIFA's governance was such that it strongly depended on Mr. Blatter himself. Third, the Award clearly shows that the violations of Articles 13 and 15 FCE were not confirmed by the Panel simply because these provisions contain general rules of conduct and loyalty which, in accordance with the principle "*lex specialis derogat generalis*", are superseded by the more specific rules contained in Articles 19 and 20 FCE. However, this did not refrain the Panel from clearly stating that Mr. Platini's behavior was neither loyal nor ethic,[41] and could therefore have triggered a violation of Articles 13 and 15 FCE in the absence of a violation of Articles 19 and 20 FCE.

The decision of the CAS to reduce the sanction is even harder to understand since the Panel itself considered as aggravating factors the fact that Mr. Platini occupied predominant positions within FIFA and UEFA and had therefore an increased duty to comply with the internal rules of such important organizations, as

[39] Ibid., para 358.

[40] Ibid., paras 358 and 362.

[41] Ibid., para 328 ("*Loin de dire que le comportement de M. Platini était loyal, la Formation est donc d'avis que l'application de cette disposition générale n'a pas lieu d'être dans le cas d'espèce*") and para 335 ("*Ce qui précède ne signifie bien entendu pas que le comportement de M. Platini était éthique, mais simplement que la disposition générale doit céder la place aux dispositions spéciales*").

well as the fact that he did not show any repentance. These factors, as well as the objective seriousness of the violations reproached to Mr. Platini, justified in our opinion that the sanction pronounced by the FIFA Appeal Committee be maintained.

3 Conclusion

The fact that the Panel, in applying the discretionary power granted to it by Article 9 FCE,[42] decided to reduce the sanction pronounced against Mr. Platini instead of maintaining it, does not undermine the general impression that the Award is well-reasoned and convincing (although Mr. Platini decided to challenge it in front of the SFT).[43] In today's climate of suspicion surrounding the football community and its overarching organizations, it is important that the judicial authorities, including the CAS, maintain a strict neutrality and do not hesitate to sanction behaviors which cannot be tolerated. This was the case in the present instance. Indeed, it would have been objectively difficult to understand a different outcome, not only in the absence of any conclusive evidence regarding the existence of an oral agreement concerning the CHF 2 million payment, but also in view of the somehow contradicting behaviors and declarations of the two protagonists of this saga, i.e., Mr. Platini and Mr. Blatter, who did not manage to counter the disturbing impression that they actually privileged, in this instance at least, their own personal interests over those of the powerful organizations they presided.

Such an impression is exacerbated by the fact that, as retained in the Award,[44] Mr. Platini's case was actually based on a "simulation". According to his version of events, he entered into the Written Contract showing a lower salary than the "real" Oral Contract (i.e., the "concealed agreement") because it would have been problematic to put the real salary per written. We are of the opinion that the fact that Mr. Platini (and Mr. Blatter) wanted to conceal the salary purportedly agreed upon would have justified a sanction for violation of the FCE regardless of whether the Oral Contract was agreed upon or not. This is yet another reason for which the outcome of the Award is most welcome.

[42] Article 9(1) FCE reads as follows: "The sanction may be imposed by taking into account all relevant factors in the case, including the offender's assistance and co-operation, the motive, the circumstances and the degree of the offender's guilt".

[43] At the time of drafting and submitting this commentary, the SFT had not yet rendered its decision on the challenge brought by Mr. Platini against the Award.

[44] CAS 2016/A/4474, *Michel Platini v. Fédération Internationale de Football Association*, Award of 9 May 2016, paras 260–263.

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