EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

DECISION

Application no. 526/18
Michel PLATINI
against Switzerland

The European Court of Human Rights (Third Section), sitting on 11 February 2020 as a Chamber composed of:

Paul Lemmens*, President*,
Georgios A. Serghides,
Helen Keller,
Alena Poláčková,
María Elósegui,
Gilberto Felici,
Lorraine Schembri Orland*, judges*,

and Stephen Phillips, *Section Registrar,*

Having regard to the above application lodged on 22 December 2017,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Michel Platini, is a French national, who was born in 1955 and lives in Genollier (Canton of Vaud). He lodged his application with the Court on 22 December 2017. He was represented before the Court by Mr W. Bourdon, a lawyer practising in Paris.

A. The circumstances of the case

1. The subject of the application

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

3. Michel Platini ("the applicant") is a former professional football player, having been captain and coach of the France national team.

4. In the first half of 1998 the applicant took part in the campaign of X.Y., who was standing for election to the presidency of the International Association Football Federation (Fédération internationale de football association – "FIFA"). In the second half of that year he began to work for FIFA as adviser to X.Y., who had in the meantime been elected. Subsequently X.Y. was re-elected in 2002, 2007, 2011 and 2015, and he remained president of FIFA until his resignation on 2 June 2015.

5. On 25 April 2002 the applicant stepped down from his role as advisor after being elected to the Executive Committee of the Union of European Football Associations ("UEFA"). He represented UEFA on FIFA's Executive Committee from that date onwards. In 2007 he was elected as president of UEFA, then re-elected to that body in 2011, and again on 24 March 2015. He was also vice-president of FIFA.

6. In 2007 the applicant requested that the four years in which he had been adviser to the president of FIFA be taken into account in the calculation of his entitlements under the pension scheme put in place for members of FIFA's Executive Committee in 2005. The supplementary sum of 36,000 United States dollars (USD) was granted by X.Y., who drew the applicant's attention to the fact that he would not receive this severance pay until he stepped down from FIFA's Executive Committee.

7. On 17 January 2011 the applicant sent the finance director and deputy secretary-general of FIFA, M.K., an invoice for 2,000,000 Swiss Francs (CHF) purportedly in respect of a salary supplement on the basis of an oral agreement for the years 1998 to 2002, in addition to the remuneration initially decided under a written agreement signed on 25 August 1999.

8. After X.Y. had approved and signed the invoice, FIFA paid the sum of CHF 2,000,000 into the applicant's account on 1 February 2011. This payment was included in the applicant's tax return for 2011, recorded in FIFA's 2010 accounts, and then approved by FIFA's Finance Board.

9. On 25 September 2015 the Office of the Attorney General of Switzerland opened criminal proceedings against X.Y. on suspicion of criminal mismanagement, and in the alternative misappropriation of funds, in respect of the payment of CHF 2,000,000 to the applicant in 2011. The applicant was interviewed on the same day with the status of "person helping the police with their enquiries" (*personne appelée à donner des renseignements*). The proceedings against X.Y. are still pending.

10. As a consequence of the criminal proceedings and after a preliminary investigation, the Investigatory Chamber of the FIFA Ethics Committee initiated a disciplinary procedure against the applicant for a breach of FIFA's Code of Ethics on account of the above-mentioned acts. The same procedure was initiated against X.Y.

11. In a decision of 7 October 2015, without giving reasons, the Adjudicatory Chamber of the FIFA Ethics Committee provisionally suspended the applicant from any football-related activity for a period of

ninety days. On 11 December 2015 the Court of Arbitration for Sport (CAS) upheld the provisional suspension but ordered FIFA not to extend it beyond the initial period of ninety days.

12. In a decision of 18 December 2015, once the investigation had been completed, the Investigatory Chamber of the FIFA Ethics Committee ruled that the applicant had breached Articles 13 (general rules of conduct), 15 (loyalty), 19 (conflicts of interest) and 20 (offering and accepting gifts and other benefits) of the FIFA Code of Ethics (see paragraph 32 below). It banned him from any football-related activity at national and international levels for eight years from 8 October 2015 and fined him CHF 80,000.

13. In a decision of 15 February 2016 the FIFA Appeal Committee upheld that decision, while reducing the length of the ban from eight years to six.

2. The CAS proceedings

14. On 26 February 2016 the applicant filed a statement of appeal with the CAS seeking to have the decision set aside. The applicant argued, in particular, that Article 11 (2006 version) and Article 10 (2009 version) of the FIFA Code of Ethics did not refer to "persons within or outside FIFA", unlike Article 20 of the 2012 version, but mentioned only "third parties" or "third persons" (see paragraphs 30-32 below). He also called into question the legality and proportionality of the disciplinary sanction.

15. The arbitration proceedings were conducted in French by a panel of three arbitrators and a hearing was held. The CAS notified the operative provisions of its award on 9 May 2016 and published its reasoning on 16 September 2016. It set aside the decision of the FIFA Appeal Committee and reduced the ban from six years to four, while reducing the fine from CHF 80,000 to CHF 60,000. Concerning the alleged violations of Article 6 of the Convention, the panel indicated that the CAS procedure cured any procedural breaches committed in the previous proceedings. The panel also rejected the complaint concerning the retrospective application of the 2012 Code of Ethics. In its view, the expression "third parties" merely referred to "any person other than the one receiving the benefit", according to the ordinary use of those words and in line with the approach of FIFA and CAS jurisprudence. In addition, the panel ruled that the 2012 version of the Code of Ethics had not extended the comparable provisions of the previous versions, but had merely clarified them, indicating that the notion of "third parties" could refer to individuals both inside and outside FIFA.

16. As to the sanction imposed on the applicant, the CAS took the view that the ban on any football-related activity (administrative, sports or any other) had to be reduced to a total of four years, on the following grounds in particular (translation by the Registry):

> "358. As was found in the impugned decision, in the present case the mitigating circumstances are the fact that Mr Platini had no history [of wrongdoing], had rendered considerable services to FIFA, UEFA and football over many years and cooperated to

some extent during the proceedings, whether in volunteering documents and calling witnesses or in giving detailed explanations. In addition, the panel notes that Mr Platini is 61 years old, is approaching the end of his career and has devoted his entire professional career to football. ...

359. On the other hand, the panel regards as aggravating factors the fact that Mr Platini has held very senior positions both in FIFA and in UEFA and that he therefore had a heightened duty to comply with the internal rules of those organisations. Moreover, he has not shown any remorse.

...

363. Accordingly, the panel finds it proportionate to impose a ban on all football-related activities for three years for a breach of Article 20 of the FIFA Code of Ethics and for one year for a breach of Article 19; for while the offences are indeed serious, such duration is sufficient to achieve the aim pursued, which is to prevent Mr Platini from committing further acts in breach of the FIFA Code of Ethics and to punish him for the breaches committed. Such a period is reasonable in relation to the aim pursued, because it is sufficiently serious as punishment for the infringement of the interests protected by Articles 19 and 20 of the FIFA Code of Ethics and sends a strong signal to restore the reputation of football and FIFA and to punish the wrongdoing. Lastly, the disadvantage to be borne by Mr Platini as a result of this sanction is proportionate to the serious acts of which he has been found guilty.

364. The ban on all football-related activities cannot, however, be reduced any further in duration, as the appellant has requested. It must be long enough to be commensurate with the serious wrongdoing committed. In that connection, the panel does not accept the appellant's argument that the sanction is incompatible with Article 8 ECHR and Article 27 [of the Civil Code] ... In the present case, the sanction does not permanently prevent the appellant from engaging in his professional activity, but only for four years. Furthermore, 'personality rights' may be restricted if an overriding public or private interest exists [reference omitted], as is clearly the case here."

3. The appeal to the Federal Supreme Court

17. On 17 October 2016 the applicant lodged a civil-law appeal in the Swiss Federal Supreme Court seeking to have the CAS award of 16 September 2016 set aside. He complained that the panel had delivered an award that was arbitrary in its result on two grounds: first, it had been based on findings that in his view were manifestly incompatible with the facts of the case, and second it constituted a manifest violation of the law. The applicant contended in particular that the 2012 version of the FIFA Code of Ethics, Article 20 to be precise, had extended the substantive scope of the rule of conduct, whereas the previous versions had only referred to individuals outside the organisation.

18. The applicant further argued, relying on Article 27 of the Civil Code and on Article 163 § 3, of the Code of Obligations, in conjunction with Article 4 of the Civil Code (see paragraphs 27 and 28 below) and on the relevant case-law, that the sanction imposed on him had been excessively harsh, in that it had represented an unjustifiable infringement of his personality rights and his economic freedom. He also contended that the four-year blanket ban on working in football was excessively long, particularly as

it extended to "any" football-related activity. In his view the wording of the sanction was incompatible with the principle that a sanction must be precise and it could not be left to an arbitrary decision by the association in question. The reference to "any" activity was so general that it would enable FIFA to set the limits as it saw fit, on account of its dominant position in football, even covering activities with very indirect links to the sport (for example that of consultant for a sports brand of clothing). The applicant asserted that the sanction even included any voluntary or leisure activity related to football, which in his view was particularly unacceptable.

19. The applicant further alleged that the arbitrators had not sufficiently taken account of the actual impact of the sanction on his personality rights, in particular on his social life, which revolved entirely around football. The sanction was also disproportionate to his age, as he had been sixty-one years old at the time and would thus reach retirement before the period expired. It would be illusory to expect him to find a new post at that age, given that he had no other qualification.

20. Lastly, the applicant submitted that the proportionality principle required a weighing-up of interests, taking into account his actual situation, but no such exercise had been forthcoming in the present case.

21. For the above-mentioned reasons, the applicant asked the Federal Supreme Court to set aside the arbitral award.

4. The Federal Supreme Court's judgment of 29 June 2017

22. In a judgment dated 29 June 2017 the Federal Supreme Court found that it had jurisdiction to hear appeals against arbitral awards delivered in domestic arbitration proceedings under Article 393 of the Code of Civil Procedure (see paragraph 26 below). However, it dismissed the applicant's appeal on the ground that its jurisdiction in such matters did not allow it to examine whether the award in question was arbitrary in its result because the award was based on findings that were manifestly at odds with the facts of the case or because it constituted a manifest violation of the law or of fairness. In the case at hand the Federal Supreme Court took the view that the CAS had not fallen into arbitrariness when it had characterised the extension of the pension scheme and the acceptance of CHF 2,000,000 as breaches of the FIFA Code of Ethics. As to the suspension imposed and the conflict of interest imputed to the applicant, no manifest violation of the law could be found in respect of those aspects either.

23. Moreover, the Federal Supreme Court, after an in-depth analysis of the jurisprudential principles regarding the methods of interpretation of statutes, concluded that there was no significant discrepancy of interpretation between the two versions of the relevant provisions of the FIFA Code of Ethics. The panel had not therefore delivered a legally unsustainable award in ruling that gifts and other benefits given to an official by another FIFA official had already fallen under Articles 10, 11 and 20 of the former versions

of the Code; the 2012 version had simply clarified the meaning of "third parties" (see paragraphs 20-32 below).

24. As to the disciplinary sanction imposed on the applicant, the Federal Supreme Court indicated that in matters of disciplinary measures taken against sportspersons, it would only intervene in such discretionary decisions where they had resulted in a manifestly unfair outcome or in unacceptable unfairness. The pleas raised by the applicant had not, however, revealed any manifest violation of the law which would render the arbitral award arbitrary in its result, as regards the disciplinary penalty decided upon by the panel.

As to the allegation that the sanction had been too far-reaching, the Federal Supreme Court ruled as follows:

> "3.7.3 ... The appellant, moreover, expressly agrees (reply, p. 4, para. 4e §). The adjective 'any', before the word 'activity' in Article 22 of the FIFA Disciplinary Code is sufficient to justify the territorial extension of the sanction at a global level, which is logical in the case of an international federation governing its sport. As to the qualifiers contained in the parenthesis which closed this provision ('administrative, sports or any other'), they somewhat restrict the substantive scope of Article 6 § 1 (h) [of the FIFA Code of Ethics], which prohibits the exercise of 'any football-related activity'. The appellant nevertheless complains of the lack of precision of this complement, owing to the term 'other' at the end. In this, he is not entirely wrong. It must be admitted that this formulation could theoretically encourage possible excess on the part of the respondent. It must therefore be clearly stated that it cannot be regarded as a blank cheque to the respondent such as to justify an unlimited application of that prohibition to any activity, even if unrelated to the fields governed by FIFA or its affiliated associations, essentially the organisation of football competitions. It is not necessary to set aside the impugned award, however, because the sanction imposed may be interpreted in a sustainable manner. Moreover, if FIFA were to come up with the idea of specifically prohibiting the appellant from exercising an activity that is clearly not prohibited by Article 6 § 1(h) [of the FIFA Code of Ethics], its decision could be set aside on appeal (see, *mutatis mutandis*, judgment 4A_458/200922 of 10 June 2010, at 4.4.8). Whatever the appellant may argue, it is difficult to imagine that FIFA, using the monopoly it enjoys in his view in anything directly or remotely concerning football, would endeavour to encourage a given sponsor or media outlet not to employ him, or that it would even put pressure on a third party to prevent him from entering a stadium as a mere spectator. This argument is purely speculative. As to any obligation for such measures to be taken by third parties by means of specific enforcement, this is hardly conceivable for an association governed by private law. Moreover, in its reply to the appeal, FIFA itself held that the ban in question could not be extended to private activities outside organised football, and that, even if the appellant could not exercise official duties within FIFA, UEFA, or the French Football Federation until the end of his suspension, nothing would prevent him from attending a match, at least as a guest not invited by a federation, or to work as a consultant for a football clothing brand. These are the concessions that could be held against the respondent should it see fit to go back on them. One would certainly hope that FIFA, which today is seeking to restore its image that has been tarnished in recent years by a series of controversies, would have better things to do than to quibble over the application of a sanction which is a little too broadly defined."

As to the applicant's age, the Federal Supreme Court continued as follows:

> "Otherwise, the ban imposed should be less problematic from the perspective of its substantive scope, in so far as it concerns both administrative activity and sports

activity. As regards the latter, the scope of the disciplinary sanction is likely to be limited. Indeed, at his age, the appellant cannot reasonably hold out any hope of regenerating as the outstanding football player that he once was, the attacking midfielder who was the champion of the foremost European clubs of the day, and the extraordinary penalty shooter who gave a hard time to many experienced goalkeepers, for in this field as in many others – as the saying goes – 'one cannot be both old and young at the same time'."

As to the duration of the sanction, the court found as follows:

"With regard to its duration, i.e. four years, the ban imposed does not appear to be manifestly excessive on the basis of the criteria set out by the panel as summarised above ... The arbitrators took into account all the incriminating and exculpatory evidence in their case file. They did not overlook any major circumstance in fixing this duration. The prominent services rendered by the appellant to the cause of football did not escape them, nor did his present situation, or, conversely, the appellant's high-ranking position at the highest echelons of football at the time of the commission of the offences of which he was found guilty, together with his lack of remorse. In this connection, there is no similarity between the penalty imposed on the active professional Brazilian footballer Matuzalem, namely the threat of an unlimited ban on practising his profession if he did not pay compensation in excess of EUR 11 million at short notice (ATF 138 III 32223), and that imposed on the appellant. To put it into perspective, the latter is less than the six-year suspension imposed on [X.Y.] in comparable circumstances."

B. Relevant domestic and international law

25. Article 387 of the Code of Civil Procedure of 19 December 2008 provides for the effects of an arbitral award. It reads as follows:

Article 387 Effects of the award

"Once notice of the award has been given to the parties, it has the effect of a legally-binding and enforceable judicial decision."

26. Article 393 of that Code provides for the grounds on which an arbitral award can be challenged in the Federal Supreme Court. It reads as follows:

Article 393 – Grounds for challenging an award

"An arbitral award may be challenged on the following grounds:

(a) the single arbitrator was appointed or the arbitral tribunal composed in an irregular manner;

(b) the arbitral tribunal wrongly declared itself to have or not to have jurisdiction;

(c) the arbitral tribunal decided issues that were not submitted to it or failed to rule on one of the pleas;

(d) the right to equal treatment of the parties or the right to be heard in adversarial proceedings was breached;

(e) the award is arbitrary in its result because it is based on findings that are manifestly at odds with the facts emerging from the case file or because it constitutes a manifest violation of the law or of fairness;

(f) the costs and arbitrators' fees fixed by the arbitral tribunal are manifestly excessive."

27. The relevant articles of the Civil Code of 10 December 1907 read as follows:

Article 4 B. Scope of civil rights / III. Judicial discretion

"Where the law confers discretion on the court or makes reference to an assessment of the circumstances or to good cause, the court shall apply the rules of the law and of fairness."

Article 27 B. Protection of personality rights / I. Against excessive restriction

"No person may, even in part, waive the enjoyment or exercise of his or her civil rights.

No person may surrender his or her freedom or restrict the use of it to a degree which violates the law or public morals."

28. Article 163 of the Code of Obligations of 10 December 1907 reads as follows:

Art. 163 C. Contractual penalty / II. Amount, nullity and reduction of penalty

"The parties shall be free to determine the amount of the penalty.

The stipulated penalty cannot be enforced where its purpose is to support an unlawful or immoral undertaking or, unless otherwise agreed, where performance has been prevented by circumstances beyond the obligor's control.

The court may reduce penalties that it considers excessive."

29. Article 22 of the FIFA Disciplinary Code (2011 edition) read as follows:

"A person may be banned from performing any kind of football related activity (administrative, sports or any other)."

30. Article 11 of the 2006 FIFA Code of Ethics read as follows:

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

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

..."

31. Article 10 of the 2009 FIFA Code of Ethics read as follows:

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

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

..."

32. The relevant provisions of the 2012 FIFA Code of Ethics read as follows:

Article 13 – 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."

Article 15 – Loyalty

"Persons bound by this Code shall have a fiduciary duty to FIFA, the confederations, associations, leagues and clubs."

Article 19 – 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 organisation 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 organisation for which the person bound by this Code performs his duties for appropriate measures."

Article 20 – 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.

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 organisation. Any such permission will be documented.

4. 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."

COMPLAINTS

33. Relying on Article 6 of the Convention, the applicant complained that a number of violations had been committed both in the disciplinary proceedings and by the CAS.

34. He further alleged that the principle of non-retrospective legislation, enshrined in Article 7 of the Convention, had been breached, since the acts held against him had dated from 2007 and 2011 but FIFA's disciplinary bodies had refused to apply the texts that were in force at the material time.

35. He also asserted that the sanction imposed on him had breached his freedom to exercise a professional activity, as protected by Article 8 of the Convention, because it had banned him from any football-related activity for four years.

THE LAW

A. Switzerland's international responsibility under the Convention and the Court's jurisdiction *ratione personae*

36. In the present case the sanction in question was imposed on the applicant by FIFA, a Swiss private-law association. The proceedings were conducted before FIFA committees, and subsequently the CAS. However, the latter is neither a domestic court nor another institution of Swiss public law, but an entity emanating from the International Council of Arbitration for Sport (ICAS), which is a private-law foundation (see *Mutu and Pechstein v. Switzerland*, nos. 40575/10 and 67474/10, § 29, 2 October 2018). The question of international responsibility and, in parallel, that of the Court's jurisdiction *ratione personae*, therefore have to be addressed.

37. That being said, the Court notes that, as this is a matter of domestic arbitration, Swiss law gives effect to the arbitral awards of the CAS and

confers jurisdiction on the Federal Supreme Court to examine their validity (see Articles 387 and 393 of the Code of Civil Procedure, paragraphs 25 and 26 above). In addition, in the present case that apex court dismissed the applicant's appeal, thereby giving the arbitral award the force of *res judicata* in the Swiss legal order.

38. The impugned acts or omissions are thus capable of engaging the responsibility of the respondent State under the Convention (see *Mutu and Pechstein*, cited above, §§ 66 and 67, and, *mutatis mutandis*, *Nada v. Switzerland* [GC], no. 10593/08, §§ 120-22, ECHR 2012). It also follows that the Court has jurisdiction *ratione personae* to examine the applicant's complaints as to the acts and omissions of the CAS that were validated by the Federal Supreme Court.

B. Complaints under Article 6 of the Convention

39. In the applicant's submission, the breaches of fair hearing rules were numerous both in the Statutes governing the functioning of FIFA's bodies and in the conduct of the disciplinary proceedings. He alleged that the CAS had come to its decision on the basis of documents in the file that were defective on account of the conditions in which evidence had been collected, and that it did not have the right to rule on a case file that had been illegally constituted.

The applicant alleged that the shortcomings in FIFA's Statutes prompted the suspicion that its disciplinary bodies (Ethics Committee and Appeal Committee) were subordinate to FIFA's executive. He further argued that the significant financing granted by FIFA each year to the CAS raised questions as to whether the latter's quasi-judicial bodies were beholden to FIFA.

The applicant contended that the investigation had not upheld the rights of the defence and had not been impartial. There had been a systematic refusal to disclose the investigation file to him even though he had made a number of requests to that effect. In addition, that investigation had been conducted in a timeframe that was incompatible with the effective exercise of defence rights (proceedings opened on 28 September 2015, sanction issued on 18 December 2015).

Lastly, the applicant criticised the CAS for not assuming its role as custodian of fair hearing safeguards, given that it had purported to "cure any procedural violations committed in the previous proceedings" such that it was therefore "unnecessary for the panel to rule on the procedural breaches alleged by the applicant, or to decide whether or not the requirements of Article 6 of the Convention had to be met in the internal proceedings". The Federal Supreme Court, at last instance, had apparently not been able either to examine or to prescribe any redress or sanction for those breaches on account of the extremely limited nature of its scrutiny over CAS decisions.

40. Article 35 of the Convention requires that the complaints intended to be made subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law. Where an applicant has failed to comply with these requirements, his or her application should in principle be declared inadmissible for failure to exhaust domestic remedies (see *Gäfgen v. Germany* [GC], no. 22978/05, §§ 144 and 146, ECHR 2010).

41. In the present case, the complaints made by the applicant under Article 6 were not raised before the Federal Supreme Court, not even in substance. This can be seen from the structure of his pleadings before the Federal Supreme Court, the arguments as to the merits being divided into the following parts: "General observations", "Regulatory provisions applied", "Extension of the pension scheme", "Impugned payment", "Participation in the Finance Committee meeting of 2 March 2011" and "Sanction imposed". The Court would observe that, with the exception of the last heading (sanction imposed), which it will examine under Article 8, no other part of the pleadings refers to the alleged violations of Article 6 § 1 of the Convention. Moreover, the only complaint raised before the Federal Supreme Court related to allegations of arbitrariness and the lack of fairness of the arbitral award as such. The fairness of the proceedings was not in fact called into question.

42. It follows that these complaints must be rejected for failure to exhaust domestic remedies, in accordance with Article 35 §§ 1 and 4 of the Convention.

C. Complaint under Article 7 of the Convention

43. The applicant alleged that the principle of non-retrospective legislation, as enshrined in Article 7 of the Convention, had been breached. While he was accused of acts dating back to 2007 and 2011, the FIFA disciplinary bodies had refused to apply the 2009 Code of Ethics and had relied on the 2012 version. He submitted that the 2009 version had been narrower in scope and had prohibited the receipt of gifts only from third parties and that, in particular, any benefits granted by FIFA itself had not been covered by Article 10 of the 2009 Code. He said that he had complained of this violation before the CAS and the Federal Supreme Court, but that neither rectification nor reparation had been forthcoming.

44. The Court considers it necessary first of all to address the question whether the applicant can rely on the protection of Article 7 of the Convention. The concept of "penalty" under that Article is, like those of "civil rights and obligations" and "criminal charge" in Article 6 § 1, an autonomous Convention concept. To render the protection offered by Article 7 effective, the Court must remain free to go behind appearances and assess for itself

whether a particular measure amounts in substance to a "penalty" within the meaning of this provision (see *Kafkaris v. Cyprus* [GC], no. 21906/04, § 142, ECHR 2008; *Welch v. the United Kingdom*, 9 February 1995, § 27, Series A no. 307-A; and *Jamil v. France*, 8 June 1995, § 30, Series A no. 317-B). The wording of Article 7 § 1, second sentence, indicates that the starting-point in any assessment of the existence of a "penalty" is whether the measure in question was imposed following conviction for a "criminal offence". Other factors that may be taken into account as relevant in this connection are the nature and purpose of the measure; its characterisation under national law; the procedures involved in the adoption and implementation of the measure; and its severity (see *Kafkaris*, cited above, § 142; *Welch*, cited above, § 28; and *Jamil*, cited above, § 31).

45. The Court has also expressly held that proceedings concerning the dismissal of a bailiff for having committed a large number of misdemeanours "did not involve the determination of a criminal charge against the applicant" (see *Bayer v. Germany*, no. 8453/04, § 37, 16 July 2009).

46. In addition, in the case of *Oleksandr Volkov v. Ukraine* (no. 21722/11, § 93, ECHR 2013) the applicant was a judge who had been punished for a breach of professional rules, in other words wrongdoing which clearly fell within the disciplinary domain. The sanction imposed on the applicant had been a typical disciplinary measure for professional misconduct and, in terms of domestic law, could be contrasted with criminal-law sanctions for the adoption of a knowingly wrongful decision by a judge. On those grounds the Court found that the case did not fall under the "criminal" head of Article 6 of the Convention (ibid., § 95).

47. Moreover, the Court has generally refused to consider that the criminal head of Article 6 is applicable to cases of dismissal and employment restrictions affecting former KGB agents (see *Sidabras and Džiautas v. Lithuania* (dec), nos. 55480/00 and 59330/00, 1 July 2003). The Polish "lustration" cases were different in that the Court held, in that scenario, that the relevant provisions of Polish legislation were not directed at a small group of individuals possessing a special status – in the manner, for example, of disciplinary law – but covered a vast group of citizens; the proceedings resulted in an employment ban for a large number of public posts without an exhaustive list being provided by domestic law (see *Matyjek v. Poland* (dec.), no. 38184/03, §§ 53 and 54, ECHR 2006-VII).

48. In the present case, the sanctions imposed on the applicant, who was a high-ranking FIFA official, in particular the ban on any football-related activity for four years, were based on the relevant provisions of the FIFA Code of Ethics and Article 22 of the Disciplinary Code (see paragraph 29 above) of that organisation and were decided upon by its disciplinary bodies, namely the Ethics Committee and the Appeal Committee. Therefore these were specific measures taken again a member of a relatively small group of individuals who had a particular status and were subject to a specific set of

rules. Consequently, the Court concludes that since the applicant was not charged with any "criminal offence" he cannot rely on the protection of Article 7 of the Convention.

49. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention, within the meaning of Article 35 § 3 (a) of the Convention and must be rejected pursuant to Article 35 § 4.

D. Complaint under Article 8 of the Convention

50. Under Article 8 of the Convention, the applicant further argued that the sanction imposed on him breached his freedom to engage in a professional activity, such freedom being protected by that provision, because it had banned him from any football-related activity for a period of four years.

51. The Court would first note that the applicant did not expressly refer to Article 8 before the Federal Supreme Court but complained of infringements of his personality rights (Article 27 of the Civil Code; see paragraph 27 above) and of his economic freedom ("economic future"). Accordingly, the Court considers that the applicant, at least in substance, has exhausted domestic remedies.

1. Applicability of Article 8 to the instant case.

52. As regards the applicability of Article 8 to the instant case, the Court has to examine whether the applicant's complaint falls within the concept of "private life". It has already had occasion to observe that this is a broad term which is not susceptible to exhaustive definition. It also covers the right to personal development and to establish and develop relationships with other human beings and the outside world (see, for example, *Evans v. the United Kingdom* [GC], no. 6339/05, § 71, ECHR 2007-I). In this sense Article 8 may also extend to professional activities (see *Fernández Martínez v. Spain* [GC], no. 56030/07, § 110, ECHR 2014 (extracts); *Bărbulescu v. Romania* [GC], no. 61496/08, § 71, 5 September 2017; *Antović and Mirković v. Montenegro*, no. 70838/13, § 42, 28 November 2017; and *López Ribalda and Others v. Spain* [GC], nos. 1874/13 and 8567/13, § 88, 17 October 2019).

53. The Court has recently had occasion to summarise the principles which govern the scope of Article 8 in professional disputes in the case of *Denisov v. Ukraine* ([GC], no. 76639/11, 25 September 2018):

> "115. The Court concludes from the above case-law that employment-related disputes are not *per se* excluded from the scope of 'private life' within the meaning of Article 8 of the Convention. There are some typical aspects of private life which may be affected in such disputes by dismissal, demotion, non-admission to a profession or other similarly unfavourable measures. These aspects include (i) the applicant's 'inner circle', (ii) the applicant's opportunity to establish and develop relationships with others, and (iii) the applicant's social and professional reputation. There are two ways in which a private-life issue would usually arise in such a dispute: either because of the underlying reasons for the impugned measure (in that event the Court employs the

reason-based approach) or – in certain cases – because of the consequences for private life (in that event the Court employs the consequence-based approach).

116. If the consequence-based approach is at stake, the threshold of severity with respect to all the above-mentioned aspects assumes crucial importance. It is for the applicant to show convincingly that the threshold was attained in his or her case. The applicant has to present evidence substantiating consequences of the impugned measure. The Court will only accept that Article 8 is applicable where these consequences are very serious and affect his or her private life to a very significant degree.

117. The Court has established criteria for assessing the severity or seriousness of alleged violations in different regulatory contexts. An applicant's suffering is to be assessed by comparing his or her life before and after the measure in question. The Court further considers that in determining the seriousness of the consequences in employment-related cases it is appropriate to assess the subjective perceptions claimed by the applicant against the background of the objective circumstances existing in the particular case. This analysis would have to cover both the material and the non-material impact of the alleged measure. However, it remains for the applicant to define and substantiate the nature and extent of his or her suffering, which should have a causal connection with the impugned measure. Having regard to the rule of exhaustion of domestic remedies, the essential elements of such allegations must be sufficiently raised before the domestic authorities dealing with the matter."

54. Turning to the present case, the applicant pointed out that he had been a professional football player, captain and coach of the national football team, that he had pursued a career in the world of football, that he had been a member of the organising committee of the 1998 football World Cup in France, that he had participated in X.Y.'s election campaign, that he had worked for FIFA as an adviser to the newly elected President until June 2002, that he had been elected on 25 April 2002 to the Executive Committee of UEFA, which he had represented on FIFA's Executive Committee from that date onwards, and that he had been elected President of UEFA in 2007, re-elected in 2011 and 2015, and was Vice-President of FIFA. He added that he had ceased all commercial activities at the end of 2006 in order to take up his position as President of UEFA, thus avoiding any conflict of interest.

55. The applicant submitted that he had therefore devoted his whole life and professional career to football, not having worked in any other field. It followed that the disciplinary bodies of FIFA, the CAS and the Federal Supreme Court could not hand down a sanction as wide and as restrictive as that imposed on him, namely a blanket ban on any professional activity (administrative, sports or any other) related to football at national and international level for four years from 8 October 2015, when he was sixty-one years old, without breaching the Convention. It was therefore a disproportionate and unjustified measure which had had the effect, in practice, of depriving him of any possibility of pursuing a professional activity, and was thus incompatible with Article 8 of the Convention.

56. The Court considers that the reasons for imposing the impugned measure affecting the applicant's professional life were not linked to his

private life. However, the effects on his private life are the result of acts of which he was accused (contrast, for example, *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, § 71, ECHR 1999-VI). It is thus appropriate, in the present case, to adopt the consequence-based approach (see *Denisov*, cited above, § 107). In such cases the Court will only accept that Article 8 is applicable where the applicant has shown convincingly, by presenting concrete evidence, that these consequences are very serious and affect his or her private life to a very significant degree (ibid., § 116).

57. In the light of the applicant's arguments, the Court concedes that, having spent his whole career in football, he must indeed have felt significantly affected by the four-year ban on any football-related activity. The Court accepts, first, that the negative consequences of the measure were capable of affecting the "inner circle" of the applicant, who had temporarily been prevented from earning a living (contrast *Denisov*, cited above, § 118) in the domain of football, which had been his only source of income throughout his life, this situation being aggravated by the dominant position – not to say monopoly – of FIFA in the worldwide organisation of the sport (see, in this context, *Schüth v. Germany*, no. 1620/03, § 73, ECHR 2010) and by his age. Secondly, it is of the view that the sanction could have a negative impact on the possibility of establishing and developing social relations with others, in view of the very broad nature of the sanction, which extended to "any" football-related activity. In this connection the Court considers that it should not be overlooked that the applicant was commonly, in public and in the media, identified with the sport of football. Lastly, it finds it probable that the sanction imposed on the applicant, like any sanction for socially reprehensible conduct, has had negative consequences for his reputation in the form of a certain stigmatising effect.

58. It follows that, having regard to the specificity of the applicant's situation, the threshold of severity has been reached for the purposes of Article 8 of the Convention. Having regard to the foregoing, the Court considers that Article 8 is applicable in the present case.

2. Nature of the obligation imposed and the margin of appreciation in the present case

59. As the Court has already found above, the impugned sanction was, in the present case, imposed by FIFA, a Swiss private-law association. As the case does not concern a measure taken by the State, the Court considers that it cannot deal with the Article 8 complaint from the perspective of the "interference" doctrine. It will thus have to examine whether the respondent State fulfilled its positive obligations in relation to Article 8 of the Convention.

60. Although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this

negative undertaking, there may be positive obligations inherent in an effective respect for private life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves. The boundaries between the State's positive and negative obligations under Article 8 do not lend themselves to precise definition. The applicable principles are nonetheless similar. In particular, in both instances regard must be had to the fair balance which has to be struck between the general interest and the interests of the individual; and in both contexts the State enjoys a certain margin of appreciation (see *Obst v. Germany*, no. 425/03, § 41, 23 September 2010; *Evans*, cited above, §§ 75-76; and *López Ribalda and Others*, cited above, §§ 111 and 112).

61. In certain circumstances, the State's positive obligations under Article 8 of the Convention are not adequately fulfilled unless it secures respect for private life in the relations between individuals by setting up a legislative framework taking into consideration the various interests to be protected in a particular context (see *López Ribalda and Others*, cited above, § 113; *M.C. v. Bulgaria*, no. 39272/98, § 150, ECHR 2003-XII; and *K.U. v. Finland*, no. 2872/02, §§ 43 and 49, ECHR 2008). In this connection the Court also points out that the domestic courts must provide sufficiently detailed reasons for their decisions, not least to enable the Court to carry out the European supervision entrusted to it (see, *mutatis mutandis*, *I.M. v. Switzerland*, no. 23887/16, § 72, 9 April 2019, and *X v. Latvia* [GC], no. 27853/09, § 107, ECHR 2013). A lack of reasoning in domestic decisions, without any real weighing-up of the interests in issue, falls short of the requirements of Article 8 of the Convention.

62. The Court takes the view that the main question arising in the present case is thus whether the State was required, and if so to what extent, in the light of its positive obligations under Article 8, to protect the applicant's right to respect for his private life against the measure imposed by FIFA, which was upheld, albeit in an alleviated form, by the CAS. In particular it should be ascertained whether the applicant had sufficient institutional and procedural safeguards available to him, in the form of a system of courts to which he could submit his complaints, and whether those courts delivered reasoned decisions which took account of the Court's case-law (see *Obst*, cited above, §§ 45-46).

63. In examining this question the Court will take account of the specific situation of the applicant, who freely chose a particular career in football, first as player and coach, then in official capacities in football associations, which are private entities and as such are not directly bound by the Convention. While it is true that such a career affords numerous privileges and advantages, it also requires the waiving of certain rights (see, in the same vein, *Fernández Martínez*, cited above, §§ 134-35). Such contractual limitations are permissible under the Convention where they are freely accepted (ibid.,

§ 135). In the present case, however, unlike that of *Mutu and Pechstein* (cited above, §§ 114 and 122), the applicant did not submit before the Court that he had been forced to sign a compulsory arbitration clause depriving him of all avenues of redress before the ordinary domestic courts. Moreover, he expressly accepted the jurisdiction of the CAS by signing the Order of Procedure (see paragraph 137 of the CAS award).

64. The Court finds it necessary to be mindful of the applicant's specific situation when examining the merits of his complaint under Article 8 of the Convention.

3. Conclusions on Article 8 in the present case

65. The applicant was able to bring his dispute with FIFA before the CAS, whose independence and impartiality as a "tribunal" were not called into question by the Court in *Mutu and Pechstein* (cited above, § 159).

66. The CAS, sitting as a panel of three arbitrators and after holding a hearing, reviewed the decision of the Adjudicatory Chamber of the FIFA Ethics Committee and reduced the length of the ban from six years to four and the amount of the fine from CHF 80,000 to CHF 60,000. The Court notes that the CAS responded to the applicant's complaints exhaustively and comprehensively, in an award extending to 63 pages (374 paragraphs). It fully shares the view of the Federal Supreme Court that the CAS carried out a complete examination of the complaints raised under the Convention, delivering a sufficiently detailed award and convincingly weighing up the interests at stake, taking account of the specific nature of the sports arbitration procedure.

67. The CAS found, in particular, that a four-year period was reasonable as to its proportionality in relation to the aim pursued, as it represented a sufficiently harsh sanction for the breach, which it regarded as serious, of Articles 19 and 20 of the FIFA Code of Ethics, in order to send a strong signal to restore the reputation of football and of FIFA. The CAS accordingly found that there was an overriding interest in restricting the applicant's personality rights and his right to engage in his professional activity (see paragraph 19 above). Moreover, neither the eminent services rendered by the applicant to the cause of football nor his situation were overlooked by the arbitrators. On the contrary, the CAS had due regard to the applicant's senior position in the highest football bodies at the time of the breaches of which he stood accused, as well as to his lack of remorse.

68. Subsequently, the applicant was able to lodge a civil-law appeal with the Federal Supreme Court against the CAS award. In this appeal, he argued in particular that the duration of the four-year sanction was excessively long, that the sanction was not sufficiently precise, that the CAS had not sufficiently taken into account the real impact of the sanction or his age, and that it had therefore not properly weighed up the competing interests (see paragraphs 17-21 above).

69. Hearing that appeal, the Federal Supreme Court, for its part, endorsed with plausible and convincing reasoning the CAS award. It took the view that the duration of the suspension did not appear manifestly excessive in view of the criteria set out by the arbitral tribunal, which had taken account of all the incriminating and exonerating factors in the file before it, and had not disregarded any material circumstance in deciding on that duration.

70. Having regard to the foregoing, it can be said that in the present case the applicant was afforded sufficient institutional and procedural safeguards, namely a system of private (CAS) and State (Federal Supreme Court) bodies before which he had been able to set out his complaints, and that those bodies properly weighed-up the relevant interests at stake and responded to all those complaints in duly reasoned decisions. Moreover, while being mindful of its remit, the Court finds that the decisions of those bodies do not appear arbitrary or manifestly unreasonable, and that they pursued not only the legitimate aim of punishing breaches of the relevant rules by a high-ranking official of FIFA, but also the general-interest aim of restoring the reputation of football and of FIFA. Therefore, and particularly taking into account the considerable margin of appreciation enjoyed by the respondent State in the present case, Switzerland has not failed to fulfil its obligations under Article 8 of the Convention.

71. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously,

Declares the application inadmissible.

Done in French and notified in writing on 5 March 2020.

Stephen Phillips Registrar	Paul Lemmens President