



## **FIDE ETHICS COMMISSION**

### **MOTIVATION**

#### **Case no. 3/2015: Discrimination against player by fellow participants in the European Individual Women's Chess Championship, Chakvi, Georgia, 2015**

##### **1. Introduction**

- 1.1 Case no. 3/2015 has emerged as a case of “witch–hunting”, namely a case of targeting a chess player in a public smear-campaign with accusations of cheating based upon fears and suspicions unsupported by any concrete evidence. The case has attracted significant publicity in the chess world, due to the high profile of the players involved therein as well as the prominence of the tournament during which the facts of the case occurred.
- 1.2 According to the ETH's perception, the case has further provoked the public sentiment as the chess world can readily relate to the situation that gave rise to it. Any chess player can find himself/herself in the position of the Complainant merely because of an extraordinary performance in a tournament with the risk of being harshly stigmatized. It is important to note that the fact-pattern of the case pertains to a situation that is as old as the sport of chess itself, but at the same time newfangled, due to the newly introduced

guidelines and procedures that should be followed in such cases.

- 1.3 The case further demonstrates how easily the prejudice caused to the accused player can be amplified and get out of control, if the complaint about alleged cheating in a chess tournament is not properly handled by the tournament arbiter and officials.
- 1.4 The present judgment puts together the efforts of the ETH to do justice in the present case and, on a second level, set a baseline for future reference in cases of purported cheating in a chess tournament and shed light on any unclear points of the procedure that should be followed in similar cases, with a view to avoiding causing irreparable prejudice to accused, but innocent, persons.

## **2. Background facts**

- 2.1 The 16th European Individual Women's Chess Championship was held in Chakvi, Georgia from 18.05.2015 to 31.05.2015 (hereinafter the "Tournament"). The results of the Tournament - <http://chess-results.com/tnr164130.aspx>
- 2.2 WGM Mihaela Sandu (ROU) (*"the Complainant"* herein) with a FIDE rating of 2300 at the time was ranked no. 45 of the players' starting list of the Tournament.
- 2.3 Ninety eight players (98) participated in the Tournament, among which GM Natalia Zhukova, GM Alissa Galliamova, FM Ianita Stetsko, IM Anastasia Bodnaruk, WFM Dina Belenkaya, WGM Jovana Vojinova, IM Svetlana Matveeva, IM Marina Guseva, Anna Tskhadadze, Tatiana Ivanova, IM Nastassia Ziaziulkina, IM Anastasia Savina, IM Evgenija Ovod, IM Melia

Salome and IM Ekaterina Kovalevskaya (collectively “*the Respondents*” in this matter).

- 2.4 After Round 5 WGM Sandu was leading the Tournament with a perfect score of 5 wins in 5 games.
- 2.5 Having regard to her impressive results against stronger, namely higher-rated, opponents of the Tournament, concerns and suspicions of cheating arose against her among a group of chess players participating in the Tournament.
- 2.6 During the first five rounds of the Tournament, WGM Sandu’s games (like the games of other players) were instantly, *i.e.* without scheduled time-delay, transmitted on the internet. During Round 6 of the Tournament, however, when WGM Sandu played against IM Nino Batsiashvili, there was a lengthy break in the live transmission of their game. WGM Sandu lost her Round 6 game. Following this incident, the transmission of WGM Sandu’s games was fully restored during Round 7, during which she won the game against GM Antoaneta Stefanova. According to the pairing of Round 8, WGM Sandu was scheduled to play against GM Natalia Zhukova in the penultimate round of the Tournament.
- 2.7 A free day was scheduled between Rounds 7 and 8 of the Tournament. During the free day the Tournament Organizers received two (2) letters from players participating in the Tournament.
- 2.8 The first letter was signed by thirty two (32) players asking for the transmission of all chess games to be delayed by fifteen (15) minutes. The second letter, which was signed by fifteen (15) players, requested the Organizers not to transmit – at all – WGM Sandu’s games during rounds 8 – 11 but merely to publish them after the rounds (hereinafter the “Letter of 15” or the “Letter”).

- 2.9 The following day, during Round 8 of the Tournament, the Organizers posted on the wall in a number of places both of the above letters and their response thereto. In the Organizers' answer they expressed the view that the 15 players' accusation against WGM Sandu was "*unfair, insulting and creating some psychological pressure*". They agreed to a 15 minute delay in the live transmission of all games (as requested in the letter signed by 32 players) but requested in their published answer that the 15 players should withdraw their signatures.
- 2.10 WGM Sandu lost to GM Zhukova in Round 8, as well as all her games in Rounds 9, 10 and 11 and eventually ended in the 26<sup>th</sup> position.
- 2.11 Four (4) players withdrew their signatures from the Letter of 15 before the end of the Tournament. Their names are, in no particular order, A. Savina, E. Ovod, M. Salome and E. Kovalevskaya.
- 2.12 GM Natalia Zhukova won the Tournament and was crowned as the 2015 European Women's champion.
- 2.13 Strict security measures were in place throughout the course of the Tournament. More specifically, there was security staff with metal detectors who checked the entrance to the playing venue. They also checked the toilets before each round. During the Technical Meeting, the Anti-cheating rules were announced to the players. There was one arbiter for every six (6) boards, a measure that allowed for good observation of the players and the games.

### **3. Complaint received**

- 3.1 The Complainant, WGM Sandu, lodged a complaint (“the Complaint”) with the ETH on 23 June 2015.
- 3.2 The Complaint is directed against the signatories of the Letter of 15. These signatories were, in order of their signatures: Natalia Zhukova (no. 1), Alisa Galliamova (no. 2), Ianita Stetsko (no. 3), IM Anastasia Bodnaruk (no. 4), WFM Dina Belenkaya (no. 5), WGM Jovana Vojinova (no. 6), IM Svetlana Matveeva (no. 7), IM Marina Guseva (no. 8), Anna Tskhadadze (no. 9), Tatiana Ivanova (no. 10), IM Nastassia Ziaziulkina (no. 11), IM Anastasia Savina (no. 12), IM Evgenija Ovod (no. 13), IM Melia Salome (no. 14) and IM Ekaterina Kovalevskaya (no. 15) - (now respectively Respondents no. 1 – 15).
- 3.3 In her Complaint the Complainant refers to events that occurred during the Tournament, when, after her impressive results in the games of the first five (5) Rounds, concerns and suspicions of cheating arose against her, allegedly leading to extra pressure, personal harassment and public accusations from other chess players participating in the Tournament. In her Complaint the Complainant puts forward the most important facts that allegedly occurred during the Tournament and she affirms that she considers herself greatly affected and prejudiced by the actions of the players that signed the Letter of 15, which the Complainant submits constitute a breach of the FIDE Code of Ethics (hereinafter the “CoE”).
- 3.4 As the Complainant explains in her Complaint, after a very good start in the Tournament, the Complainant found out that the live transmission of the game of Round 6 was interrupted for many hours. The transmission interruption as a fact itself allegedly created a wave of suspicion around her, even

though the quality of her play in that game was not related to the live transmission. In particular, her play was good during the transmission interruption and the mistakes that led to her losing the game occurred only after the transmission had been resumed.

- 3.5 During the free day, when the Complainant was second in the Tournaments standings with a score of six (6) points in seven (7) games, she found out that her opponent in Round 8, GM Zhukova, was distributing papers and collecting signatures with a petition against her. The Complainant discovered that there were two petitions, the first one, signed by 32 players, not including a personal attack against her but expressing great concern regarding suspicions of cheating in the tournament and asking the Organizers for a delay in the live transmission of the games or, alternatively, other solutions for the remaining rounds of the Tournament, and the second one signed by the abovementioned (see para. 3.2 hereof) 15 players, including a personal attack against the Complainant, expressing concerns about the Complainants' outstanding performance in the Tournament and asking the Organizers not to transmit her games live for the rest of the Tournament.
- 3.6 WGM Sandu categorically states that she did not cheat and that her play had nothing to do with computer assistance. She had played both good and bad moves and was lucky in some games. She further cites well-known chess player and analyst GM Alexey Dreev, who said he was confident that WGM Sandu had not been assisted by a computer. Moreover, she explains that no strange behavior had been observed from her side, she was by herself and with no assistance at the Tournament, and she had passed all usual and regular security checks during the previous rounds, concluding that any suspicion related to her performance was groundless and

unfounded. WGM Sandu's denial of having exhibited any strange conduct is further supported by the statement of the Chief Arbiter Tomasz Delega, according to whom there was no suspicious behavior by WGN Sandu, she spent most of her time at her chess board, rarely going out of the Tournament playing hall.

- 3.7 In her Complaint WGM Sandu affirms that extra pressure was put on her and she was harassed by the wave of suspicion around her, including the games' transmission interruptions, receiving telephone calls at night from Georgian numbers unknown to her, being questioned by fellow chess player Inna Gaponenko about her "inexplicable" performance. All these elements allegedly affected her performance, as she lost the focus on her play and made a lot of mistakes in the games after the attack, as a result of which she failed to qualify to the World Cup by a half a point (1/2), while her direct opponents, primarily GM Zhukova, her opponent in Round 8 of the Tournament, allegedly gained advantage from WGM Sandu's poor results in the final rounds of the Tournament.
- 3.8 The Complainant further claims that the cheating concerns against her lacked logical foundation, there was no evidence against her whatsoever, and most importantly, that those concerns were turned into public accusations, without following the FIDE Anti-Cheating Guidelines ("AC Guidelines") pertaining to cheating suspicions/accusations nor filling in a complaint form, all in all disregarding the applicable FIDE regulations. According to the Complaint, the Organizers failed to observe the confidentiality of the matter and prejudiced her privacy by posting the above two letters in public places, a conduct that put significant pressure on her. Even though the Organizers released a statement according to which the second letter was "*unfair, insulting and creating*

*pressure*”, the two letters remained available in different public places at the venue until the last round of the Tournament.

- 3.9 The Complainant alleges that she was greatly affected and prejudiced by the attack of GM Zhukova, the purported initiator of the Letter, and the other 14 players, her good name was discredited and her final result in the tournament was influenced by the incident. WGM Sandu emphasized that she is expecting a decision from FIDE that could restore the injustice that has been made.
- 3.10 The Complainant alleges that the 15 players who signed the Letter of 15 breached art. 2.2.4, 2.2.9 and 2.2.11 of the CoE and requests ETH to sanction them according to the provision of art. 3.2 of the CoE.

#### **4. Procedure followed**

- 4.1 As mentioned above (para. 3.1), the Complainant filed the Complaint on 23 June 2015. The ETH acknowledged receipt of the Complaint on 17 July 2015 and informed the Complainant that, as a preliminary course of action, her Complaint had been referred to an independent Investigatory Chamber (hereinafter the “IC”) of the ETH consisting of three members nominated by the Anti-Cheating Committee (the “ACC”) and appointed by the FIDE President with delegated authority from the FIDE Presidential Board, and that once the IC completed its investigation, proceedings before the ETH would resume.
- 4.2 The Complainant had already submitted an Anti-Cheating complaint to the ACC on 11 June 2015. According to the Report, Chief Arbiter of the Tournament Mr. Tomasz Delega (Poland) submitted Post-Tournament Report on 4 June 2015.



- 4.3 The FIDE Presidential Board at its meeting held in Abu Dhabi/UAE in September 2015, nominated an IC in accordance with the FIDE Handbook: Statutes, Chapter 08: Commissions, Ethics Commission 2.5 and Section 4 of the AC Guidelines. Three members were appointed from the ranks of the ACC, namely Yuri Garrett (ITA), Klaus Deventer (GER) and Yuliya Levitan (USA), who was nominated Chairperson.
- 4.4 A thorough investigation was performed by the IC. The Respondents were advised of the investigation at that time and they were given an opportunity to respond in writing. The IC additionally contacted the Tournament Chief Arbiter, Tomasz Delega (POL), who in addition to the Post-Tournament report responded to the IC's inquiries on 3-5 October 2015, and 22 March 2016, and the Georgian Tournament Organizers, who provided their responses to the IC's inquiry in December 2015 via the President of the Georgian Chess Federation G. Giorgadze.
- 4.5 On 15 August 2016 the IC submitted to the ETH its report (hereinafter the "IC Report"), comprising the facts of the case, an analysis thereof and a conclusion as to whether or not the AC Guidelines were breached in this case.
- 4.6 The ETH sent a copy of the IC Report to the Complainant on 1 September 2016 and advised her that it would consider the matter at its meeting in Baku during the 2016 Olympiad/Congress. The ETH further invited the Complainant to comment on the IC findings and to indicate to what extent she was persisting with her Complaint.
- 4.7 On 4 September 2016 the Complainant wrote back to the ETH confirming that she maintained her position, as laid down in the letter she had sent to FIDE thus far.

- 4.8 At the Baku Congress the ETH considered the IC Report and resolved that the complaint was admissible and must proceed as an ETH case. The IC was requested to forward copies of all the pertinent statements obtained in the course of its investigation.
- 4.9 The ETH, after taking note of the findings, conclusions and recommendations of the IC and supporting evidence, considered the matter on its merits during its following meeting, held on 7 April 2017 in Madrid/Spain. It reached a provisional finding and formulated a list of proposed sanctions, subject to an opportunity being given to the Complainant and the Respondents to make further submissions, if they so wished, with a view to persuading ETH to come to a different final decision and/or to impose different sanctions.
- 4.10 On 24 April 2017, the ETH notified the Respondents and the Complainant of its provisional findings and the proposed sanctions, and invited their comments and further representations with a view of persuading the ETH to come to a different conclusion if the parties believed that the proposed outcome was not fair, by 10 May 2017.
- 4.11 In response, the ETH received on 10 May 2017 further statements from the Complainant, WGM Sandu, and from Respondent no. 1, GM Zhukova.
- 4.12 Unfortunately the ETH's letter of 24 April 2017 was leaked, presumably by one of the Respondents, to the Russian press and thereafter received considerable attention on chess websites. This occurrence is commented upon by the ETH in a separate statement at the end of this motivation.
- 4.13 Having regard to procedural fairness, throughout the procedure held before them, both the ETH and the IC, were

particularly prudent to afford the involved parties with ample opportunity to be heard, namely to be accurately and timely informed on the progress of the proceedings and to be afforded reasonable time to submit their comments and argue their position before the ETH and the IC. Proceedings were delayed by the need for the IC to correspond with a great number of Respondents (in both English and Russian languages) as well as developments within FIDE regarding the formal establishment of the ACC as a FIDE commission and the staffing of the commission. The ETH could only proceed once the IC investigation was completed and then the matter had to come onto the agenda of the ETH's meetings, first in Baku (September 2016) and then in Madrid (April 2017). All of these reasons contributed to the issuance of the ETH's final decision on the matter roughly two (2) years after the filing of the Complaint.

## **5. The IC investigation**

- 5.1 The IC's conclusion, as laid down in the Report, was that the conduct of the signatories of the Letter of 15 violated the AC Guidelines. It additionally contains recommendations for tournament arbiters and organizers. The IC reminded itself that for a violation of the Anti-Cheating Guidelines relating to false complaints to occur, two elements need to be present: (1) a complaint needs to be made to an arbiter or the ACC; (2) the complaint must be manifestly unfounded (i.e. not based upon substantial evidence). It thus formulated the focal points of its investigation to be whether a complaint was made against WGM Sandu accusing her of cheating in the Tournament and whether the Letter of 15 was manifestly unfounded.

- 5.2 As to the first point, the Report affirms that the Letter of 15 was indeed an equivalent of a formal anti-cheating complaint. No proof was produced before the IC to put into doubt that any of the signatories did not sign the letter, or that the Letter of 15 did not accuse WGM Sandu of cheating, or that GM Zhukova was not involved in organizing the signature drive.
- 5.3 As for the second pivotal point, the IC found that none of the accused could point out a simple fact (other than WGM Sandu's actual result of winning her games) that would lend support to their claim that WGM Sandu's performance was questionable. The IC found that therefore, the accusation against WGM Sandu was manifestly unfounded.
- 5.4 The Respondents were all provided with ample opportunity to be heard and express their position before the IC. In order to reach a conclusion with regard to the above points, the IC Chairperson, Ms. Yulya Levitan, corresponded by email with all 15 Respondents, the Tournament Chief Arbiter and the Tournament Organizers. The correspondence was both in English and Russian language, so that all Respondents were addressed in a language they fully comprehended.
- 5.5 The AC Guidelines provide for the proper procedure for the submission of anti-cheating complaints and the penalties for making false complaints. Section 3 of the AC Guidelines stipulates that "*[i]f the complaint is specifically about possible breach of AC regulations, then the Chief Arbiter shall, in the first place, identify the complainant and invite him/her to fill out a Complaint Form (Appendix A). The Chief Arbiter shall inform the complainant about the penalty for filing a false complaint. The complainant shall provide to the arbiter the reasons why the complaint is being made, and shall sign the form on completion. [...]* If the complaint is manifestly unfounded (i.e., not based on substantial

*evidence), the complaint can receive a warning by the ACC, whereupon his/her name will be added to a special "Warning database" maintained by the ACC."*

- 5.6 The ACC created a special form to be filled out for an anti-cheating complaint to be made. However, the IC believes that a complaint should not be rejected just because it was in a different format than the anti-cheating complaint form. Here, the Letter of 15 was presented to both the Chief Arbiter and the Organizers, identified a person accused of cheating, and was formally signed. Therefore, the Report concludes that the fact that it was not submitted via the official anti-cheating complaint form should not be dispositive and the Letter of 15 can be considered as a formal anti-cheating complaint.
- 5.7 The IC contacted all 15 signatories, namely the Respondents, via email advising them about WGM Sandu's complaint and asking for their response. The email addresses were provided by the FIDE Secretariat and the Russian Chess Federation. The email asked them, *inter alia*, to admit or deny that they signed the Letter of 15, sought general response to the complaint, but also advised the addressees of their right "to remain silent" (not to respond), if they so wished. Several players did not respond to the IC's communication or responded initially and then chose not to communicate any further. The IC received full responses from (in no particular order): Nastassia Ziaziulkina, Anastacia Savina, Ekaterina Kovalevskaya, Evgenija Ovod, Melia Salome, and Natalia Zhukova.
- 5.8 Ms. Tatiana Ivanova responded to the initial email but subsequently chose to discontinue communication. Ms. Alisa Galliamova, Ms. Lanita Stetsko, Ms. Anastasia Bodnaruk, Ms. Jovana Vojinovic, Ms. Svetlana Matveeva, Ms. Marina

Guseva, and Ms. Anna Tskhadadze did not respond to the IC's inquiry. Ms. Dina Belenkaya also responded to the initial inquiry but did not communicate any further.

- 5.9 Only one person, Ms. Belenkaya, denied having signed the Letter of 15. The IC inquired why her signature on the Letter of 15 and on the Letter of 32 appeared to be very similar, and whether she wished to make a formal claim that her signature on the Letter of 15 was forged. Ms. Belenkaya did not respond. The IC believes that by not making a formal claim that her signature on the Letter of 15 was forged, Ms. Belenkaya forfeited her claim that she did not sign the Letter of 15.
- 5.10 On the basis of the above, without any evidence produced to the contrary, the IC concluded that all Respondents had indeed signed the Letter of 15.
- 5.11 On the matter of the initiator of the Letter and whether GM Zhukova was responsible for collecting signatures, the IC received statements from several of the Respondents that it was GM Zhukova who approached them personally at various venues (during lunch, bus ride) on the free day and persuaded them to sign the Letter. GM Zhukova on the other hand declined to confirm that she had drafted the Letter and collected signatures, stating to the IC that "*[t]his letter was free to sign and anybody could sign it in the hotel.*" Having regard to the fact that in no statement was there another person named besides GM Zhukova as initiator and signature collector, the IC concluded that she was not fully forthcoming in her answers to the IC and that she indeed facilitated obtaining signatures of at least several chess players other than herself. The IC concluded that even if Ms. Zhukova was not the sole person responsible for collecting

signatures for the Letter of 15, by soliciting signatures of several other chess players she caused others to sign it.

5.12 On the specific point raised by WGM Sandu in her complaint pertaining to a conversation she had with Ms. Gaponenko, where she felt that the gist thereof was that if she did not win any other games in the tournament that would be considered proof of her previous cheating, the Report states that, as a preliminary matter, since Ms. Gaponenko's statement was allegedly made directly to Ms. Sandu, it cannot be claimed to be equivalent to a formal complaint made to an arbiter. In addition, Ms. Gaponenko admits the conversation took place but states that WGM Sandu's recollection is not accurate and denies having accused the Complainant of cheating. As there were no witnesses present, the IC concluded that WGM Sandu cannot prove her accusation by a preponderance of the evidence, even if the IC was to treat oral accusation as a formal complaint. Thus, further analysis being unnecessary, the IC concluded that Ms. Gaponenko did not violate the AC rules by the above discussion.

5.13 The IC believes that there is sufficient *prima facie* proof of a contravention of the Article 2.2.9 of the CoE. The Report recommends that if the ETH reaches a conclusion that a violation has occurred and some punishment is appropriate for the signatories to the Letter of 15, the IC wishes that the ETH considers the following mitigating facts as to the following players:

i) Ms. Anastasia Savina withdrew her signature from the Letter of 15 after the Organizers applied a fifteen-minute delay in the transmission of all the games of the Tournament and apologized directly to Ms. Sandu;

- ii) Ms. Nastassia Ziaziulkina apologized for her actions to the IC and was given an opportunity to express her apologies directly to Ms. Sandu;
- iii) Ms. Evgenija Ovod also withdrew her signature, apologized for her actions to the IC and was given an opportunity to express her apologies directly to Ms. Sandu;
- iv) Ms. Melia Salome withdrew her signature after the Organizers applied a fifteen-minute delay in the transmission of all the games of the Tournament;
- v) Ms. Ekaterina Kovalevskaya withdrew her signature.

- 5.14 The IC further examined the argument that Ms. Zhukova personally benefited from presenting the Letter of 15 to the Organizers because Ms. Zhukova won the game against Ms. Sandu and won the tournament. Another troubling fact is that Ms. Zhukova solicited signatures of others without telling them about Chief Arbiter's warning about the Letter of 15.
- 5.15 The IC found that there is no evidence that the Respondents expected that the Organizers would publish the Letter of 15. All of the Respondents who responded to the IC's inquiry emphasized that they never intended for the Organizers to make the letters public. Their expectations are further supported by the AC Guidelines which state in Section 3: *"All information in the report [the one prepared by a chief arbiter upon receiving the anti – cheating complaint] shall remain confidential until an investigation is completed by the ACC."*
- 5.16 However, it was reasonably foreseeable that Ms. Sandu would eventually find out that only her games were not transmitted (as the Letter of 15 requested). It was also reasonably foreseeable that Ms. Sandu would be upset that



she was thus singled out for possible computer cheating and, as a result, her chess performance might suffer. As stated above, none of the Respondents could provide any evidence or indication (other than WGM Sandu's good – even extraordinary – rating performance in the Tournament, *quod non*) that WGM Sandu engaged in any sort of computer cheating.

- 5.17 In reviewing the facts of the case, the IC came to the conclusion that it would be beneficial, if the following best practices were followed, given that the AC Guidelines are relatively new and that all chess professionals are therefore trying to familiarize themselves therewith and abide by them:
- **Arbiters:** to provide a warning about consequences of making manifestly unfounded complaints each time an anti-cheating complaint is presented. The same rules apply regardless of whether the complainant was made during the game day or on a free day. In addition, to remind potential complainants that they should submit the complaint on the official complaint form.
  - **Organizers:** Given that the AC Guidelines currently in force are silent about the Organizers' role; however, IC strongly recommends that all details of an anti-cheating complaint, if one is made, should be treated and remain confidential.

## 6. **Provisional findings by ETH**

- 6.1 The ETH noted the findings, conclusions and recommendations of the IC and the supporting statements obtained during the IC investigation during its most recent session held in Madrid, on 7 April 2017.

- 6.2 The ETH further took note of the opinion of the ACC expressed by its Chairman Israel Gelfer, who attended the ETH's meeting in Madrid (but not its private deliberations concerning the provisional findings and sanctions), that the conduct of the 15 Respondents is a serious offence and that such conduct putting great psychological pressure on the accused player is unacceptable. Mr. Gelfer expressed his satisfaction in principle with the ETH's proposed findings and sanctions.
- 6.3 The ETH noted the statement of Prof. Kenneth Regan, the computer scientist in charge of FIDE's cheating detection software, that following the incident that occurred during the Tournament in Chakvi, Georgia he immediately did a statistical check pursuant to which the Complainant appears not to have used computer assistance and that her play was not assisted by chess engines. His conclusion was published in the internet during that period.
- 6.4 The ETH found that there was no evidence whatsoever of cheating by the Complainant in the Tournament and that the cheating allegations by the Respondents were made without any reasonable grounds for a suspicion of cheating.
- 6.5 Having regard to the above, at its aforementioned meeting in Madrid, the ETH considered the matter and arrived at a provisional finding, subject to an opportunity being given to the Complainant and the Respondents to make further submissions, that the Respondents were all guilty of a breach of art. 2.2.11 of the FIDE CoE for making reckless and unjustified accusations of cheating against WGM Sandu, thereby injuring and discrediting her reputation as an honest chess player.

- 6.6 On the basis of the above, the ETH formulated proposed sanctions, again subject to an opportunity being given to the Complainant and the Respondents to make further submissions, if they so wish, with a view to persuading the ETH to impose different sanctions, as follows:
- Respondent no. 1: - A **three (3) month ban** from playing chess in any tournament. The sanction is wholly suspended for a period of one (1) year, on the condition that she is not found guilty of making reckless or unjustified accusations of cheating against any other chess player during the period of suspension.
  - Respondents no. 2 – 10: - A **reprimand** (severe expression of disapproval and warning of consequences if conduct is repeated).
  - Respondents no. 11 – 15: A **warning** (caution to avoid a repeat of the same conduct).
- 6.7 In announcing its provisional findings and proposed sanctions to the parties (see hereunder), the ETH pointed out that the making of reckless and unjustified accusations of cheating is a serious offence which will normally attract severe punishment. It stressed, however, that in the present case the proposed sanctions were mitigated, amongst other things, by the inappropriate handling of the situation by the officials as well as the long time delay (relating to the formal establishment of the ACC) since the happening of the incident.
- 6.8 The ETH explained that the differentiation between the sanctions proposed for the three groups of players is justified by the fact that Respondent no. 1 played a leading role in obtaining the signatures of the other players, Respondents no. 2 – 10 did not show remorse for their actions by

withdrawing their signatures or giving an apology, whereas Respondents no. 11 – 15 did show the necessary remorse by withdrawing their signatures or apologizing for their conduct.

- 6.9 On 24 April 2017, the ETH notified all Parties, namely the 15 Respondents and the Complainant of its provisional findings and the sanctions that it intended to impose, thus affording them an opportunity, in addition with the opportunity they had during the IC investigation, to comment on the proposed findings and sanction, to persuade the ETH to come to a different conclusion, if they believed that the proposed outcome was not fair and to make further representations if they wished by 10 May 2017. In response to the letter of 24 April, the ETH received on 10 May 2017 further statements from the Complainant, WGM Sandu, and from Respondent no. 1, GM Zhukova.

## **7. Further statements by WGM Sandu and GM Zhukova**

- 7.1 In her statement the Complainant acknowledges that some part of justice was made, since all Respondents were provisionally found guilty of breaching the CoE, but stressed that the sanctions were in her opinion too mild and thus encouraging unsporting behaviour.
- 7.2 WGM Sandu touches upon the issues previously presented in her initial complaint and reiterated arguments regarding the serious offence she suffered, that GM Zhukova gained an advantage in their direct encounter by putting this pressure on her, thus winning their match and finally the Tournament. In this connection, The Complainant fiercely challenges GM Zhukova's denial that she had a leading role in the drafting and signing of the Letter of 15.

- 7.3 The Complainant further inquires about the inappropriate handling of the situation by the officials.
- 7.4 WGM Sandu denies that the long time delay since the incident constitutes a valid mitigation ground, she contends that the case should have been dealt in priority by FIDE and states that the two year delay in the conclusion of the case have had a significant, negative impact primarily on her but also on FIDE's image.
- 7.5 In summary, the Complainant explains that following that incident, her good name and reputation were stolen and the following year, her chess results were poor and she suffered financial losses as a consequence thereof. In this connection, she alleges that the measures taken by FIDE thus far did not take into consideration the situation as a whole, specifically referring to the ethical and financial prejudice she purportedly suffered.
- 7.6 In her statement GM Zhukova expressed her disagreement with the finding that she breached the CoE. She reiterates her position that by signing the Letter of 15, she did not intend to accuse the complainant of cheating or to damage her reputation, but merely expressed her concerns and requested the Organizers to take precautionary measures in order to prevent all possible suspicions. The Respondent further affirms that neither she nor any of the signatories expected that the Organizers would publish the Letter and contends that had the Letter remained confidential, it would be highly unlikely to have injured the reputation of the Complainant. Therefore, according to GM Zhukova her and the other Respondent's conduct could not possibly constitute a breach of art. 2.2.11 CoE pursuant to which "*[t]he Code of Ethics shall be breached by a person or organization who directly or indirectly exhibits "[a]ny conduct likely to injure or discredit the reputation of*

*FIDE, its events, organizers, participants, sponsors or that will enhance the goodwill which attaches to the same."*

- 7.7 The Respondent further questions the appropriateness of the anti-cheating measures put into place during the Tournament in order to preventing concerns of the players over each other's performance. In this connection, she raises the issue as to whether the organization of the tournament was fully compliant with Section 2(C)(3) "Maximum protection" of the AC Guidelines.
- 7.8 GM Zhukova further comments on the fact that the ETH reached its provisional findings almost two years after the occurrence of the incident. She challenges the sanction of a suspension of three months (albeit suspended) from participating in any chess tournament as unreasonably given the lime lag between imposing the sanction and the incident and expresses her concerns about such a practice being established claiming that it could be applied in an abusive manner to prevent players from participating in specific tournaments.
- 7.9 In conclusion, GM Zhukova requests the ETH to revise its provisional findings and to conclude that she was not guilty of breach of art. 2.2.11 of the CoE, and if the ETH comes to the conclusion that she is guilty, then to review the sanction in light of the significant time that has passed since the incident.

## **8. Evaluation and assessment**

- 8.1 At the outset it is useful to be reminded that in sporting justice factual disputes are decided according to the criterion of "comfortable satisfaction", i.e. the tribunal can only accept an allegation as proven if comfortably satisfied of its veracity.

This is a standard of proof higher than the civil norm of a “balance of probabilities” but lower than the criminal law standard of “beyond a reasonable doubt”.

- 8.2 In the present case, the ETH had little difficulty in endorsing the IC findings that the Letter of 15 amounted to an accusation of computer cheating against the Complainant, that all 15 Respondents were party thereto albeit that GM Zhukova played a leading role and that the accusation was manifestly unfounded. **An exceptional performance above one’s normal rating level is, on its own, no evidence whatsoever which can found a reasonable suspicion of cheating.**
- 8.3 The interruption in the live transmission of the Complainant’s Round 6 game together with another board, for technical reasons, could also not have given rise to any reasonable doubt about her performance. According to Mr. Delega’s statement, which is supported by the Organizers’ statement concerning this particular point, the interruption of live transmission in Round 6 was not deliberate, but only caused by cable connection problems. At some stage there was allegedly a problem with internet access in the city. As a result, the transmission signal was lost during Round 6 at the first and second boards of the Tournament, in one of which the Complainant was playing.
- 8.4 The ETH considers that for an accusation to be considered justified, it is not sufficient that the complainant subjectively believes that the accused person might be cheating (subjective standard). It is necessary that a neutral, reasonable observer would believe so as well (objective standard) on the basis of information available to him at the time he/she makes the respective complaint/accusation. On the other hand, a finding that a complaint was well-founded, i.e. based upon reasonable grounds / substantial evidence, is

not dependent on the accused person ultimately being found guilty of cheating. There is an in-between situation where sufficient grounds for a reasonable suspicion of cheating exist, but a full inquiry nevertheless shows that there had in fact been no cheating.

- 8.5 The ETH highlights the seriousness of consequences that false accusations may have against a chess player, as they may irreversibly tarnish his/her reputation. The making of unjustified accusations has been punishable long before the introduction of the AC Guidelines. While it is easy to accuse a player of cheating, it is difficult for the accused person to prove that the accusations are groundless and therefore false. At the same time, the intrigue rising from a case of purported cheating attracts instant publicity, goes viral within a few days and leaves tracks in the media for a long time, even if the cheating case is in the end dismissed as groundless and unjustified.
- 8.6 It is, therefore, considered crucial that objective grounds are present for a reasonable suspicion of cheating to exist. Such objective grounds would typically, but not exclusively, exist in case of abnormal behavior during or before the game, possession of devices or any kind of equipment that could be used for the transmission of information to and/or from the accused chess player during the game, such factors being usually combined with extraordinary play that can be technically and reliably proven in accordance with the standard of comfortable satisfaction to result from or be associated with computer or other external assistance. The above risks associated with false accusations can be effectively tackled by the formal procedure prescribed in the AC Guidelines to be further refined in due course.



- 8.7 The above considerations place a certain responsibility on a chess player who may believe another player makes him/herself guilty of cheating and he or she cannot abdicate this responsibility by merely reporting the matter to an arbiter for further observation or investigation in the absence of any reasonable grounds for a concern in the first place. And, we stress, an outstanding performance on its own is not enough to give rise to a reasonable concern and players must ensure that their suspicions and mistrust in this regard should not override a rational assessment of the situation.
- 8.8 In the result, GM Zhukova cannot be fully exonerated on the basis that she did not intend, according to her claims, to accuse the Complainant of cheating or to damage her reputation, but merely expressed her concerns and requested the Organizers to take precautionary measures in order to prevent all possible suspicions. The request that WGM Sandu's games must be singled-out for exclusion from the live transmission is a clear imputation that she is suspected of computer assistance during play. The damage of such a request to WGM Sandu's reputation is inevitable. The alleged concern about WGM Sandu's was not only unreasonable, but in fact irrational.
- 8.9 However, despite an objective test applying in the enquiry as to whether a groundless accusation of cheating have been made, when the personal blameworthiness of the offender is considered for purposes of an appropriate sanction, the test is subjective. Therefore two offenders both found guilty of making an unfounded cheating complaint may receive different sanctions depending *inter alia* on their motives, whether their actions were deliberate or careless, their personal circumstances, the presence of any remorse on their part and other mitigating circumstances.

- 8.10 In the present case, it cannot be found with comfortable satisfaction that GM Zhukova and the other Respondents acted with any malicious intent or motive to disrupt WGM Sandu's good performance or to gain an advantage over her. There is no evidence to suggest that they deliberately and falsely branded her as a cheater whilst knowing the opposite to be true. We also do not understand WGM Sandu's complaint to be to this effect; her complaint focusses on the devastating consequences for her as a result of the groundless accusation and the officials' treatment of the situation.
- 8.11 The ETH views the matter rather as one where the Respondents acted with extreme carelessness, which can be described as a recklessness, in making the cheating accusation without the presence of any objective reasonable grounds or substantiating evidence and in disregard for the consequences of such an accusation for WGM Sandu. Although nevertheless still serious, this lesser form of guilt has an impact on what may be considered an appropriate sanction.
- 8.12 There are a number of other factors which also have a bearing on the Respondents' personal blameworthiness in this matter. For one, they were invited to put their concerns, verbally expressed at that stage, in writing without their attention being drawn to the prescribed complaint form to be found in the AC Guidelines. Even accepting that the Chief Arbiter had informed the players about the Anti-Cheating procedures and the risk of a penalty in the case of a false accusation during the technical meeting prior to the start of the Tournament, that he was approached by the Respondents on the rest day when he was not doing official duty and that he told the Respondents that he disagreed with the Letter of 15, the Chief

Arbiter failed (as required by the AC Guidelines) to formally warn them at the stage the two letters were presented about the consequences of making a manifestly unfounded complaint. The failure to follow the prescribed procedures in the AC Guidelines caused an escalation of the matter into a petition where the support of various other players was sought. The Respondents must also be given the benefit of doubt, given the requisite standard of proof namely comfortable satisfaction, concerning their evidence that they never intended or expected that the Organizers would publish the Letter of 15.

- 8.13 The Respondents also receive the benefit of having found themselves in a somewhat novel situation and, in spite of the existence of the AC Guidelines, there was a general uncertainty, also within the ranks of the arbiters and organizers, of how the situation should be properly handled. The AC Guidelines themselves are somewhat vague on the circumstances in which a cheating accusation would be regarded as false and lack concrete examples where it would be justified for a suspecting player to make a complaint against another player.
- 8.14 It must however immediately be added that following publication of this motivation and hopefully a refinement of the AC Guidelines, in future players making false and groundless accusations will not be able to say they were ignorant of their responsibilities in this regard. The making of reckless allegations of cheating will attract severe punishment unless mitigated by the presence of extraordinary circumstances as in the present case.
- 8.15 The ETH recognizes the severe consequences the false accusations had for WGM Sandu's reputation and career and views it as extremely unfortunate. Hopefully the ETH's

decision and motivation would help to dispel any thought that WGM Sandu's play during the Tournament was in any way untoward and restore her good reputation. However, doing justice for WGM Sandu does not mean punishing the Respondents disproportionately to their own moral blameworthiness.

- 8.16 The ETH considers that the damage caused to the Complainant was amplified for reasons beyond the Respondents' control. In particular, the situation was perplexed and the prejudice caused to the Complainant was amplified by the inappropriate managing of the situation by the Chief Arbiter of the Tournament and the Tournament Organizers who decided to publish the letters together with an announcement that they do not consider the suspicions and concerns raised against the Complainant as justified. It is clear that the Chief Arbiter and Organizers failed to handle the situation with the confidentiality and discretion necessary to protect the interests of the accused player as required under the CoE and the AC Guidelines and did not observe the procedure provided in the said Guidelines that see to serve in particular the purpose of confidentiality.
- 8.17 However, their actions of the officials were without doubt well-intended. According to the statements submitted by the Chief Arbiter and the Organizers to the IC during the course of its investigation, it appears that they both genuinely believed that by publishing the Letters they had undertaken a course of action that served the Complainant's interests and lent support to her.
- 8.18 In any event, WGM Sandu's complaint was not directed against the Tournament Chief Arbiter and Organizers. The ETH may, therefore, only emphasize that with the benefit of hindsight and experience it is of great significance to

introduce improved AC rules, and not mere guidelines that have the status of “best practice” in a relevant field, regulating the respective proceedings in detail.

- 8.19 The ETH has carefully considered all the points raised in the Complainant’s further statement, but unfortunately does not share her view as to the point of balance that should be stricken in the case at hand between the interests of the Complainant and Respondents. With the benefit of hindsight, it is true that GM Zhukova and potentially other players as well did obtain an advantage vis-à-vis the Complainant and benefited from her subsequent losses in the Tournament. However, this was a consequence brought about by ignorant and reckless conduct of the Respondents and a failure of good judgment by the officials, and not because of a deliberate effort to sabotage WGM Sandu’s performance in the Tournament.
- 8.20 The ETH considers the provisional findings and proposed sanctions as necessary, adequate and reasonable in light of the circumstances of the present case, striking a fair balance between the prejudice suffered by WGM Sandu and the benefit obtained by GM Zhukova and potentially other Respondents. On this basis, the ETH rejects the Complainant’s position as set forth in her further statement of 10 May 2017 and maintains its views as laid down in the provisional findings and proposed sanctions.
- 8.21 Among the Respondents GM Zhukova was the only one who submitted a statement in connection with the ETH’s provisional findings and proposed sanctions. Despite the aggravating effect of the officials’ conduct, the Respondents’ conduct remains the cause-in fact and the adequate cause of the prejudice suffered by the Complainant. Such prejudice would not have been caused had the Respondents not drafted

and presented the Letter of 15. In addition to satisfying the “but-for” test, the Respondent’s conduct constitutes an adequate cause of the prejudice suffered by the Complainant, as it had – from the *ex ante* perspective of an objective observer - the general and objective tendency to result in such prejudice. As regards GM Zhukova’s argument concerning the time lag between the Tournament and the issuance of the ETH judgment, the ETH reiterates its position as set forth in para 4.13 above.

8.22 On the basis of the above, the ETH rejects GM Zhukova’s position as set forth in her further statement of 10 May 2017 and maintains its views as laid down in the provisional findings and proposed sanctions. The ETH finds that differentiation between the sanctions proposed for the three groups of players and the imposition of a more severe sanction against GM Zhukova is fully justified by the fact that she played a leading role in obtaining the signatures of the other players/Respondents, the fact that she has publicly declared that if she found herself in the same situation again, her conduct would be exactly the same and the fact that she personally benefitted the most from the unfortunate events. The fact that two years have passed since the incident does not alter the facts of the case nor does it remove the guilt of the Respondents, albeit that it plays a role in the imposition of an appropriate sanction.

8.23 The remaining Respondents, namely Respondents no. 2 to 15 chose not to comment on the ETH provisional findings and proposed sanctions despite being afforded ample opportunity to do so. The ETH therefore assumes that they are not dissatisfied with the provisional findings and proposed sanctions. In this connection, the ETH finds that differentiation between the sanctions proposed for the three

groups of players and the imposition of a less severe sanction on players who apologized or withdrew their signatures from the Letter of 15 is fully justified by the fact that they showed palpable signs of remorse, which is crucial in cases of ethical prejudice.

- 8.24 The ETH finds that the Respondents have violated art. 2.2.11 of the CoE. As regards art. 2.2.9 of the CoE, the ETH considers that there is arguably a measure of ambiguity in its wording that renders its applicability to the present case questionable. The said ambiguity appears to exist to the extent that the clause requires that players must not make unjustified accusations “toward” other players, which, on a literal reading, seems to prohibit a confrontation with the other, namely the accused, player. A more liberal interpretation of the clause’s wording would require the word “toward” to be understood to mean “concerning” other players, thus putting the focus on the avoidance of a false accusation than on the confrontation with the accused player. On the other hand, the wording and scope of art. 2.2.11 of the CoE (“conduct likely to injure or discredit the reputation of FIDE, its events or participants”) applies to the present case in a straightforward manner.

## **9. Final findings and sanctions**

- 9.1 The ETH, taking into consideration all the facts and evidence brought to its attention, especially the seriousness of the committed offence and the need for deterrence, maintains its provisional findings and confirms the sanctions previously notified to the Complainant and the 15 Respondents.
- 9.2 Therefore, it was held that Respondents 1 – 15 are all guilty of a breach of art. 2.2.11 of the CoE for making reckless and

unjustified accusations of cheating against WGM Sandu, thereby injuring and discrediting her reputation as an honest chess player.

9.3 Therefore, the sanctions imposed by the ETH are:

- Respondent no. 1: - A **three (3) month ban** from playing chess in any tournament. The sanction is wholly suspended for a period of one (1) year, on the condition that she is not found guilty of making reckless or unjustified accusations of cheating against any other chess player during the period of suspension.
- Respondents no. 2 – 10: - A **reprimand** (severe expression of disapproval and warning of consequences if conduct is repeated).
- Respondents no. 11 – 15: A **warning** (caution to avoid a repeat of the same conduct).

The identities of the Respondents appear from paragraph 3.2 above.

DATE: 31 July 2017

*F P Strydom*

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CHAIRMAN:  
FIDE ETHICS COMMISSION



## POSTSCRIPT

### **Premature public discussion of ETH's findings**

1. As mentioned in its motivation of its decision in case no. 3/2015, the ETH's announcement to the Complainant and the Respondents of its provisional findings and proposed sanction made its way into the public domain and formed the subject-matter of discussion on various Internet sites, such as chessbase.com and chess.com, as well as the web-site of the Association of Chess Professionals (ACP).
2. The ACP Board regrettably found it necessary to publish a statement on its website on 11 May 2017, in English, Russian and Spanish, in which the "decision" of the ETH was criticized *inter alia* on the basis that players are blamed and sanctioned but that the unfortunate role of the officials were effectively overlooked.
3. Whilst many good points are made in the ACP statement regarding the proper role of organizers and arbiters and the need for better regulations, the timing of the statement was ill-advised. The letter of the ETH of 24 April 2017 made it clear that the findings were provisional, subject to further submissions from the parties where after the ETH would in due course announce its final verdict with full reasons for its decision. The ACP statement also violated the *sub judice* principle according to which matters under judicial consideration should not be publicly discussed in order not to influence the tribunal which still has to come to a final decision.
4. The ACP statement was further wrong to accuse the ETH (without knowing the full reasons behind ETH's provisional findings) of "hardly mentioning" the role of the organizers and

arbiters in the present case. As can be seen from a reading of this motivation, the ETH took due account of the mistakes of the organizers and arbiters. The sanctions imposed on the Respondents were mitigated, amongst other factors, by a recognition of the amplified harm caused by the inappropriate handling of the situation by the officials. However, the Complaint before the ETH was not directed against the organizers and arbiters, and they had no opportunity to defend themselves against the accusations made against them. Moreover, the ETH is not empowered to act against the officials on its own motion (see The EC Competence and its Limits – Guidelines to the Interpretation of FIDE Code of Ethics).

5. The Complainant and Respondents also stand to be criticized for disclosing the private correspondence between the ETH and them to the media. As mentioned, the ETH's letter of 24 April 2017 was leaked to the Russian press and the Complainant's further statement of 10 May 2017 also appeared in the media before the ETH had time to decide upon it.

CHAIRMAN:  
FIDE ETHICS COMMISSION