



GENS UNA SUMUS

FÉDÉRATION INTERNATIONALE DES ÉCHECS

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FIDE ETHICS & DISCIPLINARY COMMISSION

The First Instance Chamber of the Ethics & Disciplinary Commission (hereafter called “the EDC Chamber”), sitting in the following composition :

Chairperson: Mr. Khaled Arfa

Members: Mr. Rajesh Joshi
Mr. David Hater

Following an exchange of correspondence and online meetings through the period 11th October 2020 - March 16, 2021, came to the following decision -

DECISION

Case n. 04/2018: “Complaint of GM Efstratios Grivas against the Mongolian Chess Federation and Mr. Sainbayar Tserendorj.”

1. The EDC Chamber **notes** its establishment by the EDC Chairman on 11 October 2020.
2. The EDC Chamber **notes** the ETH’s previous ruling dated 27 June 2018 that the complaints of GM. Efstratios Grivas against the Mongolian Chess Federation (“MCF”) and Mr. Sainbayar Tserendorj were held to be provisionally admissible.
3. The EDC Chamber **notes** the following, documents and e-mails received at the outset as part of the case file: Mr. Grivas complaint (16 June 2018), the Memorandum of Agreement (“MOA”) concluded with the MCF on 13 October 2017, the initial report of complaint filed by Mr. Grivas, Mr. Grivas e-mail (March 3, 2018), Mr. Grivas’ letter to the MCF (4 May, 2018), Mr. Grivas’ letter to the EDC (17 June, 2018), Respondent’s response to EDC (5th July, 2018), Mr. Grivas’ letter to the EDC (03 August, 2018), the emails exchange between Mr. Grivas and EDC (25 February, 2020).
4. The EDC Chamber **notes** the subject-matter of the complaint :
 - 4.1. The complaint relates to the non-payment of certain monies due to GM Efstratios Grivas in terms of the MOA concluded with the MCF on 13 October 2017 for the

supply of chess training materials and assignment of rights to use the materials translated into the Mongolian language.

- 4.2. The MCF initially refused or failed to make payment of the first two instalments of the agreed consideration due on 1 February and 1 May 2018 respectively. On 15 September 2018 Mr. Grivas received half of the amount (3.000 Euros out of total of 6.000) since then the balance of 50% remains outstanding.
5. The EDC Chamber **notes** that both parties have been given the opportunity to make additional written submissions for consideration by the EDC Chamber regarding:
 - 5.1. The general admissibility of the complaint in front of FIDE;
 - 5.2. The issue of a possible violation of art. 2.4 and/or 2.2.10 and 2.3 of the FIDE Code of Ethics;
 - 5.3. Any other issues to bring to the attention of the EDC Chamber having a bearing on this case.
6. The EDC Chamber **notes** the receipt of :
 - 6.1. Mr Tserendorj's statement of 29th October, 2020.
 - 6.2. Mr. Grivas' statement of 12 November, 2020.
 - 6.3. Mr. Grivas' memorandum of 21 January 2021 relating to the book's propriety rights with TRG Minutes of 02.03.2014, the cover and colophon (page 2 of a Pdf book) as a sample of one of the books mentioned in MOA (Advanced Chess School - Volume 1 - The Bishop Pair).
7. The EDC Chamber **notes** that the Respondents did not respond to the EDC Chamber's inquiries (Notice of 21 January 2021) or use the opportunity given to submit any further statement in the proceedings before the EDC Chamber. Accordingly, the facts supplied in the documents filed to date stand uncontroverted.
8. Upon due consideration of the documents and arguments submitted by the parties, the EDC Chamber, by **unanimity** of its members, finds that:
 - 8.1. The Grivas Chess International Academy, an unincorporated business, is registered as a FIDE academy under code No. 6 in the FIDE Trainers' Commission Academies Directory and consequently GM Efstrations Grivas is personally affected by the alleged misconduct.
 - 8.2. The MCF is a national chess federation and member of FIDE as it appears from the FIDE Directory and, as such, subject to the FIDE Code of Ethics ;
 - 8.3. Up to the date of the complaint, the President of the MCF and its representative in the conclusion of the said contract was Mr. Sainbayar Tserendorj, however, he no longer occupies that office at the date of establishment of this EDC panel as it appears from the FIDE Directory.

ADMISSIBILITY AND JURISDICTION

- 8.4. The case relates to a contractual dispute, the EDC has for the first time to decide with precision the boundaries between contract business law and the disciplinary law enforced by the FIDE Code of Ethics.

- 8.5.** As a general rule, a breach of a contractual obligation is not per se a violation of the Code of Ethics and would normally be a case for the civil courts. However, the EDC has jurisdiction if there is a dishonourable failure or refusal to meet the commercial obligations and the matter is closely enough connected to the sphere of chess governance, then there could be grounds for finding that a breach of the Code of Ethics has been committed. (A similar precedent was case 1/2007 GM Arthur Kogan v Jackie Ngubeni).
- 8.6.** A contractual dispute can be of the EDC jurisdiction upon **3 cumulative** conditions:
- 8.6.1.** The contract must be relating to chess and closely linked to one of the chess spheres governed by FIDE, for example the Chess Schools program as it is the case for the discussed MOA. Purely commercial contracts remain out of EDC Jurisdiction.
- 8.6.2.** The complainant and respondents must belong to the “FIDE Family”.
“The FIDE family” must be defined in a broad sense enclosing FIDE national federation members, all affiliated associations or organizations, all FIDE officials, delegates or representatives, all FIDE organs, FIDE Honourable dignitaries, FIDE electoral candidates, FIDE employees, FIDE registered or even not yet registered players, organisers, arbiters, trainers and administrators, match agents and sponsors of FIDE events, and any person who is otherwise an actor or participant in the sport of chess or its governance / administration.
It remains undisputed that all the parties in the present case are members of the FIDE Family (see paragraphs 8.1, 8.2, 8.3 hereof).
- 8.6.3.** There must be grounds for misbehaviour or misconduct that can be considered as a breach of the FIDE Code of Ethics.
- 8.7.** Taking into account what has been specified, the contractual clause that any dispute between the parties will be within the jurisdiction of the Greek courts is irrelevant for the case, as the EDC procedure will not "resolve the dispute" between the parties, nor will enforce the execution of the contract in the sense used by jurisdictional clauses in commercial contracts. It is rather a disciplinary procedure with the aim to impose one of the sanctions in the Code of Ethics if the respondents are found guilty.
The EDC procedure is not an alternative forum to a civil court, but a separate one that has specific targets aiming to inquire if the party's conduct is mala fide or otherwise dishonourable and the EDC only takes action if in addition to be a breach of contract, the conduct is also unethical and could be a violation of the Code of Ethics. Accordingly, the prohibition against double prosecution is not applicable in this case.
- 8.8.** For the reasons given in paragraphs 8.4, 8.5, 8.6 and 8.7 above the jurisdiction of the EDC in the present matter and admissibility of the complaint against the MCF and Mr. Sainbayar Tserendorj is **reconsidered and confirmed**;

THE FACTS

- 9.** The following facts were established by the evidence or material before the EDC Chamber:
- 9.1.** After the non-payment of the first instalment on 01-02-2018 as per the MOA, the MCF was just ignoring the multiple reminders of Mr. Grivas.
 - 9.2.** The first payment was only made after the ETH ruling was issued, and it was a partial payment (50% only).
 - 9.3.** Despite the respondent's counter-offer and Mr. Grivas, giving them a second chance to settle the debt, the MCF did not respect its commitment.
 - 9.4.** After acknowledging and paying half, the MCF disputed the debt foundation by arguing about Mr. Grivas's copyright with the aim to nullify its contractual obligations.
 - 9.5.** After three years from the date of the first agreed instalment on 01-02-2018, the respondents had enough time to settle the entire debt but failed to do so.
 - 9.6.** The MCF has shown an evident lack of cooperation by failing to respond to the latest EDC notification.
 - 9.7.** There was no evidence that the MCF had paid the Complainant the rest of what had been agreed in terms of the MOA (3.000 Euros out of total of 6.000).
 - 9.8.** Mr Sainbayar Tserendorj, is no longer president of the MCF at the date of establishment of this EDC panel as it appears from the FIDE Directory.

FINDINGS

- 10.** The EDC Chamber having considered, and deliberated on, the material before it made the following conclusions:
- 10.1.** Both parties to a contract (under EDC jurisdiction see para 8.6) must act in a loyal way and according to the principle of good faith to fulfil their obligations. If unforeseen difficulties intervene in the performance of a contract, the parties should approach each other and also negotiate in good faith to overcome them. The violation of these requirements can be considered as reprehensible behaviour and a violation of the good faith principle.
 - 10.2.** The MCF's conduct and apparent indifference by lack of response towards Mr. Grivas' reminders, multiple delays in making payment without any just cause, and failure to comply with normally accepted standards of courtesy and etiquette, must be of sufficient severity in order to undermine the integrity relationship between the parties, and let a federation appear in an unjustifiable, unfavourable light so that to damage its reputation, cause harm to the game of chess, and damage FIDE reputation about driven programs such as chess schools program.
 - 10.3.** Even if the shortage of cooperation in a disciplinary investigation (as per MCF's non-responsiveness to the latest notice of the Panel) is not regarded by the Code of Ethics as an offence, the MCF has failed to rebut the factual presumption that their non-payment of Grivas' monies was without good reason in the absence of any just explanation from their side.
 - 10.4.** The copyright of Mr. Grivas remains undeniable in view of the provided proofs.

- 10.5.** After the acknowledgment of the debt and the partial payment by the MCF, the raise of contradictory arguments such as discussing the copyright, which should have been verified before the conclusion of the contract, falls within the scope of subterfuge characterizing an unethical conduct.
- 10.6.** Despite the long period of more than three years since the first instalment provided by MOA (not made on the agreed date), and the given occasions for the total and final settlement by the MCF, the debt remains up today partially outstanding which is a clear-cut sign of reluctance to pay and unjustifiable attitude.
- 10.7.** The EDC chamber finds that the argument raised by the respondents about TIKA (Turkish Agency for International Aid) funds is irrelevant as there is no evident connection or condition in the MOA between the payment of Mr. Grivas' monies and TIKA funds.
- 10.8.** The EDC chamber finds in the present case, the MCF's guilt regarding a violation of articles 2.4 (Failure to comply with normally accepted standards of courtesy and chess etiquette. Misbehavior of a personal nature which is generally unacceptable by normal social standards.) and 2.2.10 (occurrences which cause the game of chess, FIDE or its federations to appear in an unjustifiable unfavourable light and in this way damage its reputation.) conclusive.
- 10.9.** The EDC chamber finds Mr. Sainbayar Tserendorj, who is no longer president of the MCF, is accordingly no longer responsible of the non-payment. Consequently Mr. Sainbayar Tserendorj is not guilty of the alleged violation of art. 2.3 and 2.4 of the FIDE Code of Ethics and the case against him should therefore be dismissed.
- 10.10.** Accordingly, upon due consideration of the factors relevant to the sanction including the gravity of the offence and the presence of aggravating and mitigating circumstances in-line with art 3.3 and 3.4 of the Code of Ethics, the EDC **unanimously decides** as follows:
- 10.10.1.** The Mongolian Chess Federation is **found guilty** of a violation of Art. 2.4 and 2.2.10 of the Code of Ethics;
- 10.10.2.** The two offences are taken together and the Mongolian Chess Federation is **sanctioned** in terms of art. 3.2 of the Code of Ethics with a temporary exclusion from membership as a FIDE national federation member including any participation in FIDE meetings and events, for a period of 1 Year (12 months) (without affecting the rights of players, arbiters, trainers and clubs belonging to the Mongolian Chess Federation from participating fully in sport activity). The sanction (12 months) is wholly suspended for a period of three (3) months on the condition that the MCF makes full payment of the outstanding amount to Mr. Grivas, failing to do so the full sanction will take effect after three (3) months from the date of this written decision, commencing on 16 June, 2021.
- 10.10.3.** The case against Mr Sainbayar Tserendorj is declared **dismissed** in the absence of prima facie evidence of a violation of the Code of Ethics;

11. The Respondent is **advised** that this decision may be appealed to the Appeal Chamber of the EDC by giving written notice of such appeal to the FIDE Secretariat within 21 days from the date upon which this decision is received by the Respondent. The notice of appeal must clearly state all the grounds for the appeal. Failing the due exercise of this right of appeal, the EDC Chamber's decision will become final.
12. The EDC **requests** the FIDE Secretariat to communicate forthwith the decision to parties, the complainant, Mr. Efstratios Grivas, and the respondents, the Mongolian Chess Federation and Mr Sainbayar Tserendorj, and to publish in due course the decision on the FIDE website.

DATED ON THIS 16th DAY OF March, 2021.

Khaled Arfa

First Instance Chamber Chairperson

FIDE ETHICS & DISCIPLINARY COMMISSION