

Annex n.



FIDE ETHICS COMMISSION

REPORT TO THE FIDE GENERAL ASSEMBLY

In 2014 the Ethics Commission (EC) (Chairman: Mr Roberto Rivello, Members: Mr Ralph Alt, Mr Ion Serban Dobronauteanu, Ms Margaret Murphy, Mr Ian Wilkinson, all presents) held a meeting in Athens (Greece), on 7th and 8th of June. Decisions and proposals approved in Athens are reported hereafter. Another meeting of the EC is scheduled on 8th of August in Tromsø: an additional report will be drafted following its conclusion.

I) ANTI-CHEATING ISSUES: FEEDBACK AND PROPOSALS

FIDE Secretariat asked EC to give a feedback on the proposals formulated by the Anti-Cheating Committee (ACC) for the 2014 FIDE Congress and on the legal opinion delivered by Reymond and Associés. The point was therefore included in the agenda and on 7th of June it was also possible to arrange a very fruitful meeting in Athens with Mr Shaun Press, Secretary of the ACC, discussing the possibility of a stricter future co-operation between the EC and the ACC.

Some general remarks and suggestions on anti-cheating issues were approved by the EC and are synthetized hereafter.

First of all, we would like to express our great appreciation for the important work carried out by the ACC and by Reymond and Associés: the documents they drafted are really useful and have already had the great merit to focalise the attention of FIDE members and organs on these problems, so crucial for the future of all chess competitions.

Otherwise, we have to underline that the ACC seems to have paid no attention to the numerous proposals and opinions expressed in the last 6 years by the EC on the same subject matter (more recently in 2013, in occasion of the report to FIDE Executive Board in Tallinn) and has not taken into account some important reforms introduced in the revised FIDE Statutes approved by the General Assembly in 2012, in Istanbul. In our opinion, considering them would have simplified the work of the ACC, facilitating the achievement of the most important result for FIDE: the individuation of rules and measures that can be immediately applicable in the fight against cheating.

Anyway, we do believe that this aim is still fully achievable and we are sure, especially following the meeting with the ACC Secretary, that it will be possible to formulate common proposals to be submitted to the attention of the 2014 FIDE Congress.

As a preliminary point, two key principles need to be reminded, otherwise there is a concrete risk to approve recommendations in contrast with existing rules and principles of law or, at least, absolutely not applicable in the next future:

- the necessity to respect and the opportunity to apply the current FIDE Statutes, as modified in 2012;
- the importance to consider any reform of rules concerning cheating and anti-cheating not as an isolated branch, separated from the general system, but as a part, may be an anticipation, of a more general reform of FIDE Handbook and Code of Ethics.

Concrete suggestions on various specific points will follow, together with some proposals on how it seems possible to unify the different points of view.

ORGANS AND COMPETENCES: IMPLEMENTING FIDE STATUTES

As well known, FIDE Statutes can be changed only by the General Assembly and to effect such changes two thirds of the votes delivered without taking into account abstentions are required. FIDE Statutes institute and list FIDE officials and organs, including the EC, which is an elected commission competent to evaluate and sanction all breaches of FIDE Code of Ethics.

The ACC proposes to institute two new organs specialised on anti-cheating: one charged of the investigations, the other of the judgment. More precisely:

- “an investigating Committee appointed by the ACC, known as the Investigating Committee, that shall be formed on a case-to-case basis”;

- “a FIDE Anti-Cheating Commission that should consist of 7 members which will be appointed every 4 years as follows: - Three (3) members of the commission shall be recommended by FIDE; Three (3) members of the commission shall be recommended by the Association of Chess Professionals (ACP); one (1) member is required to be a technical expert in the area of computer based cheating and shall be jointly nominated by FIDE and the ACP. The Commission Chair shall be recommended by the FIDE President, and approved by the FIDE General Assembly”.

About the merit of this proposal the discussion is surely open, also if, as EC, we fully agree with the doubts expressed by Reymond and Associés about the opportunity to multiply “judicial organs” in FIDE. We could also add that the proposed composition of the Anti-Cheating Commission is very unlikely to respect standard of independence and impartiality, given that all their members will be just “recommended” by someone, with a great risk of annulment of their decisions. But what is much more important to stress is that it is clear that these new organs could be created only changing FIDE Statutes. That means not before 2016 or following an Extraordinary General Assembly.

This does not seem opportune: both because it would be important to do something as soon as possible and also because there are some pertinent new rules, inserted in the FIDE Statutes in 2012, that have not yet been applied and it would be reasonable to at least try to apply, before changing them again. In addition, we believe that the existing problems, well underlined by the ACC, can find a solution applying these rules.

Investigations: FIDE Statutes, Chapter 8 – Ethics Commission – article 2.5, gives to the Presidential Board the power to create “an independent Investigatory Chamber of the Ethics Commission, composed by three members who shall not belong to the same Federation of the Ethics Commission members“, “charged to address motivated reports to the Ethics Commission on specific cases or typologies of cases”. In Tallin 2013 FIDE Congress we advanced the proposal to create an “Investigatory chamber on cheating issues”: this would be fully in line with the existing Statutes (cheating cases are surely a typology of cases) and at the same time quite similar to the “Investigating committee” proposed by the ACC. The Investigatory Chamber could be created in Tromsø, immediately after the election of the EC. Specialisation would be an asset for the three members: one of them could be suggested by the ACP, another one could be an IT expert, the third may be a jurist. Their activity could be useful also at a national level, for FIDE members. They could take into account all ACC suggestions.

Judgement: we definitely agree that excessive length of proceedings is a major problem of the EC, with many causes, that we underlined in our reports of the last years

(FIDE cases are requesting more and more strictly technical juridical knowledge and skills; many parties are assisted by lawyers; to deal with the cases needs time and a strict respect of a fair “trial”; when parties are not assisted by lawyers sometimes they have no idea how to lodge a complaint nor on existing rules; some EC members are professional jurists –and this helps- but they exercise their functions for the EC pro bono, sacrificing quite a lot of time and resources; EC members come from different continents, therefore meetings and hearings are complicated and expensive; there is no staff; till now there are no investigative organs; EC receive documents in different languages, frequently not translated; and so on). Otherwise, this is a general problem, which affects not only cheating, but all cases.

To find a solution to this problem, in 2012 it was introduced an important reform: the introduction of a system of shared competences on the prosecution of all violations of FIDE Code of Ethics.

The idea is to apply the subsidiarity principle, which works sufficiently well for all “real” international courts and tribunals (International criminal court, European court of human rights, EU courts, etc.).

The competence of the EC on all breaches of FIDE Code of Ethics has been confirmed, but after the reform when these breaches concern “the conduct of officials of member federations, associations, leagues and clubs as well as players, players’ agents and match agents” (cheating cases are surely included), the competence of the EC has been restricted and now can be exercised only if the case “is not judged at national level” or “if the competent organs of the national chess federations fail to prosecute such infringements or fail to prosecute them in compliance with the fundamental principles of law”. At the same time, member federations have now the possibility to attribute an appeal competence to the EC, “over decisions of corresponding national organs when cases have international implications” (FIDE Statutes, Chapter 8 – Ethics Commission – article 1). It is a big novelty, extremely important for what concerns the value of national decisions concerning violations of FIDE Code of Ethics. All FIDE members had and have the duty to apply FIDE rules and prosecute any infringements of the FIDE Code of Ethics, but in the past the effects of a national decision could not exceed the limits of the national level. With the new Statutes, if a member federation attributes a full appeal competence to the EC, then national decisions not appealed in front of the EC or confirmed by the EC will be recognised as directly applicable by all FIDE organs and members. For example, and for what here is relevant; the ban of a player judged responsible of cheating by the competent organs of a member federation, if not appealed or if confirmed by the EC, will directly extend its effects to all FIDE members.

Therefore, since 2012 all member federations are requested to introduce in their statutes organs and proceedings apt to prosecute breaches of the FIDE Code of Ethics at national level, in compliance with fundamental principles of law, as well as an appeal competence to the EC.

Both in 2012 and in 2013 FIDE Congresses the EC illustrated these radical changes, underlining that national chess Federations have to be strongly recommended to adopt this system of shared competences, in their own interest and for obtaining in this way a direct worldwide application of any decision of their competent organs of sport justice, if not appealed.

Unfortunately, no member federation get the message until now, probably because they have not yet been adequately informed and because they need to receive assistance to reinforce their internal structures. But this could be done: minimal procedural rules for the evaluation of breaches of ethics can be added as mandatory for all FIDE members, as a part of FIDE Handbook. Here it could also be possible to add a duty to co-operate with the Investigatory Chamber, as well as some specific rules concerning anti-cheating. Something similar has been done for what concerns doping and for anti-cheating it could be easier.

This way it would be possible to reinforce not only the fight against cheating but also an improved system of sport justice.

SUBSTANTIVE RULES: REFORMING FIDE HANDBOOK

Breaches of ethics, sanctions, and all substantive rules about cheating have to be included in the FIDE Code of Ethics. In the past it was discussed if the Code of Ethics was or not a part of the Statutes and/or if a qualified majority was or not necessary to modify it. It was clearly a debatable question. However, during the Tallinn Congress, the question was answered: the Code of Ethics is a part of the Handbook but it is not a part of the Statutes. It's good to know. That means that it can be easily modified.

EC has proposed many times an integral revision of the Code of Ethics, starting from sanctions (see 2011 and 2012 reports, asking for increasing the maximum number of years for a ban, and for the introduction of additional sanctions including revocations of titles, sports results and prizes): it's the time to do this, taking advantage of the general consensus about cheating.

The ACC proposes to introduce as a sanction “up to 15-year suspension from all FIDE rated events”, for a repeated “offence”: this is perfectly fine to us and we definitely agree on this.

What it is important is to introduce this and other sanctions in the general system and not only for cheating. First, because it is clearly a necessary updating of existing rules, but also because if it was possibility to apply this sanction only to cheating this would be unreasonable and disproportionate, creating risks of annulment of the decision. There are breaches of ethics that are at least as serious as cheating: for example, serious violence against an opponent during a game, or match fixing (by the way, it would be definitely relevant to add a specific rule about match fixing too, bearing in mind that in chess draw is regulated in a very particular way, including draw by agreement during the game, and it does not seem a good idea to sanction the agreement of a draw in the same way of a “real” match fixing, especially if involving betting, even in tournaments applying Sofia rules). Sanctions have to be proportioned in comparison with all different breaches of ethics.

The ACC proposes mitigated sanctions in case of minors and in case of a first violation. We definitely agree on this too, but this has to be introduced in general in the Code of ethics as well.

Moreover, this is not the only “general” part of the Code of ethics that is “missing”: we need rules for aiding and abetting, attempt, circumstances, grounds for excluding responsibility, etc. In the EC “jurisprudence”, when needed, we had to use general principles of law. Nevertheless, the introduction of specific rules would be a great step forward.

In our opinion, it would be possible to prepare for 2014 FIDE Congress a proposal of reform of the parties of the FIDE Code of Ethics currently titled “Introduction” and “Sanctions”. New rules would have to be applicable to all breaches of ethics, but the exact limits (minimum-maximum) of the sanctions for cheating could be specifically mentioned as well.

Sanctions for what? Well, it is clear that a problem of exact identification of the different breaches of the Code of Ethics exists, but for the “cheating” we agree with the ACC that is better to not add a definition, at least for the moment. Otherwise, this approach has to be consistent and the proposed “recommendation for arbiters” n.1 of the ACC seems oriented in a different direction, suggesting a huge definition of “how players can cheat”, including “accepting information by another person”.

On the contrary, it would be important to add, as a new breach of ethics, fake or false or unjustified accusation of cheating, with a minimum sanction for these behaviours (as we already suggested in 2011) and on this point we also definitely agree with ACC idea to introduce procedures for the reporting and for in-tournament complaints. Otherwise, again, sanctioning these behaviours has to follow general rules and proceedings. Exceptional rules are dangerous and, in the majority of cases, not admissible.

PROCEDURAL RULES

Evidence: one of the main point of the ACC proposal is the introduction of an anti-cheating system, a “Game screening tool”, based on statistics. In more than one case, as EC, we had occasion to debate the value of statistics.

The idea to use this system for prevention and for continuous monitoring seems very interesting. We surely agree with Reymond and Associés on their well-motivated considerations about data protection and personality law, no problems on that. We just have doubts about the retroactivity of the system, going back to 1.1.2012.

Otherwise, we cannot agree with ACC conclusion that statistics, in some cases, can be considered as sole evidence for a judgment. In accordance with CAS jurisprudence, as well reminded by Reymond and Associés, it is true that for sport justice the standard of proof is less than proof beyond a reasonable doubt but greater than a mere balance of probability, but for us it is clear that cannot be lower. The standard of “comfortable satisfaction” can be applied, as for doping, but nothing less than this.

However, in our opinion, mayor role of statistics is to orient investigations: this is the most important point. Then, additional evidence is requested.

Length of proceedings: as already mentioned discussing organs and competences, we definitely agree with the need to have fast judgments on cheating cases. New procedural rules can be introduced. Otherwise, this cannot violate defendants’ rights. Bear in mind the examples of some well-known cases, quickly evaluated by internal organs of national chess federations with judgements ... quickly annulled by national ordinary judges. This is not the solution. Investigations can and must be fast, judgements have to take a little bit more time. For the same reason the idea to introduce a sort of status of limitation (“on the 76th day, in absence of a judgment by the Ethics Commission, the defendant shall be deemed to have won” the case) is not realistic: it would be just too easy for any good lawyer to raise a sufficient number of objections and requests to obtain or an untimely or an unmotivated decision (then annulled by the CAS).

ETHICS COMMISSION PROPOSALS

Summarising, EC proposals for the General Assembly are the following ones:

- in accordance with FIDE Statutes, Chapter 8 – Ethics Commission – article 2.5, an independent Investigatory Chamber of the Ethics Commission, would have to be instituted and charged to address motivated reports to the Ethics Commission on cheating cases;
- FIDE members would have to be fully informed on and invited to give application to the system of shared competences on the prosecution of all violations of FIDE Code of Ethics introduced by FIDE Statutes, Chapter 8 – Ethics Commission – article 1, confirming the existence or introducing in their statutes organs and proceedings apt to prosecute breaches of the FIDE Code of Ethics at a national level, in compliance with fundamental principles of law, as well as an appeal competence to the EC. For facilitating their task, minimal procedural rules for the evaluation of breaches of ethics can be added as mandatory for all FIDE members, as a part of the FIDE Handbook, including the duty to co-operate with the above mentioned Investigatory Chamber;
- a reform of the parties of the FIDE Code of Ethics currently titled “Introduction” and “Sanctions” would have to be immediately approved: the EC will draft a specific proposal of reform before the General Assembly;
- all other parties of the FIDE Code of Ethics would have to be reformed: a working group of few experts could be charged of drafting a proposal, including the Chairmen of the Constitutional Commission and of the Ethics Commission.

II) DECISIONS

The EC, sitting in the following composition Chairman: Mr Roberto Rivello, Members: Mr Ralph Alt, Mr Ion Serban Dobronauteanu, Ms Margaret Murphy, Mr Ian Wilkinson, during the meeting held in Athens made the following decisions:

Case n. 5/2012: “2009 Sarajevo tournament”, complaint submitted by Mr Dejan Antic against Mr Bogut Velijko, Mr Mirza Miralem, Mr Milivoje Susic, Mr Nedim Lalic and Mr Halilovic Fahrudin, evaluated by the EC as receivable only against Mr Bogut Velijko (for an alleged violation of par. 2.2.5 of the FIDE Code of Ethics)

and Mr Halilovic Fahrudin (for an alleged violation of par. 2.2.3 of the FIDE Code of Ethics). The EC unanimously rules that:

- Mr Bogut Veljko violated par. 2.2.5 of the FIDE Code of Ethics. He has to be banned from the participation in all FIDE events and FIDE rated tournaments, as a player, for a period of 9 (nine) months. The ban is suspended, subject to a probationary period of two years, starting from 9 June 2014.
- Mr Halilovic Fahrudin violated par. 2.2.3 of the FIDE Code of Ethics. He has to be sanctioned with a warning.
- A written motivation of the decision will be communicated to the parties by the FIDE Secretariat.

Case n. 8/2013: “Mr Rohan Vijay Shandilya participation in 2013 AMBANK Malaysia chess Challenge” (complaint submitted by Mr Rohan Vijay Shandilya against the organisers and the arbiter of the tournament), the EC by majority rules that:

- the case is receivable against Mr Abd Hamid Abd Majid as the organizing secretary of the tournament, for an alleged violation of par. 2.2.3 of the FIDE Code of Ethics;
- The FIDE Secretariat will communicate the decision to Mr Rohan Vijay Shandilya and to Mr Abd Hamid Abd Majid.

Case n. 10/2013: “Mr. Raset Ziatdinov v. Mr. Robert Samuel Lee”, (complaint submitted by Mr Raset Ziatdinov against Mr Robert Samuel Lee), the EC unanimously rules that:

- the complainant reports insulting words by the opposing party, in occasion of some communications related to a job proposal as chess trainer. The complaint could be lodged to the ordinary jurisdiction, as a civil or a criminal case. Otherwise, it does not concern breaches of the FIDE Code of Ethics, given that the conditions of applicability listed in par. 1.4 are not integrated. Therefore, the case has to be rejected as not receivable and has to be dismissed.
- The FIDE Secretariat will communicate the decision to the complainant, Mr Raset Ziatdinov.

Case n. 13/2013: “Mr Gurupreet Pal Singh against All India Chess Federation” (complaint submitted by Mr Gurupreet Pal Singh), the EC unanimously rules that:

- Mr Gurupreet Pal Singh reports allegedly unjustified and disproportioned punishments meted out by the All India Chess Federation against some players, mentioning the names of Mr Elijah Emojong and Mr Rohan Shandilya (by the way, Mr Rohan Shandilya filed a different, autonomous complaint about the same facts: see case n. 8/2013). He does not report any fact directly damaging his person. Preliminary, it has to be reminded that only FIDE organs to which the FIDE Statute attributes a specific competence have the right to address a report to the EC, representing FIDE's general interests. A complaint that refers facts unconnected with a relevant individual interest of the plaintiff is not receivable by the EC. Therefore, the case has to be rejected as not receivable and has to be dismissed.
- The FIDE Secretariat will communicate the decision to the complainant, Mr Gurupreet Pal Singh.

Case n. 14/2013: “**Mr Igor Yagupov against Mr Tito Martins and the organizers of the international chess festival «Angola-open 2013»**” (complaint submitted by Mr Igor Yagupov against Mr Tito Martins and the organizers of the international chess festival), the EC unanimously rules that:

- the complainant reports an invitation received from Mr Tito Martins to participate in the 2013 Angola open chess tournament and an alleged violation of obligations of contractual nature. These facts could be the subject of a civil action in front of the ordinary jurisdiction. Otherwise, they do not concern breaches of the FIDE Code of Ethics, for two reasons. Breaches of contractual obligations are not included in EC competences and do not constitute by themselves a partial, discriminatory and not responsible behaviour ex par. 2.2.3 of the FIDE Code of Ethics. Mr Tito Martins was the press officer of the chess event: the same conditions of applicability listed in par. 1.4 of the FIDE Code of Ethics are not integrated. Therefore, the case has to be rejected as not receivable and has to be dismissed.
- The FIDE Secretariat will communicate the decision to the complainant, Mr Igor Yagupov.

Case n. 15/2013: “**Turkish Chess Federation against Ms Ekaterina Atalık**” (complaint submitted by the President of the Turkish Chess Federation and Mr Ali Nihat Yazici against Ms Ekaterina Atalık about her participation in 2013 European Individual Women Championship under ECU flag). The Turkish Chess Federation

later withdrew the complaint, retracting it and specifying that it was not their intention to bring the case in front of the EC. The EC unanimously rules that:

- the case has to be dismissed and is closed.
- The FIDE Secretariat will communicate the decision to the Turkish Chess Federation.

Case n. 16/2013: “Complaint of Mr Melvyn King concerning the participation of Mr Evgeny Eletsy in the Blitz tournament of the 23rd World Seniors Chess Championship in Opatija” (complaint submitted by Mr Melvyn King against Mr Evgeny Eletsy and the arbiters and the organisers of the 23rd World Seniors Chess Championship), the EC unanimously rules that the case can concern the position of Mr Boris Golubovic, tournament director and main organiser of the chess event, but no one of the other persons mentioned by Mr King in his complaint, and, by majority, that:

- the case is receivable against Mr Boris Golubovic, for an alleged violation of par. 2.2.3 of the FIDE Code of Ethics;
- The FIDE Secretariat will communicate the decision to Mr Melvyn King and Mr Boris Golubovic.

Cases n. 17/2013 and 4/2014: “The legitimate Pakistan chess federation” (complaint submitted by Mr Armer Karim about alleged wrong information and the legitimacy of the elections of the President and the Board of the Pakistan Chess Federation and communications sent by Mr Hanif Qureshi and Mr Naeem Hamid Mirza), the EC unanimously rules that:

- any complaint, arguing about the legitimacy of the elections of the board and representatives of a national chess federation, has to be lodged in front of the competent national civil judge (by the way, as it happened for the Pakistan chess federation) and does not concern a possible violation of the FIDE Code of Ethics. Therefore, the case has to be rejected as not receivable and has to be dismissed;
- The FIDE Secretariat will communicate the decision to Mr Armer Karim, Mr Hanif Qureshi and Mr Naeem Hamid Mirza.

Case n. 1/2014: “Borislav Ivanov” (report submitted by the FIDE Executive Director), the EC unanimously rules that:

- the case is receivable against Mr Borislav Ivanov, for an alleged violation of par. 2.2.5 of the FIDE Code of Ethics;
- The FIDE Secretariat will communicate the decision to Mr Borislav Ivanov.

Case n. 2/2014: “Ms Úna O Boyle c. Mr Colm Daly, Mr Darko Polimac and Mr Gabriel Mirza” (complaint submitted by Ms Úna O Boyle against Mr Colm Daly, Mr Darko Polimac and Mr Gabriel Mirza), the EC unanimously rules that:

- the complainant reports facts of harassment and slanderous words against her by the opposing parties, on different communications and on web forums and blogs concerning chess in Ireland and the Irish chess federation. The complaint could be lodged to the ordinary jurisdiction, as a civil or a criminal case. Otherwise, it does not concern breaches of the FIDE Code of Ethics, given that the conditions of applicability listed in par. 1.4 and 2 of the FIDE Code of Ethics are not integrated. Therefore, the case has to be rejected as not receivable and has to be dismissed.
- The FIDE Secretariat will communicate the decision to the complainant, Ms Úna O Boyle.

Case n. 3/2014: “Participation in David Bronstein Memorial tournament in Minsk (Belarus)” (complaint submitted by Mr Leontiev Aleksandr about the conditions of participation in the "David Bronstein Memorial" tournament in Minsk (Belarus) against the Chess Federation), the EC unanimously rules that:

- the complainant reports an alleged violation of tournament regulations, given that four chess players with a rating less than 2100 were admitted to participate in the tournament. The plaintiff does not refer any relevant individual interest about this and, in addition, he does not suspect any partial and discriminatory behaviour of the organisers that could be relevant ex par 2.2.3 of the FIDE Code of Ethics. The case is not receivable and does not concern a breach of the Code of Ethics; therefore, it has to be dismissed.
- The FIDE Secretariat will communicate the decision to the complainant, Mr Leontiev Aleksandr.

Case n. 5/2014: “Agreements between Mr Ignatius Leong and Mr Garry Kasparov about 2014 FIDE elections” (report/complaint submitted by the FIDE President Mr Kirsan Ilyumzhinov and complaint submitted by the Tunisian chess federation against Mr Ignatius Leong and Mr Garry Kasparov).

Preliminary to any discussion about the case, the EC had to deal with the question of the recusal of some of its members. Ms Margaret Murphy asked to be excused from the case for reasons of opportunity, given that in the last FIDE Congress she was elected as Chair of the Electoral Commission. Mr Ian Wilkinson also recused himself, given that he is running for 2014 FIDE elections, as Vice President in the

ticket of Mr Kasparov. In addition, Mr Ignatius Leong and Mr Garry Kasparov sent a letter to the EC, requesting also Mr Ion Serban Dobronauteanu to recuse himself, given that “Ion-Serban Dobronauteanu is the delegate of the Romania chess federation, which was listed in FIDE’s 12 May 2014 announcement on its website as one of the federations that nominated the Ilyumzhinov ticket for the 2014 Presidential elections. In addition, Mr. Dobronauteanu is running for European Chess Union (ECU) Deputy President on the ticket of Zurab Azmaiparashvili which is well known to be the ECU ticket allied with the Ilyumzhinov ticket”.

First, the EC clarified that, in the absence of specific rules about the recusal of a member of the EC, standards for recusal may be provided by references to general principles of law.

Recusal is the act of abstaining from participation in an official action due to a conflict of interest or for other reasons. For an organ charged to evaluate breaches of ethics, also if it cannot be considered *strictu sensu* a judicial organ, two main principles –generally applicable to all judicial and para judicial organs- have to be taken into account.

From one side, in the determination of his rights and obligations, everyone is entitled to be judged by an impartial organ. Impartiality is a lack of bias or prejudice towards the parties and is of fundamental importance that “justice” should not only be done, but should manifestly and undoubtedly be seen to be done, following an oft-quoted aphorism; therefore an appearance of bias or a legitimate doubt as to the lack of bias could be sufficient to justify and authorise a recusal.

Otherwise, the mere affiliation by a member of a “judicial” organ to a certain group or association –such as belonging to the same political party or religious confession as one of the parties in a case- is not sufficient to sustain the legitimacy of doubts about impartiality, as confirmed, for instance, by many judgments of the European Court of Human Rights. Moreover, “justice” cannot be stopped to exercise its functions and certain situations and circumstances, having a generalized impact on all “judges”, may be disregarded, when otherwise no one would be available to hear the case.

On these basis, the EC examined the requests and the objections of recusal.

First, the EC and its Chairman would like to reaffirm firmly their full trust in the impartiality of all EC members, if they had to decide the case.

Otherwise, about the position of Ms Margaret Murphy, also if there are no grounds to doubt her impartiality, her election as Chair to the Electoral Commission

constitutes a reason of opportunity to accept her request to be excused from this case, being the same connected with the next elections.

About the position of Mr Ian Wilkinson, his candidacy for the same elections in the same ticket of Mr Ignatius Leong and Mr Garry Kasparov can suggest an appearance of bias, therefore his request to be excused from this case can be accepted as well.

On the contrary, there are absolutely no reasons for a recusal of Mr Ion Serban Dobronauteanu. His candidacy for a position in the ECU board has no relationships with the FIDE Presidential elections: by the way, if it true that the case concerns an alleged violation of par. 2.1 of the FIDE Code of Ethics (“offers, or attempts to offer or accepts any consideration or bribe with a view of influencing the result in ... election into FIDE office”), no European chess federation is implied in the case. Mr Dobronauteanu has never expressed himself in favour of one or of another of the candidates and the fact that his chess federation nominated Mr Ilyumzhinov ticket for the 2014 Presidential elections cannot affect his impartiality. In addition, it has to be noted that a large number of chess federations expressed a nomination for one of the two candidates and in theory all chess federations could have expressed a nomination: if it would be sufficient to be affiliated to one of these federations to be biased –and it is not the case- the EC could not evaluate the case in any possible valid composition, and this is not admissible as well.

Following the acceptance of the refusals of two of its members, sitting in the following composition (Chairman: Mr Roberto Rivello, Members: Mr Ralph Alt and Mr Ion Serban Dobronauteanu), the EC unanimously rules that:

- the case is receivable against Mr Ignatius Leong and Mr Garry Kasparov, for an alleged violation of par. 2.1 of the FIDE Code of Ethics;
- The FIDE Secretariat will communicate the decision to Mr Ignatius Leong, Mr Garry Kasparov, Mr Kirsan Ilyumzhinov and to the Tunisian chess federation.

Case n. 6/2014: “Cheating in Iasi Open 2014” (complaint submitted by the Romanian chess federation against Mr Wesley Vermeulen), the EC unanimously rules that:

- the case is receivable against Mr Wesley Vermeulen, for an alleged violation of par. 2.2.5 of the FIDE Code of Ethics;
- the FIDE Secretariat will communicate the decision to Mr Wesley Vermeulen and to the Romanian chess federation.

Case n. 7/2014: “Agon agreement” (complaint submitted by the chess federations of Philippines and Kenya against the FIDE President Mr Kirsan Ilyumzhinov, the FIDE Deputy President Mr Georgios Makropoulos, and “certain other FIDE officials and employees” including Mr Geoffrey Borg and Mr Berik Balgabaev).

Preliminary to any discussion about the case, Ms Margaret Murphy asked to be excused from the case, for reasons of opportunity related to her election as Chair of the Electoral Commission. Following the principles enucleated in the decision concerning the case n. 5/2014, her request was accepted.

Following the acceptance of the refusal of one of its members, sitting in the following composition (Chairman: Mr Roberto Rivello, Members: Mr Ralph Alt, Mr Ion Serban Dobronauteanu and Mr Ian Wilkinson), the EC unanimously rules that:

- having to evaluate the admissibility of a case, the EC has first of all to evaluate if the EC has competence on the case, if the facts concern a possible violation of the FIDE Code of Ethics, if the plaintiff has a legitimate relevant interest but also if the complaint is not groundless, in other words if it is supported by at least minimal elements of evidence, especially bearing in mind that the EC has not investigative powers following the submission of a complaint.
- Different conclusions have to be reached in relationship to the various different positions.
- The complainants report the existence of an agreement, “clearly intended to be a secret side agreement”, between Mr Andrew Paulson, the director of Agon Ltd, and Mr Kirsan Ilyumzhinov. The agreement would have to be applied in parallel to the more or less contemporary contract between Agon and FIDE that awarded Agon the organization of World Championship cycle events. This agreement would have previewed that Mr Kirsan Ilyumzhinov had to finance Agon up to 2 million US dollars for the first two years; in return Mr Kirsan Ilyumzhinov would have acquired the control of the Agon company. In the following years Mr Kirsan Ilyumzhinov’s credit would have been repaid and he would have taken advantage of all next profits of the company by way of dividends. Fees would have been previewed too and paid by Agon, since the very first year, to Mr Paulson, as President (director) of Agon, to Mr Georgios Makropoulos and Mr Berik Balgabaev, as consultants to Agon, and to Global Chess and Mr Geoffrey

Borg, as contractor for running Agon's events (in the document it is written than “Geoffrey Borg has confirmed his willingness and interest”).

- The complainants report that the agreement has been made public by an anonymous throughout a website of chess news: they attach a copy of it as an annex to the complaint. The document is called “MEMORANDUM”. Its incipit is read as follows (in a translation into English of the original document, written in Russian language): “Dear Kirsan Nikolaevich! In accordance with your suggestion, we have prepared a model of our cooperation, for your consideration. We believe that this cooperation will be long-lasting and mutually beneficial, and will become a great success in the world of chess”, then it continues illustrating a “business model”. The document is signed by Mr Paulson, but there is another signature too, allegedly of Mr Ilyumzhinov.
- The complainants refer that “Mr. Makropoulos has asserted that the signed Ilyumzhinov-Paulson Agreement was merely a proposal which was rejected and that the final contract was signed in February 2012 and uploaded on the FIDE website as a public document” and that “Mr. Paulson has asserted that the Agreement was a mere ‘draft Memorandum’ which was rejected by Mr. Makropoulos”. For the complainants both assertions are not credible but they would confirm the existence of an agreement.
- Exclusively on these basis, the complainants ask EC to sanction the persons responsible of alleged different violations of the FIDE Code of Ethics.
- However, the complaint is groundless for what concern the positions of Mr Georgios Makropoulos, Mr Berik Balgabaev, Mr Geoffrey Borg and “certain other FIDE officials and employees”. The only evidence provided by the complainants is a copy of a document, made available by an anonymous source, that has not signed, nor written by, nor addressed to Mr Georgios Makropoulos, Mr Berik Balgabaev and Mr Geoffrey Borg, and it would concern an alleged agreement between two other persons, that in any case was secret and for sure has not had execution. Mr Geoffrey Borg is told that would have “confirmed his willingness and interest”, but nothing more and even the fact that in hypothesis he could be interested to act “as contractor for running Agon's events” does not constitute a breach of FIDE Code of Ethics. No concrete unethical behaviours have been referred to “other FIDE officials and employees”. Mr Berik Balgabaev is just mentioned as a possible beneficiary of the agreement, without attributing him any behaviour that could constitute a violation of the FIDE Code of

Ethics. Mr Georgios Makropoulos is mentioned for having rejected the proposal.

- Therefore, the case against Mr Georgios Makropoulos, Mr Berik Balgabaev, Mr Geoffrey Borg and “certain other FIDE officials and employees” has to be rejected as not receivable and has to be dismissed.
- A different conclusion has to be reached for what concerns the position of Mr Ilyumzhinov: the document was addressed to him and for the complainants he signed it having an alleged conflict of interests, that could constitute a violation of par. 2.2.2 of the FIDE Code of Ethics (“Office bearers who through their behavior no longer inspire the necessary confidence or have in other ways become unworthy of trust”). The plaintiffs, as chess federations, members of FIDE, have a legitimate relevant interest.
- Therefore, the case is receivable against Mr Kirsan Ilyumzhinov, for an alleged violation of par. 2.2.2 of the FIDE Code of Ethics.
- The FIDE Secretariat will communicate the decision to Mr Kirsan Ilyumzhinov and to the chess federations of Philippines and Kenya.

Athens, 8 June 2014

The Chairman of the FIDE Ethics Commission
Roberto Rivello