



GENS UNA SUMUS

FÉDÉRATION INTERNATIONALE DES ÉCHECS

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54 Avenue de Rhodanie, 1007 Lausanne, Switzerland

☎ 1) 216010039

✉ ce@fide.com

🌐 [://www.fide.com](http://www.fide.com)

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: Mrs. Yolander Persaud-Sammy
Mr. Ravindra Dongre

Following an exchange of correspondence and online meetings, came to the following decision -

DECISION

Case n. 03/2021: “Alleged false and non-submission of Arbiter performance records to FIDE.”

1. The EDC Chamber **notes** its establishment by the EDC Chairman on 25 March 2021.
2. The EDC Chamber **notes** that on 23 March 2021 the FIDE Ethics and Disciplinary Commission (EDC) received a complaint from Mr. Bart DE VOGELAERE (the complainant) against Mr. Luc CORNET and Mr. Geert BAILLEUL (the respondents). The complaint was also directed against the Board of the Belgium Chess Federation, but ruled to be inadmissible by the EDC Chairman as the relief sought against the Board fell outside the EDC’s competence.
3. The EDC Chamber **notes** that it is called upon to consider the possible imposition of a sanction by FIDE on the basis of the alleged violation of the FIDE Code of Ethics, more particularly art. 2.2.1 (Fraudulence in the

administration of any FIDE office or national federation office that affects other federations) and/or art. 2.2.2 (Office bearers who through their behaviour no longer inspire the necessary confidence or have in other ways become unworthy of trust) and/or art. 2.2.3 (Organizers, tournament directors, arbiters or other officials who fail to perform their functions in an impartial and responsible manner).

4. The EDC Chamber **notes** that the Respondents have been given the opportunity to respond to the complaint and received their written answers submitted by their representative Mr Marco Biagioli (Attorney at law) dated 17 June 2021, 31 March 2022, 12 April 2022 and 31 May 2022.
5. The EDC Chamber **notes** the written replies of the complainant dated 23 August 2021 and 20 April 2022.
6. Upon due consideration of the documents, arguments and submissions by the parties, the EDC Chamber, by unanimity of its members, **finds** regarding the admissibility of the complaint that:
 - 6.1. The purpose of the present proceedings is to consider a possible “*Alleged false and non-submission of Arbiter performance records to FIDE*” by the respondents.
 - 6.2. Article 26.9 of the FIDE Charter provides that : “The Ethics and Disciplinary Commission shall have jurisdiction over cases within a national sphere only if:
 - the case on which the alleged violation is based has international implications or affects various national Member Federations of FIDE and has not been judged at national level through the national federation’s own ethics process;
 - the national ethics process has operated in a manner that in itself is a breach of the FIDE Ethics and Disciplinary Code or of the fundamental principles of law and fair trial.”
 - 6.3. The EDC Chamber **notes** that all formal disciplinary proceedings by the Belgian Chess Federation related to the present matter were declared in a final verdict not valid, due to errors of procedure and violations of the regulations of the Belgian Chess Federation and

accordingly the case is considered as not have been judged at national level.

- 6.4. The respondents are members and officials of the Belgium Chess Federation and as such part of the FIDE family, over which EDC exercises jurisdiction. (See also Art. 26.8 of the FIDE Charter).
 - 6.5. The case has international implications as is it concerns FIDE rated tournaments and affects arbiters' performance visible on FIDE database.
 - 6.6. The respondent's alleged conduct *prima facie* has the potential to constitute a violation of conduct prohibited in articles 2.2.1 and/or 2.2.2 and/or art. 2.2.3 of the FIDE Code of Ethics.
 - 6.7. The EDC chamber **finds** therefore that the complaint is admissible against both Mr. Luc CORNET and Mr. Geert BAILLEUL and that it has jurisdiction to investigate the alleged violations of the Code of Ethics.
7. Upon due consideration of all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, the EDC Chamber refers in its written decision only to the relevant submissions and evidence it considers necessary to explain its reasoning and by unanimity of its members, observes and finds regarding the issue of the respondent's guilt as is set out herein after.
 8. The complainant's Request for Relief, as articulated in his complaint and subsequent statements, can be summarized as follows:
 - 8.1 To correct his missing arbiter records relating to the team championships by adding them to his FIDE chess profile of arbiter.
 - 8.2 To remove all fake arbiter records falsely transferred by Mr. Luc Cornet from the FIDE chess profiles of the arbiters concerned.
 - 8.3 To impose a sanction on Mr. Luc Cornet for fraudulence in administration and sending fake arbiter records to FIDE and likewise on Mr. Geert Bailleul for having knowledge of the fraudulence and not intervening to prevent it.

- 8.4** To take a decision about the respondents' representative Mr. Marco Biagioli regarding a possible conflict of interest and consequently to disregard all statements of defence he submitted.
- 9.** The Respondents' Prayer for Relief, as articulated in their Answers is as follows:
- 9.1** To declare the complainant allegations to be false and undue and to reject the complaint as unfounded and baseless.
- 9.2** Alternatively to call a hearing and summon the complainant and the respondents and also to hear all concerned witnesses of the Belgian Chess Federation board as well as Mr. Sergio Zamparo, Mr. Ludo Martens, Mr Marc Bils and then then to reject the complaint as unfounded and baseless.
- 10.** The preliminary question is thus whether there is a conflict of interest for Mr. Marco Biagioli between his position as data protection legal adviser of FIDE and his position as a representative of the respondents in the present case.
- 10.1** The EDC panel notes that art. 16.10 of the Charter provides “Whenever any FIDE official has a financial or personal interest in any matter coming before any FIDE body on which has a deliberative voice or vote, the affected person shall fully disclose the nature of the interest to the relevant body and withdraw from discussion, lobbying, and voting on the matter. Situations of conflict of interest can find a specific regulation in the Ethics and Disciplinary Code and in the Internal Rules of the different organs.” Mr. Biagioli has no deliberative voice or vote in front of the EDC and consequently the conditions of art. 16.10 of the Charter are not fulfilled.
- 10.2** The EDC panel notes that the old Code of Ethics has no specific regulations about conflict of interest while the new Ethics and Disciplinary Code (effective 1st April 2022) expanded on the matter in accordance with art. 16.10 of the Charter.
- 10.3** The EDC Chamber draws attention to art. 8.13 of the new Ethics & Disciplinary Code dealing with any potential conflict of interest concerning Management Board and FIDE Council members. Clearly, as it appears from the FIDE website, Mr. Biagioli is not a member of

the Management Board nor the FIDE Council, likewise there is no occurrence with the non-exhaustive list of examples furnished by art. 8.26 and 8.27 of the new Code.

- 10.4** Nevertheless, the EDC Chamber is firmly convinced that it should strive to reduce and eliminate instances of conflict of interest by being aware, prudent, and forthcoming about the potential conflicts and thus to participate in implementing the highest standards of good governance to protect both FIDE and the individuals concerned from any appearance of improper behaviour as mentioned in art. 8.22 of the new Code.
- 10.5** Accordingly, it clearly appears from the FIDE website about Data Protection that Mr. Willy Iclicki is the Data Protection Officer, that being so Mr. Biagioli has no role to access, manage, store or manipulate FIDE data, he only gives legal advice whenever requested. The EDC Chamber finds that there is no conflict of interest between Mr. Biagioli's duties to give legal advice to FIDE about data protection and his role as a representative of the respondents as far as his clients cannot profit of his status of Official with no possibility to access or manipulate the FIDE data.
- 10.6** Finally, the notion of conflict of interest linked to data protection must target only confidential data that must not be shared in public, while the present case is about public records to be shared openly in the FIDE website.
- 10.7** For the above-mentioned reasons, the EDC Chamber **finds** unanimously no merit in the complainant's preliminary ground about conflict of interest.
- 11.** Regarding the alleged fake arbiter records being falsely transferred by Mr. Luc Cornet and required to be removed from the FIDE chess profiles of the arbiters concerned, the EDC Chamber draws attention to the standard of proof required to show an official guilt in a case of fraudulence, falsification or forgery, namely "comfortable satisfaction" which is said to fall between the civil standard of "a balance of probabilities" and the criminal law standard of "beyond a reasonable doubt". In sports law, in serious matters such as an alleged fraud and fake records, it can be held that the more serious the

allegation, and its consequences, the higher the level of proof and closer to the criminal standard is required for a matter to be substantiated. Regarding cases of fraudulence, they must be attracting a higher level of proof.

12. In the present case, having regard to the complainant's allegations and evidence alone about fake records, the EDC Chamber **finds** that the respondents' conduct does not support a conclusion of guilt to the comfortable satisfaction.
13. Despite the above conclusion, the EDC Chamber **remarks** that in its view the matter should be referred for the attention of the FIDE Arbiters Commission as well as the FIDE Qualification Commission for a rectification of their records if considered necessary.
14. Regarding the rectification of the complainant's arbiter records, the EDC Chamber **notes** that the Belgian Chess Federation and the respondents have been directed and notified on 8 April 2022 to provide the EDC Chamber with all reports of matches / tournaments & IT3 forms related to the list of missing arbiter records of Mr. Bart De Vogelaere and that this direction has been duly executed on 12 April 2022.
15. In his statement dated 20 April 2022, the complainant asserts that he is "happy to see that proof (invitations, reports...) was given by the Belgian Chess Federation..." but maintains that they were not submitted to FIDE by Mr. Luc Cornet. Moreover, the complainant confirmed the veracity of the provided documents in these terms "It is mentioned in the document that reports regarding my records 22, 23 and 24 are missing. I will send these 3 reports to the FIDE office, to be forwarded to your commission".
16. In their further reply dated 31st, May 2022, the respondents categorically denied the non-submission of the provided records.
17. The EDC Chamber **notes** that the complainant in his last statement is no longer discussing fake or missing records and as a general rule facts contained in Competition Officials' reports and in any additional reports or correspondence submitted by the Competition Officials are presumed to be accurate, unless proven otherwise by the Parties.
18. The only pending point is relative to the visibility of the complainant's records in his FIDE profile which is managed by the FIDE team and falls under their duties to update and/or correct a FIDE arbiter's profile when deemed necessary and in line with the current FIDE rules thus, the complaint

does not disclose sufficiently that any violation of the FIDE Code of Ethics by the respondents has taken place.

19. Accordingly, the EDC panel unanimously **decides** as follows:

19.1. The Respondents are not guilty of any violation of art. 2.2.1, 2.2.2 and 2.2.3 of the FIDE Code of Ethics; and

19.2. The matter should be referred for the attention of FIDE Arbiters Commission as well as the FIDE Qualification Commission for any deemed possible rectification of the complainant arbiter's records and/or any investigation about incorrect records.

19.3. Save as aforesaid, Case no. 03/2021 is dismissed.

20. The complainant Mr. Bart De Vogelaere is referred to Rules 42.3 and 43 and 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 calendar days from the date upon which this decision is received. The notice of appeal must clearly state all the grounds for the appeal and an appeal lodgment fee of 150 Euros is payable to the FIDE Financial Department. Failing the due exercise of this right of appeal, the EDC Chamber's decision will become final.

21. The EDC Chamber requests the FIDE Secretariat to communicate forthwith the decision to the complainant, the Belgian Chess Federation, to Mr. Luc Cornet and Mr. Geert Bailleul through their representative Mr. Marco Biagioli, the FIDE Arbiters Commission as well as the FIDE Qualification Commission and to publish in due course the decision on the FIDE website.

DATED ON THIS 13th day of September 2022.

Khaled Arfa

First Instance Chamber Chairperson

FIDE ETHICS & DISCIPLINARY COMMISSION