

FIDE ETHICS AND DISCIPLINARY COMMISSION
APPEAL CHAMBER

MOTIVATION

in re:

CASE NO: 2/2022(A): Public Statements causing harm to FIDE, its federations and the game of chess

A. PRELIMINARY MATTERS

1. The Decisions

- 1.1. On 21 March 2022 the EDC First Instance Chamber rendered a Decision, finding Mr Sergey Karjakin of Russia guilty of having breached Article 2.2.10 of the FIDE Code of Ethics ("the old Code") and imposing a sanction upon him in the form of a 6-month worldwide ban from participating as a player in any FIDE-rated chess competition, with effect from the date of its decision.
- 1.2. On 6 May 2022, the EDC Appeal Chamber rendered its Decision in Mr Karjakin's appeal against the Decision of the EDC First Instance Chamber. The Appeal Chamber dismissed Mr Karjakin's appeal against both the guilty verdict and the sanction imposed and held that the Decision of the First Instance Chamber must be confirmed and maintained.
- 1.3. The present Motivation records the detailed reasons for the EDC Appeal Chamber's Decision as envisaged in paragraph 5 of its Decision of 6 May 2022. In providing the Appeal Chamber's reasons, it is not proposed to repeat the detailed motivation as contained in the First Instance

Tribunal's Decision of 21 March 2022, save to record the Appeal Chamber's general agreement with the reasoning therein recorded.

2. **The Parties**

- 2.1. The appellant in the appeal is **Sergey Alexandrovich Karjakin**, born 12 January 1990, a well-known chess grandmaster belonging to the Russian Chess Federation. Karjakin was the challenger for the World Chess Championship held in New York in November 2016, but lost the championship match to Magnus Carlsen. Karjakin qualified for the 2022 candidates to be held in Madrid, Spain in June 2022, by finishing second in the Chess World Cup 2021. Karjakin is currently ranked 17th in the world on the FIDE rating list.
- 2.2. The respondent in the appeal is the **FIDE Council**, the strategic and oversight body of FIDE, established in terms of Article 20 of the FIDE Charter. The FIDE Council is authorised to represent FIDE's general interests in proceedings before the Ethics and Disciplinary Commission (EDC) – see EDC Case no. 2/2018: *FIDE Presidential Board v Ilyumzhinov*; Guidelines to the Interpretation of FIDE Code of Ethics (July 2007).

3. **Procedural history**

- 3.1. The appellant noted an appeal to the Appeal Chamber by delivering his notice of appeal on 9 April 2022, as well as an addendum to the notice of appeal on 11 April 2022.
- 3.2. On 12 April 2022, the Appeal Chamber was constituted and the appeal proceedings commenced by the

respondent being offered an opportunity until 25 April 2022 to deliver its representations in answer to the appellant's case on appeal.

- 3.3. On 19 April 2022, the Appeal Chamber directed certain enquiries to the appellant. The appellant was requested to provide copies of all the postings made by him on his Twitter and Telegram accounts during the period 24 February until 19 April 2022 and further to furnish the Appeal Chamber with his submissions on whether the Appeal Chamber may take into account the public statements made by the appellant since the release of the First Instance Chamber's Decision on 21 March 2022. The appellant was further invited, as a factor to be considered in mitigation of sanction, to furnish a written apology for, and retraction of, the offensive statements published by him in social media. A deadline for the appellant's reply was set for 25 April 2022.
- 3.4. On 25 April 2022, the respondent, as represented by Mr Luca Tettamanti, of the legal firm Elite Law SA, in Lugano, Switzerland, filed its Statement in answer to the appeal.
- 3.5. Also on 25 April 2022, the appellant, represented by Mr Andrey Filatov, under power of attorney, replied by e-mail to the Appeal Chamber's enquiries of 19 April 2022.
- 3.6. In his reply, the appellant declined to furnish copies of the postings made by him on his Twitter and Telegram accounts, relying on the privilege against self-incrimination. The appellant submitted that the Appeal Chamber is not entitled to take into account the public

statements made by the appellant since the release of the First Instance Chamber's Decision. The appellant further declined to make a written apology as, he submitted, it would constitute "inadmissible new evidence" in the procedure before the Appeal Chamber.

3.7. In the period from 26 April until 5 May 2022, the members of the Appeal Chamber considered their Decision, which was announced to all parties on 6 May 2022.

4. **Admissibility of the appeal**

4.1. In terms of Article 35.3 of the FIDE Charter an appeal before the Court of Arbitration for Sport (CAS) may only be brought after FIDE's internal procedures and remedies have been exhausted.

4.2. An internal appeal to the EDC Appeal Chamber against decisions of the EDC First Instance Chamber is impliedly given by Article 26.4 of the Charter.

4.3. In terms of Article 17.1 of the new Ethics and Disciplinary Code, effective 1 April 2022 ("the new Code"), an express right of appeal to the EDC Appeal Chamber is given against the final decision of any First Instance Chamber of the EDC. According to Article 17.4 of the new Code, such right of appeal must be exercised within twenty-one calendar days from the date on which the appealable Decision is communicated to the party concerned.

4.4. The appellant argues that the procedural aspects of the present appeal are governed by the new Code according to the principle of *tempus regit actum*, namely that

procedural matters are governed by the rules in force at the time when the procedural action occurs.

- 4.5. The respondent shares the appellant's view that the new Code applies immediately upon its entry into force (1 April 2022) and governs any subsequent procedural act, even in proceedings related to facts which occurred beforehand. The respondent accordingly accepts the jurisdiction of the Appeal Chamber to determine the appellant's appeal.
- 4.6. The time limit of 21 days to file an appeal expired on 11 April 2022. The appellant's appeal was thus filed timely.
- 4.7. The Appeal Chamber accordingly held, by unanimity of its members, that the appellant's appeal is admissible and that the Appeal Chamber has the necessary jurisdiction to adjudicate the appeal.

B. BACKGROUND AND GENERAL DISCUSSION

5. The imperative to settle disputes by peaceful means

- 5.1. On 24 February 2022, Russia launched a large-scale military invasion against Ukraine, the biggest attack by one State against another in Europe since World War II. Since then, in the continuing war, regular reports are received of attacks on civilian facilities in Ukraine such as residences, schools and hospitals, and of civilian casualties, including women, older persons, persons with disabilities, and children.

- 5.2. This military action received widespread international condemnation as a breach of international law, in particular the violation of the sovereignty of another State, the use of military means to resolve political conflicts, and the violation of fundamental human rights.
- 5.3. Article 2 of the United Nations Charter provides as follows:
- “2(3) All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.”
- “2(4) All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”
- 5.4. Article 33 of the United Nations Charter provides as follows:
- “33(1) The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice”.
- 5.5 On 24 October 1970, the United Nations General Assembly adopted resolution 2625 in which it approved the “*Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States*” in accordance with the Charter of the United Nations, and reaffirmed the principles contained therein that the territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force, and that any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a State or

country or at its political independence is incompatible with the purposes and principles of the Charter.

- 5.5. On 2 March 2022, the United Nations General Assembly adopted resolution ES-11/1 in which it deplored the Russian Federation's invasion of Ukraine and demanded, *inter alia*, that the Russian Federation immediately cease its use of force against Ukraine and unconditionally withdraw all of its military forces from the territory of Ukraine. The resolution was passed with 141 voting in favour, 5 against, and 35 abstentions.
- 5.6. In late February 2022, Ukraine sued Russia in the International Court of Justice, sitting in The Hague. On 16 March 2022, the Court granted provisional measures and ruled that Russia must immediately suspend the military operations. The Court's decision was reached by a majority of 13-2 of the Judges.
- 5.7. On 24 February 2022, the International Olympic Committee (IOC) published a statement in which it strongly condemned the breach of the Olympic Truce by the Russian Government. On 25 February 2022, the IOC Executive Board urged all international sporting federations to relocate or cancel their sport events planned in Russia or Belarus, and further that no Russian or Belarussian national flag be displayed and that no Russian or Belarussian anthem be played in international sports events.
- 5.8. The Olympic Movement has as its mission to contribute to peace through sport and to unite the world in peaceful

competition beyond all political disputes. The goal of Olympianism is to place sport at the service of the harmonious development of humankind, with a view to promoting a peaceful society concerned with the preservation of human dignity and in pursuance of the values of peace, solidarity and non-discrimination in sport for whatever reason. The idea is that sports events should unite athletes of countries which are in confrontation and sometimes war.

- 5.9. FIDE in its governance of the sport of chess subscribes to and seeks to promote the fundamental principles of Olympism. Belonging to the Olympic Movement requires compliance with the Olympic Charter and recognition by the International Olympic Committee. In 1999, FIDE was recognized by the IOC as a Global Sporting Organization.
- 5.10. On 27 February 2022, the FIDE Council expressed FIDE's position regarding the due political situation and took a number of decisions:

"FIDE expresses its grave concern about the military action started by Russia in Ukraine. FIDE stands united against wars as well as condemns any use of military means to resolve political conflicts. FIDE will take any necessary action to ensure the security of chess-players and other members of the Chess community. No official FIDE competitions and events will be held in Russia and Belarus".

and

"The FIDE Council supports the call of IOC and:

- (a) FIDE relocates / cancels its official competitions and events currently planned in Russia;
- (b) No Russian or Belarussian national flag be displayed and no Russian or Belarussian anthem be played in all FIDE

rated international chess events. Instead – the National Chess Federation's flag or other official symbol / logo shall be used.

- (c) FIDE will provide an opportunity to play / be represented under the FIDE flag for any chess players (or arbiters, trainers, organisers) who would have a notable justification within the current due political situation. A simplified procedure for the transfer shall be used."

and

- "(a) The FIDE Council acknowledges receipt of a letter from the Ukrainian Chess Federation regarding, among other things, Russia's invasion of Ukraine and published comments attributed to chess Grandmasters Sergey Karjakin and Sergey Shipov.
- (b) The FIDE Council refers the matters to its appropriate organ – the Ethics and Disciplinary Commission.
- (c) The FIDE Council states categorically that it condemns any public statement from any member of the Chess Community which has the potential of bringing Chess and FIDE in disrepute, particularly any statement supporting unjustified military action by one State against another."

and

- "(a) In order to safeguard FIDE for reputational, financial and other possible risks, FIDE terminates all existing sponsorship agreements with any Belarussian and Russian sanction and/or State-controlled companies and will not enter into new sponsorship agreements with any such companies.
- (b) Mandate the FIDE financial department to evaluate the risks of FIDE having its accounts in Sberbank and Gazprombank. If there are any possible risks to FIDE, these accounts shall be closed."

5.11. In addition, the FIDE Council on 27 February 2022 adopted decisions to review the contractual agreements with the employees of the FIDE Office in Russia, transferring them to Lausanne, Switzerland and the invitation of bids from

national federations for the organisation of the 2022 Chess Olympiad and Congress, which would have taken place in Russia.

6. **FIDE principles / values and Article 2.2.10 of the Code**

- 6.1. Article 4 of the FIDE Charter sets out the fundamental principles followed by FIDE and which principles have to be respected and complied with by all members of the FIDE family. These principles must be read with the mission and role of FIDE as stated in Article 2 of the Charter.
- 6.2. Article 2.6 of the Charter makes it part of FIDE's mission to support close international cooperation of chess devotees in all fields of chess activities, thereby also aiming to improve harmony and promote peace among all peoples of the world.
- 6.3. In terms of Article 4 of the Charter:
 - 6.3.1. FIDE is a democratically established and fully independent organisation, based on the principle of equal rights of its members (4.1);
 - 6.3.2. FIDE preserves the autonomy of chess and sport (4.2);
 - 6.3.3. FIDE is committed to respecting all international recognised human rights and shall strive to promote the protection of these rights (4.3);
 - 6.3.4. 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 (4.4);

6.3.5. FIDE shall undertake all measures necessary to guarantee equal access to the game of chess and tournaments to all countries, zones and continents (4.6);

6.3.6. FIDE events may be hosted only by nations where free access is assured to representatives of all FIDE members (4.7);

6.3.7. FIDE shall promote friendly relations between and among member associations, clubs, officials and players (4.8);

6.3.8. FIDE observes strict neutrality in the internal affairs of its members but has the right and duty to evaluate their compliance with FIDE principles and their obligations towards FIDE (4.10).

6.4. In terms of Article 5 of the Charter, the FIDE motto is "*Gens Una Sumus*" ("We are one family").

6.5. All FIDE members, organs and officials must observe FIDE Rules and Regulations, and all FIDE members must include in their statutes the obligation for their members to observe FIDE Rules and Regulations (7.11 and 7.12).

6.6. In terms of Article 11 (a), (b) and (c) of the Charter, member federations must observe all rules, regulations and decisions of FIDE and ensure that their members and various bodies, including leagues and clubs, also comply

with them; ensure that their statutes and rules fully comply with FIDE Rules and Regulations; and comply with their own statutes, rules and regulations, refraining from taking discriminatory decisions or actions. In terms of Article 11(m), member federations must promote amicable and courteous relations with other member federations and their members, officials and players.

- 6.7. In terms of Article 26.8 of the Charter the EDC shall have jurisdiction over the conduct of officials, players, players' agents, match agents, arbiters, trainers, organisers, representatives of chess associations, leagues and clubs who are associated to FIDE member federations or affiliated organisations or FIDE continents or who participate in or organise FIDE events, tournaments and congresses, except where their conduct is limited to a national sphere, as in the case of national events not rated by FIDE.
- 6.8. In terms of Article 7.2 of the new Ethics and Disciplinary Code, non-compliance with the FIDE principles set out in Article 4 of the FIDE Charter by any members of the FIDE family shall constitute a breach of the new Code and be subject to either remedial action or disciplinary action in terms of the new Code.
- 6.9. It is appreciated by the Appeal Chamber that Article 7.2 of the new Code only entered into force on 1 April 2022 and, in assessing the appellant's conduct during February and March 2022, any non-compliance by the appellant with the FIDE principles was not sanctionable under the old Code without more. The appellant could only be found

guilty by the First Instance Chamber if any non-compliance with the FIDE principles on his part additionally satisfied the elements of a breach of Article 2.2.10 of the old Code.

6.10. Article 2.2.10 of the former Ethics Code read as follows:

"In addition, disciplinary action in accordance with this Code of Ethics will be taken in cases of occurrences which cause the game of Chess, FIDE or its federations to appear in an unjustifiable unfavorable light and in this way damage its reputation."

6.11. The non-compliance with FIDE principles will be sanctionable in terms of Article 2.2.10 of the old Code if it causes reputational harm to the game of chess, FIDE or its national federations. Whether such reputational harm has been suffered will depend on the profile and status of the offender, the nature of the occurrence and knowledge thereof within the ranks of the chess community or general public.

6.12. For example, publication in news articles on the Internet or dissemination in social media of an incident where a chess grandmaster has been caught cheating in a chess tournament will put the game of chess in an unjustifiable, unfavourable light. Also, if a senior FIDE official socially misbehaves to a significant degree and this is reported upon in the media, this may lead to a conclusion that the reputation of FIDE has been harmed.

7. **Freedom of speech, ambassadors and role models, conduct injurious to the sport**

7.1. Sport itself and the bodies that administer it have their own reputations, distinct from the sporting reputations of its

players (Patrick George: "Sport in Disrepute" Australian and New Zealand Sports Law Journal 2009 4 (1) 24-54 at 26).

- 7.2. For many reasons, including the future growth of the sport and attraction of sponsorships, it is in a sports body's best interests that the good public image of its sport is maintained and even improved. Sport bodies must take care to protect the image and reputation of the sport lest a bad name drives money, fans and youngsters away, or damages the public esteem in which the sport is held (George at 27).
- 7.3. Sports governing bodies control the behaviour of individuals engaged in its sport through various codes, rules and regulations. These measures may expressly deal with certain types of unwanted conduct, for example corruption, cheating, racism, abusive or violent behaviour, etc. However, it is not possible for the rules and codes of conduct to expressly provide for all misbehaviour that may have an adverse effect on a sport. Therefore, general wide-reaching clauses are used to catch misconduct that falls outside the scope of specific rules.
- 7.4. These "disrepute clauses" typically prohibit an individual from generally behaving in a manner which brings, or have the potential to bring, the sport into disrepute. Such behaviour could be either "on-field conduct" (on the playing field or in its vicinity, usually witnessed by other players, officials or spectators) or "off-field conduct" (away from the competition venue, whether taking place in private or in public). (Martin Kosla: Disciplined for 'bringing

a sport into disrepute' – a framework for judicial review",
Melbourne University Law Review Vol 25 654-679).

- 7.5. The misbehaviour must negatively affect the sport and not merely the accused's personal interests and image. A sportsman's behaviour may be classified as injurious to the sport either because it has some negative bearing upon his capacity to perform his public duties in the sport, or because the sportsman has been put forward to the public as subscribing to a particular standard, and that standard has been lowered in the eyes of the public (Kosla at 669).
- 7.6. In the context of on-field conduct, the player's conduct may have an adverse consequence on his ability to perform in his sport if that conduct leads to a refusal of his peers to take further part in the competition, if it causes friction and division amongst those engaged in the sport, or that the conduct is so shocking or outrageous that the sport is subject to public ridicule (Kosla at 670 - 672).
- 7.7. A player's off-field conduct may also be injurious to the sport if the behaviour has a negative bearing upon the player's capacity to perform his public responsibilities or functions in the sport, for example if the behaviour constitute criminal conduct or it takes the form of dissent and unfavourable comment. In the latter case, the mode and manner of dissent may determine whether or not the conduct brought the sport into disrepute (Kosla at 673 – 675; George at 40).
- 7.8. Misconduct may also be injurious to a sport because a particular standard of behaviour to which an individual

subscribes has been lowered in the eyes of the public. The person may have put themselves forward to the public as subscribing to a specific standard, or they may have been held out as subscribing to such a standard by a sport-governing body (Kosla at 676).

- 7.9. An individual athlete may be deemed to have put himself forward as subscribing to a particular standard of behaviour if, for example, he has taken on a leadership role (such as being the captain or coach of a team) or a position of authority (for example, being an arbiter, official or executive officer of a club or governing body). If a person in a leadership role or position of authority engages in misconduct, the status of the position or office held is lowered (Kosla at 676).
- 7.10. Individuals engaged in professional sport may need to adhere to a particular standard of behaviour because they have been held out by their sports' governing bodies as being role models (*IAAF & WADA v Marta Dominguez Azpeleta*, CAS 2014/A/3561 & 3614), *Henrik Stridh v IIHF*, CAS 2018/A/5747, *Nils-Erik Landen v IIHF*, CAS 2018/A/5748, *Tomas Montén v IIHF*, CAS 2018/A/5749).
- 7.11. Most individuals engaged in professional sport may be deemed to be role models as they have risen through the amateur ranks and reached the highest level of competition possible in the sport. They compete at the level at which almost all aspiring players in the sports strive. If the particular standard to which these role models subscribe has been lowered in the eyes of the public as a

result of their misbehaviour, the misconduct may be deemed to be injurious to the sport (Kosla at 676-677).

- 7.12. The right of freedom of opinion / speech / expression is not absolute and always require a balance between the sports' right to reputation and the individual's freedom of speech (*Irina Deleanu v FIG*, CAS 2012/A/3041; *General TawEEP Jantroroj v AIBA*, CAS 2010/A/2188).
- 7.13. An association – based on the special contractual legal relationship – may impose stricter duties on its members than the duties imposed on citizens by criminal law (or civil law). Associations in general have a large freedom to manage their own affairs, an official can freely opt out of his obligations by resigning from any role that subjects him to the association's rules and regulations (CAS 2018/A/6007 *Rajoub v FIFA* at paragraphs 87-99).
- 7.14. A holding out by a sport's governing body that an individual is a role model (not all persons engaged in sport are role models or ambassadors for the sport) could permit any misconduct which fell outside the scope of the rules and codes of behaviour to be classified as injurious to the sport (Kosla at 677).
- 7.15. If a sportsman holds himself out or is held out by his sporting body to the public as a role model, the hypocrisy of double standards could make the conduct disreputable in the eyes of the public to the requisite degree (George at 32).
- 7.16. As pointed out in the Decision of the First Instance Chamber's, international grandmasters and other title holders may be seen as informal ambassadors of the game

of chess. This is especially valid for grandmasters, belonging to the world elite and competing for the World Championship title, such as the appellant. A high level of conduct may be expected from such prominent members of the FIDE family and, in particular, that they comply with the FIDE principles as stated in the FIDE Charter.

- 7.17. In many instances, it is the continued association of the sportsman with the sport that is likely to produce the damaging effect on the reputation of the sport or its governing body. Once a sportsman is involved in a scandal which brings him into disrepute, the public may infer from the continued association of the player with the sporting body or the sport itself, that the disreputable conduct is tolerated. Also, if the public has an expectation that the sporting body will impose sanctions upon the sportsman concerned and that expectation is not met, the effect may be damaging to the reputation of the sporting body or sport. The stigma of disrepute infects those who continue to associate with that sportsman and damages their reputation (George at 37).
- 7.18. The effect of a sportsman's misconduct on the reputation of the sport and its governing body is often difficult to demonstrate or measure. The nature of the conduct which may bring a sportsman into disrepute is very similar to the conduct that is considered defamatory in civil law. In defamation law, damage to reputation is presumed to flow from the defamatory publication. It is the tendency or effect of the defamatory publication that proves that

damage was caused or was likely to be caused (George at 28, 35).

C. THE APPELLANT'S GROUNDS OF APPEAL

8. Summary of grounds of appeal

The appellant, in his notice of appeal, advances the following grounds of appeal:

- 8.1. The complaint investigated and judged by the First Instance Chamber was inadmissible as the Ukrainian Chess Federation (UCF) lacked substantial individual interest to file a complaint (paragraphs 26 -39).
- 8.2. The elements of Article 2.2.10 of the old Code had not been satisfied, as:
 - 8.2.1. The appellant acted not as a chess-player or a FIDE official, but as a politically active citizen/ thought leader (paragraphs 44 – 55).
 - 8.2.2. The appellant made no reference to chess and his conduct had no connection to chess (paragraphs 56 and 57).
 - 8.2.3. There is no negative impact on the game of chess or FIDE (Paragraphs 58 - 65).
- 8.3. The Decision of the First Instance Chamber violated the principles of freedom of speech and expression (paragraphs 66 – 73).
- 8.4. The Decision of the First Instance Chamber treated the appellant unequally compared to his fellow accused, Mr Sergey Shipov (paragraphs 75 – 84).

8.5. The sanction imposed by the First Instance Tribunal is disproportional (paragraphs 85 – 103).

9. **Admissibility of the original complaint**

9.1. The appellant argues that the First Instance Chamber commenced disciplinary procedure upon the request of the UCF as regards the subject matter of the complaint. He submits it was a matter between FIDE and the appellant and did not affect the legally protected interests of the UCF as a third party. Accordingly, the UCF did not have standing to request sporting sanctions to be imposed on the appellant and the First Instance Chamber's lacked the jurisdiction to consider a complaint on facts unconnected to a relevant individual interest of the UCF.

9.2. In its Statement, the respondent submits that the appellant's argument about a lack of standing to sue of the UCF and a lack of individual interest are irrelevant as the only interest at stake was the general interest of FIDE as the association governing the sport of chess and the complaint was referred to the First Instance Chamber by the FIDE Council, being a FIDE organ, regarding a matter concerning FIDE's interests in general (paragraphs 15-25).

9.3. The First Instance Chamber indeed approached the matter as a referral by the FIDE Council and not as a complaint made by the UCF to the EDC (paragraphs 2 and 6.1 of the Decision).

9.4. On 27 February 2022 an e-mail message, ostensibly prepared and sent by members of the National Chess Team of Ukraine/the UCF to FIDE, was forwarded to the

EDC by the FIDE legal advisor, Mr Alexandr Martynov. The e-mail characterised itself as an appeal to the chess community, FIDE, European Chess Union and all national chess governing bodies. It was not specifically addressed to the EDC as required by the EDC's procedural rules (Rule 1).

- 9.5. In addition, the Ukrainian e-mail addressed a variety of topics connected with Russia's military attack on Ukraine and asked for various steps to be taken, including but not limited to an appropriate assessment and punishment of famous Grandmasters who openly supported the aggression against Ukraine.
- 9.6. The Ukrainian e-mail forwarded to the EDC contains no information about the date of the e-mail, the e-mail addresses of the sender and recipients of the e-mail and further fails to identify of the author.
- 9.7. The Appeal Chamber is of the opinion that the UCF e-mail cannot be qualified as a "complaint" to the EDC, neither in its form nor in its content. The e-mail is denuded of all the essential elements that a complaint must contain, for example, the relevant background, the aggrieved behaviour, the foundations for a conviction and a request.
- 9.8. On the contrary, the referral to the EDC was clearly initiated by the FIDE Council which had taken a decision on 27 February 2022, *inter alia*, acknowledging receipt of the letter from the UCF and referring the matters to its appropriate organ, the EDC. As stated, the matter was

brought to the attention of the EDC by the FIDE legal adviser.

- 9.9. The fact that the matter was referred to the EDC by the FIDE Council is further borne out by the minutes of the Extraordinary FIDE Council meeting of 27 February 2022 (styled "Protocol"), available on the FIDE website. The minutes unequivocally establish that the matter was referred to the EDC at the instance of the FIDE Council.
- 9.10. It follows that, in the view of the Appal Chamber, the First Instance Chamber was correct in declaring the complaint admissible on the basis that it was referred by a FIDE organ and concerned FIDE's interest in general.
- 9.11. Accordingly, the Appeal Chamber finds no merit in the appellant's first ground of appeal.

10. **Application of Article 2.2.10 of the Code of Ethics**

Capacity in which statements were made

- 10.1. The appellant points out that he does not fall within the ranks of "FIDE officials" as defined in the definitions Article and Article 16.4 of the FIDE Charter, i.e. he does not occupy a FIDE office or represents FIDE formally by virtue of any mandate to act in the name and on behalf of FIDE. Thus there is no satisfactory basis to conclude that the appellant's relevant statements should be treated as in an official role on behalf of FIDE or a federation. On the contrary, it is argued that the appellant is not only a chess player, but acts as a public figure which an inherent right to make statements on the current political situation in his country as an expression of his freedom of speech. The

appellant describes himself as a "thought leader" and, to some extent, a politician in Russia.

- 10.2. It is further submitted by the appellant that the principle *nulla poena sine lege* applies to the matter at hand, pursuant to which no sanction may be imposed unless there is an express provision describing with sufficient clarity and specificity, not only the misconduct but also the applicable sanction.
- 10.3. In opposition, the respondent submits that Article 2.2.10 of the old Code does not refer exclusively to FIDE officials or persons holding such positions. The only requirement for the application of Article 2.2.10 is that the offence is committed by a person or entity falling within the scope of the Code. As a chess player and more particularly a FIDE titled player registered on the FIDE database, the appellant is clearly subject to the FIDE Code of Ethics and all of its provisions, including Article 2.2.10 which, in turn, does not limit its own applicability to a certain category of persons like "officials" (paragraphs 32 – 37).
- 10.4. The Appeal Chamber agrees with the submissions made on behalf of the respondent in this regard. Clearly the appellant, as a regular competitor in FIDE registered tournaments, is subject to the FIDE Code of Ethics (see also Articles 26.6 and 26.8 of the FIDE Charter). Furthermore, Article 2.2.10 of the old Code, in its terms, is not limited to any class of offender, but on the contrary applies to all the persons and organisations mentioned in Article 1.4 of the Code, including competitors in FIDE registered tournaments.

- 10.5. The appellant is a FIDE titled and rated player who makes his living by participation in events organised or rated by FIDE. By virtue of his membership or other association with the Russian Chess Federation, the respondent has subjected himself to the FIDE Charter and is deemed to subscribe to the standard of conduct demanded by the FIDE Charter and Code of Ethics.
- 10.6. Furthermore, the Appeal Chamber rejects the appellant's reliance on the legality principle expressed by the maxim *nullum crimen, nulla poena sine lege scripta et certa*.
- 10.7. In the CAS Decision in the matter of *Paul King v AIBA* (CAS 2011/A/2452) at paragraph 6.6, the CAS Panel recognised the principle *nullum crimen, nulla poena sine lege* as a fundamental principle of both criminal and disciplinary law (see also *General Taweeep Jantroroj and Amateur Boxing Federation of Thailand v AIBA* (CAS 2011/A/2358/2385/2411) and *Anderson et al v IOC* (CAS 2008/1545)).
- 10.8. In *George Yerolimpos v WKF* (CAS 2014/A/3516), at paragraph 105, the CAS Panel accepted that disciplinary provisions are not vulnerable to the application of the principle of legality merely because they are broadly drawn. Generality and ambiguity are different concepts. The Panel accepted that the WKF sought, like other sports-governing bodies, to draft a disciplinary provision with a reach capable of embracing the multifarious forms of behaviour considered unacceptable in the sport in question, but the real issue for the Panel was whether the WKF had achieved such intention with reference to the

principle of legality. In the end, the Panel concluded that the relevant offence could not be identified on the facts of that case which embraced the conduct with which the appellant was charged.

- 10.9. Disrepute clauses are generally expressed in broad terms, requiring a sportsman "not to engage in conduct which brings or would be likely to bring him, the sport, the sporting body and/or team into disrepute". (See, in general, *Kosla supra* and *George supra*)
- 10.10. Having regard to the formulation of Article 2.2.10 of the old Code, the Appeal Chamber finds that although the Article is widely drawn and capable of covering any occurrence or conduct, the Article is not ambiguous and meets the "predictability test" formulated in *Anderson's* case, namely the imposition of a duty not to cause reputational harm to the game of chess, FIDE or its federations and it is further clearly conveyed that a breach of such duty will attract disciplinary sanctions. It is not possible, nor necessary, for the Article to specifically mention the nature of the various types of conduct that would bring the game, FIDE or its federations into disrepute.
- 10.11. Accordingly, the appellants' arguments in this regard are rejected and it is held that the appellant's statements, in his capacity as a prominent chess player, do bring him into the ambit of Article 2.2.10 and that he could be sanctioned for a breach of Article 2.2.10 was indeed foreseeable by him.

Connection between the statements and chess

- 10.12. The appellant further argues that his statements on Twitter, which formed the subject matter of the complaint, did not mention FIDE or Chess, or otherwise referred to chess activity, even indirectly. Therefore, it is argued, there is no connection between the appellant's statements and the objectives preserved by the Code of Ethics (paragraphs 56 and 57).
- 10.13. The respondent submits, on the contrary, that the appellant's statements can indeed be connected to the game of chess and to his activity as a FIDE chess player as all the contentious statements were made on the appellant's Twitter account, in which account the appellant presents himself as a chess player and grandmaster, referring to his records of achievements. It is argued that almost all the appellant's followers on his Twitter account interact with him due to his position as a prominent chess grandmaster. Furthermore, there were a number of posts by the appellant in which he either mentions chess or criticises FIDE and the appellant even remarked that, due to his posts, he lost invitations to Western chess tournaments and may lose invitations to the FIDE Candidates Tournament (paragraphs 38 - 47).
- 10.14. In the appellant's Twitter account, which enjoys approximately 67 000 followers, his status is reflected as "*Chess player. Grandmaster. World Champion in Rapid and Blitz Chess 2012, 2016. Finalist of the match for the World Crown. World Cup Winner.*" There is no reference to his alleged political activity.

- 10.15. Furthermore, the greater part of the statements ("tweets") published on the appellant's Twitter account is related to chess and the reasonable inference can be made that a large part of the appellant's following on Twitter are chess players or persons interested in the game of chess. The appellant clearly used his Twitter account as a platform to make known his views, as a renowned chess player, to his followers. It is also foreseeable that the appellant's tweets, which can be "re-tweeted" to others by his followers, can further be reproduced in other publications on the Internet with a wider audience.
- 10.16. Contrary to the appellant's argument, the Code of Ethics does not govern only conduct expected from parties involved in FIDE tournaments and events or are in some other way directly connected to the game of chess, but also governs conduct which may indirectly affect the image of chess and the good name of its governing bodies.
- 10.17. Accordingly, the Appeal Chamber finds that public statements made by a prominent chess player in a social media account used predominantly to express views on chess-related matters, despite that the subject-matter addressed may be unrelated to the game of chess, do fall within the scope of conduct governed by the FIDE Code of Ethics, and in particular Article 2.2.10 thereof.
- 10.18. The Appeal Chamber notes that on at least one previous occasion it had to analyse and apply Article 2.2.10 of the old Code - EDC Case no. 2/2018: *FIDE Presidential Board v*

Ilyumzhinov (see paras 2.4 & 9.15 – 9.18) and finds its present conclusion in conformity with the earlier decision.

Impact of statements on chess

- 10.19. The appellant further argues that his relevant statements had no negative impact on the game of chess or FIDE, and in particular that the Decision by the First Instance Chamber does not refer to any facts proving actual damages to FIDE or chess. According to the appellant, it was only his own image in the public which was influenced by the statements (paragraphs 58 – 65).
- 10.20. In its Statement, the respondent argues that it is sufficient for the Tribunal to conclude, with the necessary certainty, whether the relevant statements had caused the game of chess, FIDE or its federations, "to appear in an unjustifiable unfavourable light" and "in this way damage its reputation". It is not necessary, so it is argued, that there is evidence of actual damage to constitute a violation of Article 2.2.10.
- 10.21. It is submitted by the respondent that the analysis of the First Instance Chamber was therefore correct in focussing on checking whether the game of chess and FIDE itself was put in such an unfavourable light by the occurrences (i.e. the appellant's statements) and not on searching and balancing the weight of potential damages suffered by FIDE as a consequence. Evaluating damages, for an economic view, is the prerogative of civil law cases of restoration and compensation, and not of disciplinary cases like the present.

10.22. The Appeal Chamber takes the view that a correct interpretation of Article 2.2.10 of the Code of Ethics merely requires the occurrence to have caused the game of chess, FIDE or its federations to appear in an unjustifiable, unfavourable light. This is an objective enquiry into the effect of the published statements and does not focus on the subjective interpretation of the statements by individual readers thereof. For purposes of determining objectively whether the statements had the mentioned result, it is permissible to take into account that there are situations where an occurrence is of such a nature that it is more or less certain to cause damage to the reputation of the sport and its Association. In other words, the inference must be able to be drawn (to the comfortable satisfaction of the Tribunal) from the established facts, especially in regard to the nature and content of the statements and the general reaction of the public, that the statements in issue had caused the game of chess, FIDE or its federations to appear in an unjustifiably unfavourable light.

10.23. The Appeal Chamber had regard to the appellant's various statements made on his Twitter account in the period 24 – 28 February 2022 as it appears from the case file of the First Instance Chamber hearing. What follows is a brief analysis of the contents and meaning of the tweets and their impact on the image of chess and FIDE.

"Taxi driver in Dubai ..." (case file, p 4)

10.23.1. The appellant relayed what he had allegedly been told by a taxi driver in Dubai which had said that in a few years his country would be

close friends with Russia and that they were not as stupid as Ukraine.

- 10.23.2. By sharing this story, the appellant is presumed to adopt and support the same idea and position. The message insults all Ukrainians, suggests that Ukraine has itself to be blamed for the invasion and makes propaganda for Russia's position in support of the military aggression.
- 10.23.3. In making the tweet, the appellant acted in a divisive or polarising manner, supported the idea of resolving international disputes by means of war and showed a complete insensitivity to the breach of human rights of the Ukrainian people, thereby flaunting FIDE's motto of *Gens Una Sumus* and breaching the FIDE principles stated in articles 4.3, 4.4 and 4.8 of the FIDE Charter.
- 10.23.4. Furthermore, the appellant, as an informal ambassador of chess and role model, creates the impression that chess and its international governing body, FIDE, support the idea of a war as an acceptable dispute resolution mechanism and stands indifferent to the interests of the members of the FIDE chess family in Ukraine.
- 10.23.5. As a "thought leader" (as the appellant describes himself), the appellant uses his social media platform to influence his followers to accept the position that Russia's invasion of the Ukraine was justified.

10.24. *"Maybe I should not have published ..."* (case file, p 5)

10.24.1. In this tweet the appellant apologised for repeating what the Dubai taxi driver had told him, but added that it did not change his opinion which was apparent from the previous post.

10.24.2. By reiterating his views, as conveyed in the previous post, the appellant perpetuated the harmful effect caused by his previous post. The appellant did not immediately delete his previous tweet, maintaining its accessibility to the public.

10.24.3. Again, he expressed support for Russia's aggression in complete disregard of the principles in the Olympic and FIDE Charters, promoting harmony, friendly relations, peace and solidarity, which principles he is bound to respect and protect.

10.25. *"Are you sure you want to support Ukrainian army? ..."* (case file, p 5)

10.25.1. The appellant posted a photograph showing Ukrainian soldiers holding a framed photo of Hitler and commented that "this is who the Russian army is fighting against".

10.25.2. The appellant accuses the Ukrainian regime and fighters of being pro-Hitler and glorifies the Russian attack as one aimed at de-militarisation and de-Nazification of Ukraine.

- 10.25.3. This posting and publication of a photo of Hitler is inflammatory and provocatively accuse Chess 24 and others of being supporters of a Nazi army. Chess24 is a chess platform and the simple fact of it condemning the Russian military act cannot be seen as support for the Ukrainian army nor for Nazism.
- 10.25.4. Again, the tweet is divisive and offensive to the Ukrainians and seeks to once more justify the Russian invasion.
- 10.26. Letter to President Putin (case file pp 3 and 7)
 - 10.26.1. The appellant published his letter addressed to President Putin of Russia and expressed his full support for the special operation to protect the interests of Russia, its people, eliminating threats and establishing peace. The appellant mentioned that the fight is for the de-militarisation and de-Nazification of Ukraine of its ruling regime.
 - 10.26.2. The statement glorifies the military action as an act of salvation with Putin as the saviour.
 - 10.26.3. The appellant makes the point that the fight is about the freedom of the lands where he spent his childhood and where he learnt to play chess and where his relatives still live. This establishes a clear link to his status as a chess grandmaster.

10.27. *"These are not new photos ..."* (case file, p 8)

10.27.1. The appellant posted photos of presumably Ukrainian fighters with a swastika banner visible on the one photo. The appellant commented that "if you think that facts are propaganda, it is really up to you",

10.27.2. The appellant again invokes the theme of Nazism and applies this to the Ukrainian people in a discriminatory manner.

10.27.3. The appellant further tries to depict the Russian invasion as a just war, despite that he is promoting the use of violence to settle conflicts.

10.28. *"Never forget who's the real threat to the world"* (case file, p 9)

10.28.1. The appellant reposted a "USA bombing list" previously posted by a Chinese government official. The appellant expressed his thanks to "our Chinese friends for telling the truth".

10.28.2. This post is a clear attempt to downplay the level of aggression displayed by Russian in its invasion of Ukraine. At the same time, it is an attack on the USA and continues to cause division in the chess world. It is blatant disregard for the FIDE principles seeking to promote solidarity and peaceful relations.

10.29. *"These are photos of the Alley of Angels ..."* (case file, p 14)

10.29.1. The appellant posted photos of a memorial dedicated to 91 children who allegedly died from the bombs of the Ukrainian army. He commented that "every time you justify Ukraine, remember these photos".

10.29.2. The appellant accuses Ukraine of genocide in order to legitimise the Russian military action. Even if it was true, both violent acts are condemnable.

10.29.3. Again, the appellant makes himself guilty of discriminatory conduct and behaviour promoting violence to settle conflicts.

10.30. *"For many years, FIDE has existed on Russian money"* (case file, p 15)

10.30.1. The appellant suggested that with FIDE's decisions to break off its links with Russian sponsors, the situations of chess players all over the world will worsen.

10.30.2. This is a tweet directly connected to chess and harmful to FIDE as it calls into question FIDE's independence and stature as an international organisation.

10.30.3. At the same time, it is suggested that FIDE will be unable to give the same level of support to chess players without Russian money and implied that FIDE had done harm to its own members by its

decision to sever links with the Russian sponsors.
This clearly harms FIDE's reputation.

10.31. *"You can remember that in boxing ..."* (case file, p 15)

10.31.1. The appellant pointed out that in boxing there are four main federations. He then stated that he would not be surprised if FIDE would soon hold only children's competitions and that professional chess would be led by a new federation with fresh ideas, professional management and large sponsorship contracts.

10.31.2. Again this is a tweet directly related to chess and constitutes an attack on FIDE's status, as recognised by the IOC, as the supreme body responsible for the governance of chess. The appellant is advocating for a break-up of FIDE which is clearly harmful to the organisation.

10.32. *"Celebrating the first day of Spring. A Russian Spring."*(case file, pp 13 and 16)

10.32.1. The appellant posted a photo with himself in boxing gloves with the abovementioned caption.

10.32.2. The reference to the Russian Spring is understood by the Appeal Chamber as a reference to pro-Russian unrest in the Ukraine in 2014 and the invasion and annexation by Russia of the Ukrainian territory of Crimea.

10.32.3. This posting provoked a strong reaction, given that the former World heavyweight boxing

champion, Vitali Klitschko is the Mayor of Kyiv, Ukraine.

10.32.4. Again, the appellant glorifies a previous Russian invasion into Ukraine in direct conflict with his duty to promote the FIDE principles.

10.33. *"Should I send a video ..."* (case file, p 17)

10.33.1. The appellant claimed that peaceful protesters had died at the hands of Ukrainian nationalists, but they are protected by the Ukrainian authorities.

10.33.2. Again, the appellant seeks to discredit the Ukrainian resistance and indirectly promote acceptance of the Russian invasion. By accusing the Ukrainian government of complicity, he further sows division.

10.34. *"Eight years left after the tragedy in Odessa ..."* (case file, p 17)

10.34.1. The tweet referred to the 2014 Odessa clashes between pro-Maidan and anti-Maidan demonstrators resulting in 48 deaths. The appellant suggested that the reason that no one had been punished for this is that the Ukrainian government are supporting the perpetrators and are afraid of them. He then asked rhetorically whether "you think such a country has a future?"

10.34.2. Again, the appellant makes himself guilty of inflammatory comment, accusing the Ukraine of criminal acts and cover-ups. This is divisive and

seeks to make propaganda for Russia's present invasion of Ukraine.

10.35. *"Many people ask if I regret my public support of the special operation?"* (case file, p 24)

10.34.1 This post of 10 March 2022 (after the initiation of the disciplinary proceedings against the appellant) was posted by way of a question and the appellant's answer. He replied to the above question that he supports Russia and his President without thinking a second about it and without regard for the consequences, even if it means that he loses his invitation to the Candidates.

10.34.2 This post demonstrates the complete lack of remorse and recalcitrance on the part of the appellant and a blind conviction in his country regardless of the personal cost to him.

10.36. The appellant's postings show firstly a complete disregard for an adherence to the FIDE principles whilst he is promoting, unashamedly, the Russian aggression. Secondly, the appellant is acting in a highly divisive and discriminatory fashion. Thirdly, the appellant seeks to undermine FIDE's authority and reputation.

10.37. Through his statements it is clear that the appellant no longer believes in the FIDE principles, values and rules to which he must adhere according to the FIDE Charter, he no longer wants to be a member of the FIDE family and aims to become a member of a new organisation managing professional chess in the future.

- 10.38. His attitude and point of view leaves him with little choice, but between two options: either to be in harmony with his convictions and to withdraw on his own from all FIDE competitions, or to be expelled from FIDE for a long period until he apologises and reaffirms his adherence to the principles of FIDE and accepts its full authority in the chess sphere.
- 10.39. The appellant's statements without doubt put FIDE and the game of chess in an unjustifiable, unfavourable light because of the double standards adopted by the appellant, an informal ambassador and role model for chess. A member of the public reading the appellant's posts may conclude that many chess players or all Russian chess players, think as he does and do not care about the principles and values that the FIDE family hold dear. Rather than looking like an organisation which aims to bring together differing people with differing viewpoints through a common interest in chess, FIDE looks divisive.
- 10.40. There is real harm for FIDE in that other candidates in the Candidates Tournament or other FIDE tournament may refuse to play against the Appellant. Other private organisers of prestigious chess tournaments like the London Chess Classic and the Grand Chess Tour have already indicated that the appellant is no longer welcome at their tournaments. The appellant's statements have caused friction and division amongst those engaged in the sport of chess and a huge outcry in social media. FIDE's continued association with the appellant under the present circumstances, or the lack of enforcing FIDE's code of

conduct against the appellant, would cause serious disrepute for FIDE.

10.41. Further harm lies in the media attention these statements invite. In any event where the appellant competes there will be a media distraction. If a Ukrainian player refuses to play the appellant (which certainly seems at least possible) then there will be a significant disruption to FIDE, especially if this occurs at an official FIDE event. Because the appellant is an unofficial ambassador, many people (especially casual observers) will equate his views to FIDE views. This will then require FIDE to repudiate these views. If FIDE does not do this in a prompt and strong enough manner, there is a significant risk that casual observers might believe that FIDE tolerates these views, which would certainly be harmful to FIDE's reputation.

10.42. Accordingly, based on the above, the Appeal Chamber is comfortably satisfied that the appellant's statements indeed resulted in the game of chess, FIDE or its federations appearing in an unjustifiable, unfavourable light.

11. **Freedom of speech and expression**

11.1. The appellant argues that his statements in no way incited hatred or violence, but were limited to the expression of support for the Russian Federation and its President. He notes that whereas the majority of society condemns the actions of the Russian federation, freedom of speech and the right to support in good faith those in positions of authority would allow the expression of a contrary opinion. In other words, it is not only the expression of popular

opinions which are protected, the same applies to the expression of unpopular opinions (paragraphs 66 – 73).

- 11.2. The respondent points out that restrictions to freedom of opinion are contrary to the core values of FIDE, but such freedom is not absolute and may be subject to limits. One such limit is that a sports federation may contractually impose stricter duties on its member than those that usually apply in terms of criminal or civil law. The respondent submits that the appellant's statements denote incitement to violence and/or hatred. In the eyes of a reasonable third person, the appellant's statements exceeded the limits to freedom of speech and mere support for his own country or patriotism. It rather became a legitimisation of violence, through the use of acts of war or the calls for "elimination threat", "evoking", "genocide" and "de-Nazification" (paragraphs 59 – 67).
- 11.3. The Appeal Chamber notes that the appellant is an elite chess player and former challenger for the World championship title. At present, before his ban by the First Instance Chamber, the appellant had qualified as one of eight players in the prestigious Candidates Tournament in order to find a challenger for the World championship match in the present cycle.
- 11.4. The Appeal Chamber agrees with the findings of the First Instance Chamber that a person such as the appellant must be regarded as an informal ambassador and role model for the game of chess. A high level of conduct is expected from such prominent members of the FIDE family, which includes compliance with the FIDE principles

and not making statements in conflict with such statements. By making such conflicting statements, the appellant is making himself guilty of double standards, i.e. subscribing to the standards in the FIDE Charter, but at the same time displaying conduct which is directly against such principles.

11.5. In the circumstances, the Appeal Chamber holds that there is indeed a fetter on the appellant's freedom of speech and expression, namely not to make public statements which espouse a different set of values than those contained in the FIDE Charter.

11.6. The Appeal Chamber agrees with the submissions of the respondent that the appellant's reliance on CAS jurisprudence to the effect that the criticism and commentary of the decisions of a sports body should be allowed within bounds as an expression of free speech, does not find application on the facts of the present case.

12. **Equality of treatment**

12.1. The appellant contends that his conviction is of a discriminatory nature when compared with the acquittal of Mr Shipov. The appellant submits that the First Instance Chamber's reliance on the lesser level of Mr Shipov's fame in the public and therefore a less powerful platform, are not valid distinctions to warrant different treatment in the application of the provisions of the old Code (paragraphs 74-84).

12.2. The respondent submits that the First Instance Chamber did not apply or interpret Article 2.2.10 differently in two

equal situations. It was the right of the First Instance Chamber to consider whether there are circumstances specific to each case which justified a different treatment. It used its discretionary powers to decide that "in an overall evaluation of the potential negative impact on the game of chess and/or FIDE" the statements of Mr Shipov were different, less provocative and issued by a less-known athlete without the same power to influence the public if compared to the appellant. (paragraphs 68 – 78)

- 12.3. The respondent points out that the appellant is a world famous chess player, ranked 17th in the world, with almost 70 000 followers on his Twitter account and whose statements have led to hundreds of comments/reactions. Mr Shipov is a player ranked 561st in the world, whose Facebook account is followed by around 2 600 and whose statements have generated no more than a dozen reactions (paragraph 74).
- 12.4. The Appeal Chamber cannot find a breach of the principle of equal treatment. Had the issue simply been whether there had been a violation of the FIDE principles (as is the situation in the new Code), both the appellant and Mr Shipov had to be found guilty. However, the old Code in Article 2.2.10 requires the statements to have resulted in a certain consequence, namely that the game of chess, FIDE or its federations appear in an unjustifiable unfavourable light as a result of such statements. The potential of public statements made in conflict with the FIDE principles of putting FIDE or chess in an unjustifiable unfavourable light may indeed depend on the profile of

the author of such statements. The more well-known the author, or the greater his following, the better the chance that the image of FIDE or chess will be diminished.

- 12.5. The Appeal Chamber agrees with both the First Instance Chamber and the respondent that the distinctions in profile between the appellant and Mr Shipov are valid considerations in assessing the reputational harm to FIDE and/or chess as a result of their respective statements.
- 12.6. Accordingly, the Appeal Chamber holds that there has been no violation of the principle of equal treatment which may assist the appellant.

13. **Proportionality of sanction**

- 13.1. It is indeed trite that a disciplinary sanction should be appropriate to the violation committed and in balance with a weighing-up of the interests of the offender and the general interests of the Association.
- 13.2. The appellant submits that the sanction imposed *in casu* was excessive, having regard *inter alia* to the fact that the appellant is a first offender, the sole breadwinner for a family relying mostly for their income on the appellant's chess-related activities and having the effect of excluding the appellant from participation in the Candidates tournament scheduled to commence in June 2022.
- 13.3. The appellant suggests, in the event that the Appeal Chamber confirms his guilt, that a milder sanction, such as a warning or fine should be imposed (paragraphs 85 – 103).
- 13.4. The respondent points out that the measure of the sanction imposed by a disciplinary body, in the exercise of the

discretion allowed by the relevant Rules, can be reviewed by appeal bodies only when the sanction is evidently and grossly disproportionate to the offence, or when such body "exceeded the margin of discretion accorded to it by the principle of association autonomy, i.e. only in cases in which the judicial body concerned must be held to have acted arbitrarily" (paragraph 80).

- 13.5. The respondent further submits that the sanctioning Tribunal may take into account the appellant's grandmaster position, exposure, fame, image, contents of his messages and wide audience they had and the lack of remorse shown by him in determining the applicable sanction, regardless whether it is marked as an aggravating or mitigating factor. Furthermore, having regard to the general attitude of the appellant in response to the enquiry into his conduct, the respondent submits that the First Instance Chamber had indeed taken into account all the relevant circumstances and imposed a proportionate sanction. (paragraphs 79 – 88).
- 13.6. The Appeal Chamber is of the view that there exist no proper grounds to interfere in the sanction imposed by the First Instance Tribunal which cannot be said to be grossly disproportionate to the offence or to have exceeded the margin of discretion to the extent of arbitrariness. In coming to this conclusion, the Appeal Chamber takes into account all of the appellant's personal circumstances as well as the circumstances relevant to the offence committed. It only deems it necessary to highlight the following:

- 13.6.1. An effective ban of chess-playing activities is indeed the appropriate form of sanction for the appellant's offence which was committed repeatedly even after the FIDE Council had made its position clear on 27 February 2022 and disciplinary proceedings had commenced against the appellant.
- 13.6.2. A ban suspended on certain conditions would be inappropriate in the light of the appellant's lack of remorse and recalcitrance. In this regard, the Appeal Chamber is reminded of the fact that the appellant was offered an opportunity to apologise and retract his statements, but he was not prepared to do so.
- 13.6.3. If the nature and severity of the offence is considered in isolation without taking into account the mitigating circumstances operating in favour of the appellant, a ban of up to twelve months could well be justified. This is illustrated by the recent decision by the FINA Disciplinary Panel in the matter of the swimming athlete Mr Evgeny Rylov of Russia who, in similar (but perhaps less serious) circumstances, was suspended for a period of nine months.
- 13.6.4. When taking into account the mitigating factors, such as the appellant's personal family situation and the social ridicule and sporting disapprobation suffered by him, as well as the harm to his future professional career as a result

of his statements, the appellant is deserving of some mercy reflected in a reduction in the length of the ban to a period of six months only.

13.6.5. It is indeed unfortunate that the appellant, as a result of the ban, would forfeit his place in the Candidates tournament but this is a consequence he entirely brought upon himself when he repeatedly made the offensive statements and when he refused to retract them.

13.6.6. A warning or a fine as suggested by the appellant would be wholly inappropriate as it would clearly fail to reflect the seriousness of the offence.

D. CONCLUSION

14. Taking into account all the circumstances of the present matter, and having carefully considered all of the appellant's grounds of appeal, the Appeal Chamber finds it unable to uphold the appellant's appeal on either the guilty verdict or the sanction imposed.
15. It follows that the Decision of the First Instance Tribunal Chamber of 21 March 2022 must be confirmed and maintained.

F P Strydom

FRANCOIS STRYDOM
CHAIRMAN: EDC APPEAL CHAMBER

10 May 2022