



GENS UNA SUMUS

# FÉDÉRATION INTERNATIONALE DES ÉCHECS

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## FIDE ETHICS AND DISCIPLINARY COMMISSION

The Appeal Chamber of the Ethics & Disciplinary Commission (hereafter called "the Appeal Chamber"), sitting in the following composition –

Chairperson:	Mr Francois Strydom
Members:	Ms Yolander Persaud Mr David Hater

following a review of all documents filed in the first instance and on appeal, and deliberations at an online meeting held on 7 July 2021, came to the following –

## DECISION

*in re:*

**CASE NO: 2/2021(A): ALLEGED DISCRIMINATION BY REFUSAL OF ATTENDANCE AT FIDE COMMISSION MEETING ("Appeal")**

1. This is the first internal appeal in the new two-chamber regime introduced by the adoption of the FIDE Charter in February 2020.
2. This matter concerns an appeal and a cross-appeal:
  - 2.1. The appellant in the main appeal is **Mr Ozgür Solakoglu**, the respondent in the original proceedings before the EDC First Instance Chamber. The respondent was found guilty of certain violations of the Code of Ethics and sanctioned by a warning.
  - 2.2. The appellant in the cross-appeal is **Mr Ali Nihat Yazici**, who was the complainant in the original proceedings. He is dissatisfied with the sanction imposed by the First Instance Chamber.
  - 2.3. For the sake of convenience, the parties in the appeal will be referred to in their original capacities: Mr Yazici as "*the complainant*" and Mr Solakoglu as "*the respondent*".
3. On 15 February 2021, the complainant submitted a complaint to the EDC to the effect that the respondent had violated Articles 2.2.2, 2.2.3 and 2.2.4 of the FIDE Code of Ethics by excluding

the complainant from access to and participation in the online meeting of the FIDE Events Commission ("EVE") held during the FIDE Congress on 2 December 2020. The respondent is the Chairman of EVE and was in charge of the relevant meeting.

4. The EDC Chairman, pursuant to his powers in terms of Article 26.5 of the FIDE Charter, ruled the complaint was admissible insofar as an alleged violation of Articles 2.2.3 and 2.2.4 was concerned, but inadmissible as regards Article 2.2.2. The EDC Chairman nominated a First Instance Chamber to decide the case.
5. On 4 May 2021, the First Instance Chamber (J Sigeman, R Joshi and R Dongre) delivered the following unanimous decision:
  - 5.1. The respondent is found guilty of a violation of Art. 2.2.3 and 2.2.4 of the Code of Ethics;
  - 5.2. The respondent is sanctioned to a warning.
6. In terms of the Code of Ethics, the time limit for noting an appeal is 21 days following communication of the EDC decision. This period expired at midnight on 26 May 2021, as at FIDE's head office in Lausanne, Switzerland.
  - 6.1. On 25 May 2021, the complainant submitted an appeal against the sanction imposed.
  - 6.2. On 26 May 2021, at 23:01, the respondent submitted an appeal against both his conviction and sanction.
  - 6.3. It follows that both appeals were filed timeously.
7. **Admissibility of the appeals:**
  - 7.1. Having been filed timely and being otherwise in order, it is held that the respondent's appeal is admissible.
  - 7.2. Both the FIDE Ethics Code and EDC Procedural Rules are currently in the process of review which, in their amended versions, will deal with the requirements and procedures for an internal appeal. It is noteworthy that the draft new Code indeed allows for such an internal appeal by an aggrieved complainant.
  - 7.3. For purposes of this appeal, given the conclusion reached by the Appeal Chamber concerning the merits of the cross-appeal, it is unnecessary to make a pertinent finding regarding the admissibility of an internal appeal filed by an aggrieved complainant and it is assumed for present purposes that the complainant's appeal is indeed admissible.

**8. Factual findings of the Appeal Chamber:**

- 8.1. The complainant is an Honourable Dignitary of FIDE as contemplated in Article 15 of the Charter. The complainant was granted this status by a decision of the General Assembly in Baku in 2016. The Honourable Dignitaries are a constituent part of the General Assembly (Article 71.3(c) of the Charter) and they have a right to attend the General Assembly without voting rights (Article 15.4 of the Charter).
- 8.2. According to the evidence of the complainant, which is accepted by the Appeal Chamber, the complainant was the first secretary of the EVE and further attended every meeting of the EVE since its creation as a commission until prior to December 2020.
- 8.3. Traditionally, FIDE Congress meetings are open to all registered Congress participants. FIDE is a public organisation and performs its functions with as much transparency as possible. According to Article 17.2 of the FIDE Charter, the sessions of the General Assembly are public, unless it is decided otherwise.
- 8.4. According to the FIDE Congress Regulations, the Congress shall include sessions of the General Assembly, the Executive Board (now FIDE Council), permanent and temporary FIDE Commissions, as well as zonal and continental meetings of Federations.
- 8.5. In principle, all members of the FIDE family are welcomed at Congress meetings. These members would include FIDE member federations, continental and zonal councils, affiliated organisations, all through their delegates and other representatives, as well as members of FIDE organs, non-elected commissions and other FIDE officials, and FIDE honourable dignitaries.
- 8.6. On 13 November 2020, the FIDE Executive Director wrote to all FIDE Commission chairpersons in relation to their respective online commission meetings to be held during the Congress. The following information was provided:

"We draw your attention to the following information –

- Most of the Commissions meetings will be open for all (maximum 300 participants).
- Verification, Ethics & Disciplinary and Constitutional will be closed meetings. However, respective Commission Chairmen and FIDE President may issue special invitations.
- Chairpersons will receive full instructions and information for the Zoom meeting invitation of the respective meetings, in advance."

- 8.7. The above instruction differentiated between elected and appointed commissions. The EVE is an appointed commission and its meeting was thus open to all, subject only to the capacity requirement of 300 maximum participants. In other words, the respondent as EVE Chairman was not given any discretion to determine the participation in his meeting.
- 8.8. The respective Commission Chairmen did not only chair their online meetings and control the floor, as would have been the case at a physical meeting, but they were also given additionally the responsibility of hosting the virtual meeting on the Zoom platform. FIDE provided the chairpersons with the invitation link to the meeting and it was the responsibility of the chairperson to distribute this link and instructions to participants. At the meeting the Chairman had to verify and accept participants upon joining from the waiting room into the meeting room. The Chairman, as host, also had the power to remove a participant from the room or eject him/her to the waiting room or to mute his/her microphone or to switch off his/her video camera. The start and ending of the meeting was in the absolute control of the Chairman as host of the virtual meeting.
- 8.9. On 26 November 2020, the FIDE Secretariat, situated in Elista, sent an invitation to the complainant in his capacity as "FIDE Honorary Member" and addressed him as "Dear Participant of FIDE Online Congress". The complainant was sent a copy of the Congress schedule and informed that in case he wishes to attend any Commission meeting, he should make contact with the Chairperson of the respective Commission whose name and contact details were given.
- 8.10. On 29 November 2020, the complainant wrote to e-mail to the respondent and indicated his interest in attending the EVE meeting and asked to be sent the necessary information to connect thereto.
- 8.11. On 1 December 2020, not having received an answer from the EVE, the complainant by e-mail asked for help from the FIDE Secretariat, in which the respondent was copied.
- 8.12. On the same day, the complainant received an answer from the respondent stating that the EVE was inviting participation by Commission members, delegates, FIDE officials and Federation officials. The implication was that the complainant, as an honourable dignitary, had been excluded from participation.
- 8.13. Having then approached the FIDE Executive Director, the complainant received the following answer from Mr Bologan (with a copy to the respondent):

"We would like to note that the current FIDE Charter does not contain strict rules regarding the procedure for holding Commission meetings. In this regard, and taking into account the meeting of the Commission is held online and has technological features, it was established that Commission members, Delegates, FIDE Officials and Federation officials are entitled to mandatory access to the meeting. Other persons may be invited by the decision of the Chairman of the Commission, but such persons are observers only in the meeting. Thus, the final decision on your admission to the meeting is within the competence of the Chairman of the Commission, who, however, I kindly asked to reconsider your request, taking into account the principle of openness of FIDE activities."

- 8.14. The Executive Director's answer that persons falling outside the mentioned classes with mandatory access may be invited in the final decision of the Chairman was unfortunately worded and contradictory to his earlier instruction of 13 November 2020, as well as the general prevailing practice in FIDE over many years. However, to the extent that a discretion was given to the respondent to decide the issue of the complainant's participation, it is clear that such a discretion had to be exercised for good reasons.
- 8.15. In the end, the respondent decided not change his position and the complainant was unable to attend the EVE meeting of 2 December 2020.

9. **Merits of the respondent's appeal:**

- 9.1. The respondent repeated basically the same arguments he had advanced in the proceedings before the First Instance Chamber.
- 9.2. The respondent's main defence is that nowhere in the FIDE Charter or Regulations of the FIDE online congress is there a clear written rule that honourable dignitaries have a right to participate in FIDE Commission meetings. The respondent added that he had further followed the instructions of the FIDE management in this regard.
- 9.3. In the view of the Appeal Chamber this defence has no merit for the following reasons:
  - 9.3.1. The respondent, as an honourable dignitary, is a member of the FIDE General Assembly, the highest governing body in FIDE and, by implication, entitled to attend other meetings held during the Congress.
  - 9.3.2. The respondent was pertinently invited by the FIDE Secretariat to attend the Congress and in particular the open Commission meetings.
  - 9.3.3. In any event, any member of the FIDE family attending the Congress is entitled to attend all meetings which are not closed meetings. This is based on a long-standing custom in FIDE.

- 9.3.4. The meeting of the EVE was not a closed meeting and was open to all members of the FIDE family up to a maximum of 300 attendees according to the instruction of the Executive Director of 13 November 2020.
- 9.3.5. Even if it is accepted that on 1 December 2020, the respondent was given the final say about the complainant's attendance, it is clear that he misconceived the scope of his power and that he did not have an absolute prerogative to exclude the complainant without good reason.
- 9.4. The respondent has also indicated in the EDC proceedings that he decided to exclude the complainant because of past disruptive behaviour displayed by him at the Baku 2016 FIDE Congress and because the complainant, in the respondent's view, does not show any respect for FIDE management, FIDE Commissions and FIDE officials, including the respondent. The respondent feared that the complainant's participation would hinder the productive and peaceful conduct of the EVE meeting. He suspected that the aim of the complainant was to spoil the meeting. In other words, on the respondent's own version, he excluded the complainant because he viewed him as a trouble-maker.
- 9.5. This defence can be rejected for the same reasons as those relied upon by the First Instance Chamber:
- 9.5.1. The respondent had the ability in a virtual meeting environment, to mute / remove the complainant from the meeting if he showed unacceptable behaviour. This is comparable to the practice by FIDE in physical meetings where a speaker on the floor disobeys the Chairman and continues speaking, in which case the security personnel is asked to take the speaker's microphone away or to escort him out of the room.
- 9.5.2. Even if the respondent viewed the complainant as a trouble-maker, and despite the obvious personal animosity between the two of them, the respondent should not have allowed this to cloud his objectivity and he should have permitted the complainant to exercise his right of attendance until an abuse of those rights manifested themselves during the meeting. It was wrong to exclude the complainant in advance and by way of precaution.
- 9.6. Taking into account all of the circumstances, the Appeal Chamber finds to its comfortable satisfaction that the respondent, as official, had failed to perform his functions in an impartial and responsible manner, i.e. by not acting objectively and fairly, but rather arbitrarily, and with prejudice and pre-judgment towards the

complainant. This means that the conviction of a violation of Article 2.2.3 of the Code of Ethics was well-founded and the respondent's appeal in this regard falls to be dismissed.

- 9.7. However, the Appeal Chamber finds no convincing grounds to uphold the conviction of a violation of Article 2.2.4, namely a failure to comply with normally accepted standards of courtesy and chess etiquette; misbehaviour of a personal nature which is generally unacceptable by normal social standards. This Article demands polite and respectful behaviour towards other people and a display of good manners.
- 9.8. Although the respondent can be criticised for not responding promptly to the complainant's request of 29 November 2020 to attend the EVE meeting, and for being somewhat dismissive in his reply of 1 December 2020, this conduct does not rise to a sufficient level of unacceptability or objectionableness to render the respondent guilty of a violation of Article 2.2.4. Hence, the respondent's appeal succeeds in this regard and his conviction of a violation of Article 2.2.4 is set aside.

#### 10. **The merits of the complainant's cross-appeal:**

- 10.1. The complainant takes issue with the sanction of a warning which was imposed and submits that the sanction does not match the respondent's guilt. The complainant submits that the respondent has made himself guilty of discrimination which is against the principles of FIDE as set out in Article 4 of the FIDE Charter and in particular Article 4.4 which reads as follows:

"FIDE rejects any kind of discrimination against a country, private person or group of people on account of race, skin colour, ethnic, national or social origin, citizenship, birth, age, status, wealth, disability, language, religion, sex, gender identity or expression, pregnancy, sexual orientation, political opinions, or any other reason."
- 10.2. The complainant points out that, according to the finding of the First Instance Chamber, the respondent shows no remorse, that he is unapologetic and that a sanction of a warning (the lowest level of sanction which may be imposed) is wholly inappropriate for a serious transgression such as a conscious or deliberate act of discrimination.
- 10.3. The Appeal Chamber finds that the strict meaning of the word "discrimination" is the unfair or prejudicial treatment of people and groups based on characteristics such as race, gender, age, sexual orientation etc. This is also borne out by Article 4.4 of the Charter which has in mind discriminatory conduct on account of race, skin colour, etc.
- 10.4. On the other hand, personal or individual discrimination refers to the unfair treatment caused by a negative attitude towards another person (which is illustrated by the facts

of the present case). Such acts of personal or individual discrimination fall outside of the scope of Article 4.4 as the concluding words "or any other reason" must be interpreted according to the *eiusdem generis* rule, a principle of interpretation which holds that where words with a limited or particular meaning are followed by a phrase of general application, the meaning of the phrase is restricted to the generic meaning of the preceding word – the meaning of the word is thus known from that of its companions.

- 10.5. Although the respondent's unfair treatment of the complainant, based upon a personal prejudice and dislike, was clearly unacceptable, it does not amount to "discrimination" in the strict sense and the offence is not as serious as the complainant makes it out to be.
- 10.6. The complainant argues that the respondent's conduct deserves a ban of at least one day at the next General Assembly and Congress. The Appeal Chamber does not agree with this suggestion (which is clearly based upon an over-stressing of the severity of the offence) and finds that the sanction of a warning is indeed proportionate to the respondent's guilt, taking into account also the following mitigating reasons:
  - 10.6.1. According to the respondent, this is the first time over the length of the respondent's involvement in chess for more than thirty years that he had to face an ethics complaint;
  - 10.6.2. The respondent is the Chairman of the EVE and on all accounts has performed his tasks, save for this incident, in an exemplary fashion. Even the complainant complimented the respondent's handling of the meeting of 2 December 2020 (after watching the video recordings). There are no grounds to believe that the respondent has lost in any way the confidence of FIDE or has otherwise become unworthy of trust;
  - 10.6.3. During the EDC proceedings the complainant was given access to the list of participants and the video recording of the EVE meeting of 2 December 2020, as well as the EVE report to the General Assembly. Save for being denied participation on the day, the complainant has not suffered great prejudice;
  - 10.6.4. The respondent was, to an degree, misguided by the advice received from the Executive Director on 1 December 2020, which operates to reduce the respondent's blameworthiness;



10.6.5. The sanction of a warning will indeed have a deterrent effect for the future as the respondent, if he should make himself again guilty of a violation of the Ethics Code, will no longer be regarded as a first offender. No doubt the respondent has learnt a lesson and will tread carefully should a similar situation again arise.

10.7. The Appeal Chamber finds the sanction of a warning appropriate for the violation of Article 2.2.3 in the circumstances of this case. The sanction is accordingly maintained and the complainant's cross-appeal is dismissed.

11. In conclusion, the complainant's cross-appeal fails and the respondent's appeal is partially successful. The Appeal Chamber sets aside the decision of the First Instance Chamber and replaces it with the following:

11.1. The respondent is found guilty of a violation of Article 2.2.3 of the Code of Ethics.

11.2. The respondent is sanctioned to a warning.

12. In accordance with the Code of Ethics, this final decision is appealable to the Court of Arbitration for Sport (CAS) within twenty-one (21) days following communication of this decision.

13. The FIDE Secretariat is requested to communicate the decision forthwith to the respondent and the complainant and to publish the decision on the FIDE website in due course.

DATE: 15 July 2020

*F P Strydom*

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APPEAL CHAMBER CHAIRMAN:  
FIDE ETHICS AND DISCIPLINARY COMMISSION